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**ADVISORY COMMITTEE  
ON  
CRIMINAL RULES**

---

**October 14, 2026**

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**Boston, MA | October 14, 2026**

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# TAB 1

## ADVISORY COMMITTEE ON CRIMINAL RULES

Honorable Michael W. Mosman  
United States District Court  
Portland, OR

Professor Sara Sun Beale  
Duke Law School  
Durham, NC

### Associate Reporter

Professor Nancy J. King  
Vanderbilt University Law School  
Nashville, TN

### Members

Honorable André Birotte Jr.  
United States District Court  
Los Angeles, CA

Honorable Jane Boyle  
United States District Court  
Dallas, TX

Honorable Timothy Burgess  
United States District Court  
Anchorage, AK

Honorable Stephanie Dawkins Davis  
Sixth Circuit Court of Appeals  
Detroit, MI

Honorable Thomas M. Durkin  
United States District Court  
Chicago, IL

A. Tysen Duva, Esq.  
Assistant Attorney General (ex officio)  
United States Department of Justice  
Washington, DC

Honorable Michael Harvey  
United States District Court  
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Marianne Mariano, Esq.  
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Buffalo, NY

Shazzie Naseem, Esq.  
Berkowitz Oliver LLP  
Kansas City, MO

Honorable Carlos A. Samour, Jr.  
Colorado Supreme Court  
Denver, CO

Professor Jenia Turner  
Southern Methodist University  
Dedman School of Law  
Dallas, TX

Mary Jo White, Esq.  
Debevoise & Plimpton LLP  
New York, NY

### Liaison

Honorable Paul J. Barbadoro  
(*Standing*)  
United States District Court  
Concord, NH

## ADVISORY COMMITTEE ON CRIMINAL RULES

### Clerk of Court Representative

Brandy S. Lonchena, Esq.  
Clerk  
United States District Court  
Pittsburgh, PA

## ADVISORY COMMITTEE ON CRIMINAL RULES

| Members                             | Position | District/Circuit     | Start Date                  | End Date     |
|-------------------------------------|----------|----------------------|-----------------------------|--------------|
| Michael W. Mosman<br>Chair          | D        | Oregon               | Member: 2024<br>Chair: 2025 | ----<br>2028 |
| Andre Birotte, Jr.                  | D        | California (Central) | 2021                        | 2027         |
| Jane Boyle                          | D        | Texas (Northern)     | 2021                        | 2027         |
| Timothy Burgess                     | D        | Alaska               | 2021                        | 2026         |
| Stephanie Dawkins Davis             | C        | Sixth Circuit        | 2026                        | 2029         |
| Thomas M. Durkin                    | D        | Illinois (Northern)  | 2025                        | 2028         |
| A. Tysen Duva*                      | DOJ      | Washington, DC       | ---                         | Open         |
| Michael Harvey                      | M        | District of Columbia | 2023                        | 2026         |
| Marianne Mariano                    | FPD      | New York (Western)   | 2023                        | 2028         |
| Shazzie Naseem                      | ESQ      | Missouri             | 2024                        | 2027         |
| Carlos A. Samour, Jr.               | JUST     | Colorado             | 2024                        | 2027         |
| Jenia Iontcheva Turner              | ACAD     | Texas                | 2025                        | 2028         |
| Mary Jo White                       | ESQ      | New York             | 2025                        | 2028         |
| Sara Sun Beale<br>Reporter          | ACAD     | North Carolina       | 2005                        | Open         |
| Nancy J. King<br>Associate Reporter | ACAD     | Tennessee            | 2007                        | Open         |

Principal Rules Committee Staff: Sarah Sraders, 202-502-1820

\* *Ex officio* representative

## RULES COMMITTEE LIAISON MEMBERS

|                                                        |                                                                                                                                                         |
|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Liaisons for the Advisory Committee on Appellate Rules | <p>Andrew J. Pincus, Esq.<br/><i>(Standing)</i></p> <p>Hon. Daniel A. Bress<br/><i>(Bankruptcy)</i></p>                                                 |
| Liaison for the Advisory Committee on Bankruptcy Rules | <p>Dean Troy A. McKenzie<br/><i>(Standing)</i></p>                                                                                                      |
| Liaisons for the Advisory Committee on Civil Rules     | <p>Hon. Amul R. Thapar<br/><i>(Standing)</i></p> <p>Hon. Leigh Martin May<br/><i>(Bankruptcy)</i></p>                                                   |
| Liaison for the Advisory Committee on Criminal Rules   | <p>Hon. Paul J. Barbadoro<br/><i>(Standing)</i></p>                                                                                                     |
| Liaisons for the Advisory Committee on Evidence Rules  | <p>Hon. Thomas M. Durkin<br/><i>(Criminal)</i></p> <p>Hon. Edward M. Mansfield<br/><i>(Standing)</i></p> <p>Hon. M. Hannah Lauck<br/><i>(Civil)</i></p> |

**ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**  
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Chief Counsel  
Administrative Office of the U.S. Courts  
Office of the General Counsel—Rules Committee Staff  
Washington, DC

**Bridget M. Healy, Esq.**  
Counsel

**Shelly Cox**  
Management Analyst

**Sarah Sraders, Esq.**  
Counsel

**Rakita Johnson**  
Administrative Analyst

**FEDERAL JUDICIAL CENTER**  
**Staff**

**Hon. Robin L. Rosenberg**  
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Washington, DC

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Tim Reagan, Ph.D., J.D.  
Senior Research Associate

**Appellate Rules Committee**

Tim Reagan, Ph.D., J.D.  
Senior Research Associate

**Bankruptcy Rules Committee**

Carly Giffin, Ph.D., J.D.  
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**Criminal Rules Committee**

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Elizabeth Wiggins, Ph.D., J.D.  
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**Evidence Rules Committee**

Elizabeth Wiggins, Ph.D., J.D.  
Division Director

Timothy Lau, Ph.D., J.D.  
Research Associate

# TAB 2

**ADVISORY COMMITTEE ON CRIMINAL RULES  
SUBCOMMITTEES  
(effective October 1, 2026)**

|                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Rule 11 Subcommittee</b><br>Judge Jane Boyle, chair<br>Judge Andre Birotte<br>Ms. Marianne Mariano<br>Ms. Sonja Ralston (DOJ)<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper                         | <b>Rule 15 Subcommittee</b><br>Judge Timothy Burgess, Chair<br>Judge Thomas Durkin<br>Ms. Marianne Mariano<br>Ms. Sonja Ralston (DOJ)<br>Justice Carlos Samour<br>Prof. Jenia Iontcheva Turner<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper |
| <b>Rule 40 Subcommittee</b><br>Judge Michael Harvey, chair<br>Judge Andre Birotte<br>Judge Jane Boyle<br>Ms. Marianne Mariano<br>Ms. Sonja Ralston (DOJ)<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper | <b>Rule 49.1 Subcommittee</b><br>Judge Michael Harvey, Chair<br>Judge Andre Birotte<br>Ms. Marianne Mariano<br>Mr. Shazzie Naseem<br>Ms. Sonja Ralston (DOJ)<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper                                   |
| <b>Rule 53 Subcommittee</b><br>Mary Jo White, Chair<br>Judge Andre Birotte<br>Judge Stephanie Davis<br>Ms. Marianne Mariano<br>Ms. Sonja Ralston (DOJ)<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper   | <b>Pro Se Filing Subcommittee</b><br>Judge Timothy Burgess, Chair<br>Judge Michael Harvey<br>Ms. Marianne Mariano<br>Mr. Shazzie Naseem<br><br>Cc: Criminal Rules Committee Chair & Reporters, Ms. Dubay, Ms. Sraders, Ms. Ripper                                                        |
| <b>Evidence Rules Committee Liaison</b><br>Judge Thomas Durkin                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                          |

# TAB 3

**ADVISORY COMMITTEE ON CRIMINAL RULES**  
**MINUTES**  
**April 29, 2026**

**Attendance and Preliminary Matters**

The Advisory Committee on Criminal Rules (the “Committee”) met on April 29, 2026, in Washington, D.C. The following members, liaisons, reporters, and consultants were in attendance:

Judge Michael Mosman, Chair  
Judge André Birotte Jr.  
Judge Jane J. Boyle  
Judge Timothy Burgess  
Judge Thomas M. Durkin  
Judge Michael Harvey  
Marianne Mariano, Esq.  
Shazzie Naseem, Esq.  
Judge Jacqueline H. Nguyen  
Sonja Ralston, Esq.<sup>1</sup>  
Justice Carlos Samour  
Professor Jenia Turner  
Mary Jo White, Esq.  
Brandy Lonchena, Esq., Clerk of Court Representative  
Judge James C. Dever, Chair, Standing Committee  
Judge Paul Barbadoro, Standing Committee Liaison  
Professor Sara Sun Beale, Reporter  
Professor Nancy J. King, Associate Reporter  
Professor Edward Hartnett, Reporter, Standing Committee  
Professor Catherine T. Struve, Standing Committee Consultant (via Microsoft Teams)

The following persons participated to support the Committee:

Carolyn A. Dubay, Esq., Secretary to the Standing Committee  
Shelly Cox, Management Analyst, Rules Committee Staff  
Bridget M. Healy, Esq., Counsel, Rules Committee Staff  
Rakita Johnson, Administrative Analyst, Rules Committee Staff  
Sarah Sraders, Esq., Counsel, Rules Committee Staff  
Dr. Timothy Reagan, Federal Judicial Center (via Microsoft Teams)  
Dr. Brittany Ripper, Federal Judicial Center

**Opening Business**

Judge Mosman opened the meeting and welcomed the attendees.

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<sup>1</sup> Ms. Ralston represented the Department of Justice.

Judge Mosman stated that Judge Nguyen would be leaving the Committee after this meeting, and he expressed his gratitude for all of the hard work that she had done, especially in carrying the Rule 17 project forward. Judge Nguyen said that she had already said goodbye to the Committee once before, since this last year had been her “bonus” year. It had been a pleasure for her to serve on the Committee, first under Judge Kethledge, then Judge Dever, and now Judge Mosman. She thanked the chairs, the committee members, the members of the Rule 17 Subcommittee, and the reporters for all of their hard work and for making the Committee’s work such a collaborative process.

Judge Mosman reminded those participants appearing remotely to turn on the “raise hand” feature in Microsoft Teams, or simply raise their hand, to be acknowledged. He also asked members present in the room to raise their hands before speaking. Finally, he noted that the meeting today would need to conclude by 3 p.m.

Judge Mosman then turned to the draft minutes of the November 2025 Committee Meeting and asked whether there were any changes recommended. Professor Beale said that she had been notified of two typographical errors that needed correction. She said that even if a small mistake like that were to be noted later, the reporters were permitted to correct a misspelling. She asked that members let the reporters know of any other typographical errors.

A motion to approve the minutes was made, seconded, and approved unanimously.

Ms. Dubay then provided a report on the progress of proposed amendments to the Federal Rules. She directed the Committee to page 94 of the agenda book, which showed the amendments that would be effective as of December 1, 2026. She noted that the chart listed Appellate Rules 29 and 30, which had been withdrawn. Those would later be resubmitted with the changes voted on by the Appellate Rules Committee two weeks earlier. The other amendments identified on that chart, however, were approved by the Supreme Court and delivered to Congress on April 8, 2026. Barring any action by Congress, those will become effective at the end of this year.

Ms. Sraders provided an update on legislation that would directly or effectively amend the Federal Rules. She directed the committee members to page 99 of the agenda book and drew their attention to the Prohibiting Political Prosecutions Act of 2026. This legislation would add several provisions to Criminal Rules 6, 16, and 48. No action had been taken on this bill since it was introduced, but the Rules staff would continue to monitor it.

Dr. Reagan then provided a report on the work of the Federal Judicial Center (FJC). First, the research on deepfakes and authenticity was complete and had been published in the spring agenda book for the Evidence Rules Committee. Second, the FJC planned to release a documentary video on how two district courts were allowing self-represented litigants to file electronically in civil cases. One district allows them to use CM/ECF, and the other does not. Both allow self-represented litigants to use an online upload portal to submit documents for electronic filing.

## Rule 17

Judge Mosman then turned to Judge Nguyen to report on Rule 17. Judge Nguyen said that the Standing Committee had recommended that the amended Rule 17 be published. The subcommittee met and reviewed all testimony and comments received during the publication period. The subcommittee heard from 13 commenters, which included individuals as well as organizations. Eight of these supported the revised rule with some modifications, and three commenters expressed strong opposition, primarily based on concerns about victims' rights. Judge Nguyen explained that the public comments received could be divided into three categories: comments for which the subcommittee believed no change to the proposed rule was warranted; comments for which the subcommittee recommended a change; and comments for which the subcommittee was divided as to how to respond.

### Subcommittee recommendation of no changes

Judge Nguyen began with the category of comments for which the subcommittee thought no change was warranted. She turned the Committee's attention to the redline on page 145 of the agenda book. The Committee received strong opposition to subparagraph 17(c)(2)(A), which would expand the availability of subpoenas beyond trial. Professor Cassell, one of the commenters, argued that 95% of criminal cases result in pleas, so expanding the availability of subpoenas beyond trials would dramatically increase the number of subpoenas to victims. There was concern expressed about fishing expeditions, especially in sexual assault cases or cases involving violent crimes.

The subcommittee thought that the concerns expressed were very serious but recommended making no changes to the proposed rule text. Expanding the availability of subpoenas beyond trial was an issue that was extensively discussed and considered both by the subcommittee and the full Committee. The Committee made a deliberate choice to expand subpoena availability beyond trial, for several reasons. One was that the defendant has the right to present evidence in these other proceedings. The expansion was designed to correct inconsistencies across districts: in some districts, defendants are permitted to use subpoenas, but in other districts, the practice is more restrictive. The subcommittee was not aware of any examples of the harms identified by commenters in any of the districts that have liberal subpoena practices. Judge Nguyen reiterated that under the amended rule, courts in every district have full discretion to control the way that subpoenas are handled. Accordingly, the subcommittee unanimously recommended that no changes be made.

The subcommittee also reviewed comments about the relaxation of the *Nixon* standard, in subparagraph (c)(2)(B). Judge Nguyen stated that the defense bar—the National Association of Criminal Defense Lawyers (NACDL) and others—renewed their argument for a more generous “relevant and material” standard. On the other hand, the victims' rights groups advocated strongly for the *Nixon* standard, which is very restrictive. Their primary argument was that relaxing the standard beyond *Nixon*, along with the other proposed changes in the amended rule,

would magnify the harm to victims and decrease district judges' abilities to protect the victims' rights.

The subcommittee again felt that these issues had already been fully explored and considered. Judge Nguyen explained that the standard that was implemented in the proposed rule—"likely to be possessed by the subpoena's recipient," "not reasonable available" elsewhere, and "likely to be admissible"—was a middle ground that drew a balance between the very restrictive *Nixon* standard and the "relevant and material" standard. Relaxing the *Nixon* standard was the thrust of this entire project, and was extensively discussed. Accordingly, the subcommittee members unanimously recommended that no changes be made in response to these comments.

Next, Judge Nguyen turned to the comments received in response to subparagraph (c)(2)(E), on line 61 of the redline. The amendments provided that, for good cause, the court must permit the party to file the motion ex parte. This was an issue that the subcommittee worked very hard on, and the Advisory Committee and Standing Committee approved. The objection to this provision was that it would open the floodgates and undercut the court's ability to safeguard victims' rights. Judge Nguyen stated that Professor Cassell raised one point that the subcommittee had not previously considered, which was that this may somehow facilitate the district court's ability to issue a gag order preventing victims from talking to AUSAs. Judge Nguyen said that the proposed amendments to Rule 17 did not do anything regarding gag orders, so any law regarding gag orders remained the same.

The subcommittee thought that this was, again, something integral to the compromise struck in the amended rule, to allow the defendant to have—upon a showing of good cause—the ability to file an ex parte motion. The subcommittee therefore recommended no change to the proposed rule.

The final comment for which the subcommittee was recommending no change be made concerned paragraph (c)(4), beginning on line 88 of the redline. This provision imposed additional requirements for self-represented parties. One commenter questioned why self-represented parties should be treated differently and argued that this potentially undermined their Sixth Amendment rights. Judge Nguyen explained that these requirements were a deliberate choice made by the subcommittee, acknowledging that self-represented litigants do not have the same ethical obligations or legal training as attorneys, warranting greater judicial supervision. The subcommittee therefore recommended no change to the proposed rule.

Professor Beale stated that prior to the meeting the Committee had received a comment from one of the other reporters suggesting clarification of the committee note. She explained that one of the concerns raised by victims about the expansion of the availability of subpoenas to non-trial proceedings was that the Federal Rules of Evidence do not apply. The published committee note, at line 313 on page 159 of the agenda book, said, "There is no separate reference to 'relevance' in **(c)(2)(B)** because it is not likely that information would be admissible unless it was relevant." Professor Beale noted that this language could be stronger. The suggestion was to say, ". . . because information would not be admissible unless it was relevant." She said that if

the Committee believed that this was correct and less convoluted, then it would deliver a more reassuring point.

Judge Nguyen agreed that this tightened up the language and said the same thing in a clearer and more straightforward way. She believed that this should be fairly non-controversial.

A member noted that this had been a concern of his, an evidentiary standard that may have indirect application and a proceeding where the Federal Rules of Evidence would not apply. He asked how a magistrate judge should prepare for a detention hearing and apply the standard, which talked about the likelihood of admissibility.

Professor Beale said that her understanding based on Committee discussions was that judicial officers apply concepts of relevant, reliability, and authenticity when making these determinations, but do not strictly apply the Federal Rules of Evidence. She stated that it was fairly well-understood that these proceedings were not the “wild west,” and judges looked at whether the party was introducing something that was actually relevant to the detention decision, and sufficiently reliable that the judge would want to admit it. The judge would then apply those same standards when thinking about something that a party wanted to subpoena.

Judge Mosman remarked that his experience, which he thought was shared widely, was that even in hearings where the Federal Rules of Evidence do not apply, there was an independent issue of admissibility that was applied, that involves things like relevance, authenticity, and the like. There was still a question to be answered by any magistrate judge: is this admissible? It may not be. The answer is not guaranteed simply because the Federal Rules of Evidence do not apply.

Professor King noted that privileges apply in all proceedings.

A member commented that in the context of detention hearings, seeking the subpoena was almost a higher standard. At a detention hearing, the government and defense lawyers can proffer information as officers of the court. The attorneys simply tell the court what their position is. She noted that although she had yet to uncover a subpoena at a detention hearing with her colleagues, she anticipated that this would occur where the proffers did not align. She thought that getting a subpoena would be relevant to that particular consideration. The member therefore agreed that although the Federal Rules of Evidence would not technically apply, attorneys must always present relevant evidence to the court, at every juncture.

Ms. Ralston stated that the primary feature of the Federal Rules of Evidence that do not apply at these other proceedings is the hearsay rules. The government thought that most other rules apply by principle—things like relevance and authenticity—even if they do not technically apply. Hearsay was the one thing that generally did not apply; for example, at sentencing, the government would introduce a victim witness statement without the victim. For a subpoena for documents, that would be the purpose: to bring in a document instead of a witness.

The member who initially asked the question said that he did not disagree with anything that had been said, and that was how he would have answered his own question. He noted that he was always concerned with relevance, but was almost never concerned with strict hearsay. He was always thinking about reliability, which is what hearsay tried to address. The member said

that the standard here was something that magistrate judges can work with, and that he had received a sufficient answer to his question.

Judge Nguyen asked whether there was a motion to approve the amendments to the committee note, at lines 313-315 on page 159, as Professor Beale had suggested. Ms. Ralston offered a friendly amendment to change “was” to “were.” The revised committee note would read, “There is no separate reference to ‘relevance’ in **(c)(2)(B)** because information would not be admissible unless it were relevant.” A motion to accept the committee note language, as amended, was made, seconded, and approved unanimously.

#### Subcommittee recommendation to change the rule and/or committee note

Judge Nguyen then turned to the comments for which the subcommittee thought that some change was warranted. The first concerned subdivision 17(a), which was clarified to make clear that it applied to both subpoenas for producing items as well as to testimony. However, NACDL noted that this portion of the rule could be construed to preclude testimony and the production of documents at the same hearing. Judge Nguyen said that it was the Committee’s intention all along to allow this, but to the extent someone thought that this was somehow precluded or unclear, the subcommittee thought that the language needed to be clarified. It proposed the language on page 145, lines 6 and 7, to correct that.

Professor Beale noted that she did not believe that this change required republication. It was absolutely clear that what the Committee meant all along was not to prevent people from, at one proceeding, being able to be subpoenaed to both present documentary evidence and testify. These proposed amendments only clarified what the Committee thought was already clear. The committee note was still consistent with the proposed change in the text because the committee note was written with this interpretation of the rule in mind. Professor Beale thanked the Style Consultants for their help in ensuring that the new language was clear and efficient.

A motion to approve the amended language in Rule 17(a) was made, seconded, and approved unanimously.

Next, Judge Nguyen turned to another change recommended by the subcommittee, which fell into the same category of things that the Committee had intended, but did not make clear. A commenter had raised the question whether a “third party,” as referenced in subparagraph (c)(3)(A), included a victim. The subcommittee thought that a victim was a third party, and so recommended adding language to the rule (in line 79 of the redline) and committee note (in lines 424-431 of the redline) to make this clear.

Judge Nguyen noted that this was also a change for which the subcommittee members thought no republication was needed. Professor Beale elaborated that the analysis for republication asks whether this would be a substantial change, and if so, whether it was one where the Committee would really need to get more input to understand the implications. The subcommittee thought that including a victim as a third party was what the amendment already intended to do. After some research, though, the subcommittee found cases that said that a victim is not a third party. The subcommittee therefore thought that this should be clarified and that this was non-controversial.

A motion to approve the amended language in the rule and committee note was made, seconded, and approved unanimously.

The next item concerned proposed changes to Rule 17(c)(3)(B). Judge Nguyen explained that this rule required notice to the victim before an order is entered allowing a subpoena for the victim's personal or confidential information, unless there are exceptional circumstances. Since 2008, the committee note had defined "exceptional circumstances" to include the risk of revealing defense strategy. Commenters raised an objection that this would be very easy to show, and victims would rarely receive notice. The concern expressed was that this would violate the Crime Victims' Rights Act (CVRA), and that notice to the victim was the only way that would allow the victim to contest the subpoena in any way.

The subcommittee considered this comment and thought that the Committee should, at a minimum, revise the language to the note. Page 162 of the agenda book, lines 409 to 423, showed the draft language that the subcommittee proposed adding to the committee note. Judge Nguyen explained that this paragraph was designed to address the concern raised by the commenters and to draw a distinction between providing notice to the victim and providing a detailed explanation of why a subpoena was needed. Notice was different from the "good cause" showing for ex parte applications. The notice to a victim that their information was being sought would not necessarily reveal a sensitive defense strategy, so that would not qualify as "exceptional circumstances."

Judge Nguyen said that there was also a suggestion that the *government* be required to give notice to the victim in every instance, which aligns with the practice of at least one district. She noted that this does not align with some other districts' practices, and so the subcommittee did not recommend that change.

A member stated that she supported the amendment, but she noted that the amended language did not entirely adopt Professor Cassell's position that the CVRA forbids a lack of notice if it would reveal defense strategy. The amended committee note language recognized that it would be uncommon for merely providing notice to reveal a defense strategy. The member stated that this was why the defense bar could accept the amendment, because the court would ultimately make the determination on whether exceptional circumstances had been met (under the possibility that evidence would be destroyed or that perhaps even the mere notice would impede the defense). She stated that the word "uncommon" in the committee note was important for that reason, but thought that this accurately stated the practice in most districts.

Professor Beale addressed the question of the necessity of republication. She stated that the proposed change was in the committee note, not the text. The committee note could not change the meaning of the rule text, or add to or subtract from the text, but it did clarify the intent of the text. She noted that the amended committee note was consistent with the 2008 committee note, but it did draw a distinction with the additional ex parte provisions that were being added to the rule. The subcommittee thought that this was very useful and important to add, and that it did not require republication to do so.

Ms. Ralston responded to the previous member's statement and said that the rule as written would not prevent a court from adopting Professor Cassell's statutory interpretation of

the CVRA. The rule said that *unless* exceptional circumstances apply, the court *must* require giving notice. It did not say that even if exceptional circumstances apply, the court may not require notice. The court may still require notice even if there are exceptional circumstances; it was just not required to do so. The rule left the court with discretion.

A motion to amend the committee note was made, seconded, and approved unanimously.

Judge Nguyen then turned the Committee's attention to comments regarding paragraph (c)(5). The portion of the memo addressing this issue began on page 134 of the agenda book. Paragraph (c)(5) stated that a non-grand jury subpoena requested by a represented party may require the recipient to produce the designated items to the party's counsel. But for subpoenas sought by self-represented parties, the subpoena must require production to the court, unless the court orders otherwise. Judge Nguyen reminded committee members that there were many conflicting practices in various districts as to what the original rule meant. Some courts had read the original Rule 17(c)(5) as always requiring a return to the court. Other courts said that if there was a production ordered before trial, then it had to be returned to the court, but otherwise, it did not. And some courts permitted returns directly to the requesting party unless the court ordered otherwise. So to clarify this, the amended Rule 17(c)(5), as published, set two different defaults. If the subpoena was from a self-represented litigant, then the production was to the court unless it was ordered otherwise. If the subpoena was from a represented party, then the materials were produced directly to counsel.

Judge Nguyen said that NACDL strongly supported this change, but had argued that because of the way that the published rule was written, the district court should have no discretion to order production to the court unless the subpoena was requested by a self-represented litigant. Judge Nguyen did not think that this was the intention of the rule, but thought that it was arguable as to whether NACDL's interpretation was a fair reading or not. Since NACDL read the language this way, the subcommittee thought that the language should be changed. The reporters sought input from the Style Consultants on the proposed changes. The committee note was also revised, throughout lines 442-495.

Judge Nguyen explained that the major change being made was to set a third default: unless the court ordered otherwise, production in response to a subpoena requested by a represented party, that does not require the production of personal or confidential information about a victim, could be made directly to counsel. Personal or confidential information about victims would go to the court.

Professor Beale expressed her appreciation for the assistance from the Style Consultants in drafting this provision. She said that the subcommittee had wished to put the provisions about production of personal or confidential information about victims in the victim provision, thinking that was where people would look for it. The Style Consultants pointed out that the heading of subsection (c)(5) was, "Place to Produce the Designated Items," and readers would follow those headings. It was important for provisions about the place to produce designated items to be in that subsection—not somewhere else, and not in two places. Professor Beale also stressed the importance of avoiding unnecessary cross-references.

Professor King said that the changes in (c)(5)(A) and (B) did two things. First, they clarified that NACDL's reading of the published text was incorrect, and that the court was always in control of where the subpoenas would be returned. There was not a requirement that the production go to defense counsel if the party was represented. Second, and more consequentially, the change would add a category of subpoenas—personal or confidential information about the victim—to those that were presumptively returned to the court unless the court ordered otherwise. This would create a substantial difference, but for a very narrow category of subpoenas. There was unanimity on the subcommittee that this should not require republication.

Professor Beale elaborated that the first change was simply a clarification, to make clear what the Committee intended all along. This did not require republication. The second change came out of expressions of deep concern from the victim advocates that the Committee was changing a well-established and important practice, where the court would referee and protect victims when their personal and material information was sought. There would be an opportunity for redaction or to hold back things that were not relevant; the information would not simply be provided directly to the defendant's counsel. Professor Beale said that the victim advocates were extremely concerned that the Committee was inadvertently changing the established rule in a way that seriously disadvantaged and concerned victims and their advocates. The subcommittee agreed with the view that it was important to have the court as a gatekeeper for this fairly narrow category of subpoenas that sought personal or confidential information about a victim. Professor Beale highlighted that this provision would apply only to personal or confidential information about *victims*, not just anyone. The concerns were well-voiced in the hearings and written testimony, and the subcommittee had had the opportunity to think about the policy implications. If the Committee did not think it needed to hear more information beyond that which came out clearly in the hearings and written testimony, and was able to fully understand the implications of the change, then Professor Beale thought that the change could be presented to the Standing Committee without the need for republication, even if it was a substantial change.

Judge Nguyen added that throughout the subcommittee's work, the key was flexibility, so that the *Nixon* standard could be relaxed for the districts that had no subpoena practice, but would leave alone the practice of districts that had always had a robust subpoena practice. The subcommittee thought that the rule as published already had that built-in flexibility, because the rule began, "Unless the court orders otherwise," and then set out a default that self-represented parties return to the court, but otherwise the return was to counsel. The idea was that in districts where judges wanted to tighten that practice, they could. The change now was that the rule made more explicit that the presumption for personal or confidential information of victims was return to the court, unless the court ordered otherwise.

A member said that he liked the way that paragraph (5)(A) was worded, because it said that unless the court issued an order to the contrary, the court must do what (A) said. But he thought paragraph (5)(B) was strange, because (B) gave the court discretion. It seemed odd to the member to say, "Unless the court orders otherwise, the court may order this." He thought that perhaps the language in paragraph (5) should only be included in subparagraph (A).

Judge Mosman stated that he had originally read the language the same way as the member. However, the rule said, "Unless the *court* ordered otherwise, the *subpoena* may require

the following.” The rule did not say that the court had discretion twice. Rather, it addressed what the subpoena could say.

Ms. Ralston said that the “court” was the subject of the introductory clause in (5), but the subject of the next clause was the “subpoena.” The verbs that followed in (5)(A) and (B) applied to the “subpoena,” not the “court.” The opening clause said that the court could always order otherwise. The default rule in subparagraph (A) was that the subpoena must require the recipient to produce these objects to the court. The subpoena must state this. Then subparagraph (B) said that the subpoena “may require the recipient” to produce the items to counsel. It again would be the subpoena that would direct the recipient to produce the items to defense counsel.

Professor Beale noted that this left the option for a party drafting the subpoena. They did not have to draft it this way, but Professor Beale guessed that defense lawyers would want to do so. If they were permitted to do so, they would rather have the production come directly to them. And they were permitted to do so, unless the court ordered otherwise. The court could order otherwise by local rule or by an order in the particular case. The rule was a directive of what must or may be in the text of the subpoena and would instruct the drafter of the subpoena.

Judge Nguyen stressed that that was the difference between the “must” and “may” language. The court could always order otherwise, but there were certain categories for which the subpoena must order production to the court. The permissive provision was for defense counsel.

Judge Mosman stated that the oddness that the member had originally raised would disappear if subparagraph (5)(B) were also mandatory and used the word “must” instead of “may.” However, the Committee did not want this section to be mandatory.

A member asked whether someone could clarify what “personal or confidential” meant, because that affected both the motion and order practice and the return. She questioned how lawyers determined whether they should proceed by motion or not.

Judge Nguyen answered that it was a deliberate choice not to define “personal or confidential.” That could be defined in many different ways and could be subject to extensive litigation as well. The subcommittee had lengthy discussions on whether to define it, and if so, how, and eventually decided not to do so.

Professor Beale added that this language had been in the Criminal Rules since 2008, when the Rules were revised to incorporate the CVRA. “Personal or confidential” was not defined at that time. It had been working in practice thus far, because there must be a motion and order to subpoena confidential information about a victim. The amended rule carried forward the way that courts and litigants had been applying that language, without getting into a fight about its meaning.

Judge Nguyen noted that even within the same district, or even within the same courtroom, “personal or confidential” could be defined differently. It was a highly fact-specific analysis. Even the same judge might say that something was “personal or confidential,” without providing a specific definition, and something else that was close might fall the other way.

Professor Beale added that NACDL had asked that the committee note define “personal or confidential” narrowly, but the subcommittee decided not to choose a definition.

A member said that sometimes non-lawyers were deciding what “personal or confidential” meant, because they were the recipients of the subpoena. This could be a police department or a victim advocacy group. In the member’s experience, they were much more protective over the information that they turn over, and so would want to follow any rules that apply to them rather than turn over things they hold in confidence.

Ms. Ralston responded that it would not be up to the police department to decide whether information was “personal or confidential,” because that decision was made when the subpoena was written. The subpoena itself would require the return to the court. She stated that she did not know what would happen if a party thought that they were issuing a (5)(B) subpoena, but the recipient thought that it was a (5)(A) subpoena. She added that even though this language had been in the rule for 18 years, and seemed to have been working well, there was not much case law on this. It appeared that this issue was being worked out behind the scenes. Maybe the rule change would make the definition of “personal or confidential” more frequently litigated, because there would be more subpoenas and more opportunities to talk about what it meant. If there was a split in the case law, then the Committee would have the opportunity to come back and clarify the definition. This was something that the rules do often, clarifying between different court interpretations of what the rules mean. Ms. Ralston stated that in November 2024, when the Committee held a hearing, there was an attempt to define the term more explicitly, in reference to state privacy laws and the like. The Committee had determined that that would be unworkable.

A member asked whether subparagraph (5)(B) could say “the subpoena” again, to clarify that the subpoena was the subject of the clause in (B). Professor Beale responded that the Style Consultants would not accept that.

Professor King stated that because this carried over a category that had been in the rule since 2008, the question of what was “personal or confidential” had to come up much earlier than the return of the production. This issue would arise at the front end of the subpoena process. If the drafter of the subpoena erred at the front end, they would be in more trouble than just missing the production. They missed the motion and court order entirely. Thus, this was not just a question of whether “personal or confidential” in this clause was undefined; this was a concept that carried throughout Rule 17 and had done so since 2008.

A member said that although this was a change to the text of the rule, she did not believe that this required republication, for the reasons set forth in the reporters’ memorandum. As a member of the subcommittee, she said that there was no question that victims were forefront in the subcommittee’s efforts to try to protect their information. When the subcommittee drafted the language that was ultimately published, the thought was that all of the discussion about “personal or confidential” would take place on the front end of the subpoena process, because it would require a motion. She said that the victims were very persuasive at the January hearing that there was still a concern about the return. To the extent the court did not require the return under the published rule, that would be a departure from what the subcommittee intended. For those

reasons, the member did not think that this change required republication. She supported the change.

Professor Beale said again that there was not much case law on personal or confidential information. As Professor Cassell had pointed out, victims do not always have their own lawyers. Even if they did, this issue would arise at a stage of the proceeding where it may not ever give rise to appellate decisions. This was being worked out behind the scenes at the trial level. The rule change accepted that reality and did not try to crystallize that reality into a particular definition. There could come a time when the Criminal Rules would need to define “personal or confidential” information, perhaps as applied to non-victims, where this had not been in place since 2008. But in her opinion, the subcommittee made a wise choice to accept the status quo.

Professor King stated that many of the categories of personal or confidential materials are routine: health records, school records, etc. For a large portion of what would fall under “personal or confidential,” there is no question as to whether it fits in that category. Thus, this not only concerned one category of people—victims—it also concerned a relatively small category of information for which there is a question as to whether it is “personal or confidential.”

A motion to approve the change to the rule text and committee note was made, seconded, and approved unanimously.

Judge Dever expressed his view that republication was unnecessary for all of the reasons that had been stated thus far. He added that the text and the language of the note, especially lines 470-500, talked about judicial discretion.

A motion to proceed without republication was made, seconded, and approved unanimously.

#### Subcommittee divided as to recommendation

Judge Nguyen then turned to the final category of responses to comments, those as to which the subcommittee was divided. She directed the Committee’s attention to Rule 17(c)(2)(C), on page 147, line 48 of the agenda book. In the published rule, except for subpoenas seeking personal or confidential information about victims, or subpoenas sought by self-represented victims, no motion and order were required before service (unless otherwise ordered by the court). There were thus two categories that required a motion and order: self-represented litigants, and subpoenas seeking personal or confidential information of a victim. One commenter, Jonathan Wroblewski—the former DOJ representative on the Committee—argued that the amendment should be revised to require a motion and order any time a subpoena seeks personal or confidential information about *anyone*, not just a victim. His concerns were, first, that this operates on an honor system. The defense attorney is the one who decides whether the subpoena meets the standards that are articulated in Rule 17. Second, if the person whose personal or confidential information is being sought does not know that a subpoena is issued, how can they object to it? Third, he argued that there was a constitutional dimension to the issue, analogizing to *Carpenter v. United States*, 585 U.S. 296 (2018), which requires the government to seek a warrant for cell-site location information held by third parties. Judge Nguyen noted that this analogy highlights the confidentiality concerns that people have in information they may

want to keep private. She said that the subcommittee spent a fair bit of time going over Mr. Wroblewski's concerns, but was not persuaded that *Carpenter* was a perfect analogy. The Fourth Amendment does not apply in the subpoena context; the concern, and the analogy, is in the privacy interest. Nevertheless, the subcommittee was unanimous in recommending that the Committee not revisit the requirement for a motion and order for all subpoenas seeking personal or confidential information.

Judge Nguyen added, for the benefit of those new to the Committee, that this was the subject of extensive discussion. Initially, the subcommittee was persuaded by that approach: put all personal or confidential information into one category, regardless of whether it was a victim's or non-victim's, and require a motion and order for those subpoenas. There would be another system for other types of subpoenas that did not seek personal or confidential information. That was part of the initial draft that the subcommittee presented at the Criminal Rules Committee's fall 2024 meeting in New York. Judge Nguyen said that this approach was roundly rejected by many, if not all, of the committee members who were not on the subcommittee. The subcommittee therefore thought that, since this had been so extensively considered, it should not retread that same ground. The amended rule reflected a series of compromises to make incremental changes that preserved the flexibility of subpoena practice in some districts and opened up the practice a bit more in other districts.

Professor Beale added that it was not only the committee members who rejected this other approach to the rule; there were a variety of invited speakers at the meeting, from different districts and with different perspectives, and they generally did not like this approach, either. For a practicing lawyer, it was an unnecessary burden and unhelpful; judges also felt that this would be very burdensome. The question for the subcommittee then became how to draw that back and determine when a motion and order should be required. The compromise approach was created because of that very strong and widespread opposition.

Judge Nguyen explained that this strong opposition to motion and order practice for all personal or confidential information was part of what extended the subcommittee's work. She said that part of the opposition was from district judges, who thought that this would dramatically increase their workload, and it was not necessary to go that far.

Judge Nguyen then explained that, although the subcommittee was unanimous that it would not revisit the motion and order practice that was previously rejected by the full committee, the views were divided as to whether it should somehow tip the balance in favor of greater supervision for personal or confidential information of non-victims. Some subcommittee members were strongly opposed to any amendment at all. The view was that this was already fully considered and exhaustively discussed. There were no problems in the districts that had allowed the defense to have this flexibility, and no widespread abuses had been brought to the subcommittee's attention. To the extent that there were any problems, the subcommittee should instead consider adding something to the committee notes or working with the FJC to better educate the bench and bar on best practices.

There were some views expressed that maybe some adjustment should be made to the rule text. Many people, including the reporters, felt that this would require republication of the rule. Ms. Ralston had floated the idea that the rule require the filing of a sealed notice to the

court, so that the court could choose to say that, for this particular subpoena, it wants notice to be given to the person whose information was being sought. Judge Nguyen said that this idea had not been explored yet, so the subcommittee would need to pause, slow down, and gather information and feedback on how this would actually work. She said that another idea was for the default rule to require the return to the court. This would be a significant consideration.

The Committee's choice was now to (1) make no change to the text, but perhaps add something to the note, or (2) really consider whether something new needs to be done, among the options floated at the subcommittee meeting. Judge Nguyen said that there were a few considerations that counseled in favor of Option One. The published rule strove to create a balance between some traditional oversight and the burdens imposed on courts and litigants. Requiring some sort of a default production back to the court puts the rule closer to the motion and order practice that the Committee previously rejected. The other consideration was that this was a substantial change to the rule that would warrant republication. There was momentum behind the change to Rule 17 now; should the Committee take advantage of that momentum and move forward? Judge Nguyen observed that the earliest time that amended Rule 17 would go into effect would be December 2027. The Committee could monitor the situation and determine whether there was a problem in practice. Judge Nguyen said that although she was very concerned about the lack of notice to individuals from whom personal or confidential information was being sought, she did not know whether it would be much of a problem in the real world. Maybe it could be adequately addressed by a particular district imposing local rules. Or maybe it was something that was much more of a concern, that could not be adequately addressed through bench books, best practices, local rules, and the like. She noted also that the rule had built-in flexibility, so some judges could supervise the practice very strictly while others might choose not to. She therefore believed that the Committee could move forward now, and revisit the issue in a year or two if there was a problem.

Judge Nguyen stated that the proposed change to the committee note, lines 495-500, re-emphasized the flexibility and discretion that rests in the hands of the district judges. She concluded by saying that she was in favor of adding to the note.

Judge Mosman said that he was in favor of making no change to the text but revising the note.

A member stated that she was the sole member of the subcommittee who wanted *no* change made, but having been defeated in the subcommittee, she was now arguing in favor of Option One, amending the committee note. She stated that the proposed rule change had been fully vetted multiple times—not just by the subcommittee, but in multiple public hearings. She observed that oftentimes things that are personal or confidential, like medical records, are going to require a motion and order because the recipient wants a court order to accompany the subpoena. The subcommittee had heard testimony that trying to define these categories would be adding to a very crowded field of federal, state, and local laws and regulations defining what is personal or confidential. She thought that what was published provided enough protection. Option One, with or without the bracketed language, would reinforce what was already part of the published rule and would not require republication. That option was consistent with the published draft and with the public work of the Committee.

The member said that at the end of the Committee’s fall 2024 meeting in New York, the subcommittee was directed to make an incremental step to loosen the *Nixon* standard, minimize the burden on courts, and allow for the preservation of practices in districts that already had a more robust subpoena practice. This balance was struck in the published version of the rule. But if the Committee were to change the text, she thought that that would require republication. It would be a significant change, and the public had no reason to think that the Committee would be making this type of change to the text. The member reiterated that the Committee’s focus must be, what is the problem that we have identified? Notably, both defense attorneys and prosecutors that testified in New York—where there are robust subpoena practices, with no motion required in some districts—identified no issue with their subpoena practices. There was no problem to be fixed. Although the Committee was tweaking a rule that could generate more subpoena practice, the Committee had heard from litigants in districts that already had a significant subpoena practice, and practitioners confirmed that there were no problems.

Another member said that she was one of the two subcommittee members identified in the reporters’ memorandum as favoring a change to the text—specifically, return to the court—but she was now persuaded that Option One, clarifying the committee note, was the best choice. She said that the reaction of the judicial members of the subcommittee, that the return to court could be very burdensome on them, was persuasive. She stated, however, that it would be very important to get, as soon as practicable, full comprehensive input on the impact that these changes would have, particularly in those districts that did not currently have robust subpoena practices.

Another member stated that he also favored moving forward with Option One. He was very impressed by how thorough the testimony was at the 2024 New York Committee meeting, observing that the Committee had been able to bring in people from various segments of the criminal justice system. Everyone, by and large, supported the idea that there is trust that exists when an attorney practices in a certain district—between the court, the defense attorneys, and the prosecution. That trust is based on dialogue that occurs back and forth about what is appropriate to do. The member thought that requiring the courts to have greater supervision undermined the trust that exists with respect to what defense attorneys do. He added that as an attorney, regular subpoena practice was very robust, and it took significant time to review the information provided, even for just one case. He said that although he obviously was not a judge, he could not begin to imagine what it would be like for the district courts to receive all that information, take it back into chambers, and make decisions on what to do with it, in addition to everything else that the courts have to handle. Option One relieved the district courts of that potential burden.

Ms. Ralston said that she wanted to clarify a few things. First, if the subpoena, by statute or other law, already required a court order to begin with—for example, for medical records and similar things—then there would not necessarily be a much larger scope of “personal or confidential” things that were not already being examined by the court. It could not be true both that there were not many things that would have to be examined and that this examination would create a huge burden on the courts. The rule retained the discretion for a court—in an individual case, by local rule, or by standing order—to do something different. She said that a rule that said that if there was a motion approved by a court order, then the subpoena production can be

returned to counsel, was a different situation. She thought that the return to court was intended to be a much lower burden than the motion and order requirement generally.

Second, the current rule, Rule 17(c)(1), reads as though the return for *everything* is to be to the court, because it says that the court may allow the parties to inspect the return. If the court allows the parties to inspect the return, the materials must be in the court's possession. Ms. Ralston understood that this was not how this works in practice everywhere, but the local practices exist in the shadow of Rule 17. They are also in the shadow of *Nixon*, which is a tighter standard. Subpoenas are also only available for trial, which is a very small percentage of cases. This proposed rule change is broadening the scope of the proceedings, loosening the *Nixon* standard, and generally dispensing with the motion requirement. All of that would take what is currently a small circle and make it much bigger. To now pare back on the broad scope of this change as published would still be an incremental step in making the small circle slightly bigger.

Ms. Ralston said that the idea that "personal or confidential information" would need to be defined was a red herring. That term has been in the Criminal Rules since 2008, and there was no reason that it would mean something different when applied to non-victims as to victims. If there were litigation about this term, then all the better, because then the Committee could get a definition of what it means.

As for republication, Ms. Ralston said the Committee already considered the motion and order requirement, which people said would be onerous. The return to the court, however, does not *require* the court to do anything. It gives the court the opportunity to do something. This was already required for victims, and the court was not expected in those instances to read every line or every page of the document. She reiterated that this may not come up often enough to impose a substantial burden on the courts, but said that in contrast to the victims, there are situations where there could be subpoenas issued with absolutely no oversight by the court and no check by another party. A motion would not be required, because under Rule 17(c)(2), it was not a pro se party and it was not personal or confidential information of a victim. The attorney does not have to notify the other party that they are serving it, and does not have to notify the subject whose information they are seeking. If the subpoena recipient is a major organization, it might have the resources to resist, but a smaller entity may not have the incentive or the resources to move to quash. In those situations, she said, there deserved to be an additional thumb on the scale to protect people's privacy.

Ms. Ralston further noted that when the government seeks personal information, or information in which someone has a reasonable expectation of privacy, the government has to go to court and convince the judge to issue a warrant. That rule does not apply to defense counsel. But the change that the Committee is making to subpoena practice will not, and cannot, benefit the government. She did not understand why, as a matter of trial practice, this should be asymmetrical. Further, as an individual, she thought that personal information deserved to be protected as least as much from someone who a grand jury has charged with committing a federal crime as it did from the government. She said that it was worth putting a thumb on the scale in favor of privacy in those circumstances where otherwise there would be basically no check on the practice. She agreed with the member who said that criminal practice was built on trust, but said that right now, that trust was built in the shadow of a very limited rule. Everyone operates under an understanding that the rule itself is very restrictive. That is much different

from a situation where the underlying rule is much looser. She observed that defense attorneys have an ethical obligation to do the best for their clients, and have no obligations to the third parties whose privacy might be invaded. Ms. Ralston concluded by saying that although she proposed the idea of requiring sealed notice for the subcommittee's consideration, there was no interest in pursuing that, and she did not think the Committee needed to spend more time on it.

Judge Mosman offered two brief comments. First, he addressed whether the return-to-court requirement would really operate as a useful check. He observed that a recurring theme from commenters was that this would not require the court to do anything. However, if he had personal or confidential information as a return submitted to him, he would view it as a dereliction of his duty to do nothing and simply hand the information over. So, yes, the return to court did require the judge to do something. He further stated that he had reviewed these sorts of materials many times, but it was almost impossible to do any sort of meaningful review, because he did not know the case. The case had not yet gone to trial and may not have even had any hearing. He therefore questioned whether the return-to-court requirement was a meaningful change, rather than a symbolic one.

Second, he agreed that the Committee should monitor how the rule change plays out. He thought that there were two ways to do this. First, the Committee could back off and create a new idea, whether that was sealing, return to court, or something else. This could be implemented years from now. The other way was one the rule allows, which would be to allow 93 districts to develop 93 different subpoena practices over time. Some may require sealing; some may require returns to the court; some may not require anything. Then, two years from now, the Committee can review to see what went well and what went poorly among those districts. It will not have committed to one particular path, but can look at all 93 paths to see which ones best protect non-victims. Judge Mosman agreed that the Committee should care about the privacy interests of non-victims, but did not pretend to know the best way to do that right now. He agreed with adding language to the committee note, which would cement that the courts have discretion.

Professor Beale said that this would be Option One, with a commitment to monitoring subpoena practices as they play out in the different districts. She said that the Committee would talk to the FJC about when it might make sense to begin studying this. She also noted that the Committee could talk to the committee that revises the *Bench Book for United States District Judges* about best practices. This would be an open issue that would need attention going forward.

Judge Nguyen stated that those best practices can sometimes come from districts where there is a robust practice. Those judges create a set of local rules or orders that others follow. Professor Beale added that Jonathan Wroblewski's proposal said that there should be a standard protective order, which could be another part of what the Committee is looking at with this. Monitoring could be the next stage, if the Committee decides to move forward.

A member said that he was torn, because he saw both sides of the issue. He was reluctant to try to make the rule perfect and delay at this late stage. But he also identified with the concerns raised by Ms. Ralston about privacy. He asked what the rationale was for distinguishing between personal or confidential information about victims and personal or confidential

information about other people. He also asked how often personal or confidential information about non-victims comes up in federal court.

Judge Nguyen responded to his first question by saying that the original draft of the amended rule did not distinguish between personal or confidential information for victims and for everyone else. This approach was rejected at the fall 2024 Committee meeting in New York. The subcommittee thought that it was still very important to protect victims' rights, particularly because under the CVRA, victims warrant different treatment. This was the compromise position that was reached.

Professor Beale added that the CVRA itself creates a distinction for victims. Everyone has privacy rights, but victims' privacy rights are elevated. In 2008, the Committee amended Rule 17 and put in, as part of a package of amendments, the requirement for a motion and order and notice to the victim. There was a question as to whether the rules should try to incorporate the statute, and the Committee decided that it should incorporate aspects of it. Rule 17 therefore reflects that notion without denigrating other people's privacy rights.

A member said that she understood the concerns raised by Ms. Ralston, as well as the concerns that this had been studied extensively for three years. She did not want to make the perfect the enemy of the good, and noted that republication would delay the process by another two years. She was personally comfortable with Option One, but liked the idea of having some commitment to study its development and maybe put some best practices in the Bench Book. She said that another option could be to allow the subpoena recipient to object just in writing, without having to hire a lawyer. This would relieve courts of a burden, unless the person seeking the subpoena moves to compel, which usually does not happen. The member noted that Vermont and West Virginia have this option.

Another member said that the testimony in Arizona highlighted issues in districts where there was a complete absence of defense subpoena practices because the court, for example, would not accept an ex parte application, or would require any return to be disclosed immediately to the government. But it was not true that federal practice, broadly speaking, was that subpoenas are only used for trial, that this would be a loosening of the *Nixon* standard everywhere, or that there was no motion practice required. There are districts that already apply a loosened *Nixon* standard, including the member's own district. She had surveyed her colleagues quite extensively, and many districts already routinely allow subpoenas in non-trial proceedings. That would not be new under this rule. And return to the parties differs from district to district and judge to judge. There are already places where return to the parties is common practice. The member stated that she did not make these points to undermine the importance of the topic, which should be studied and will be made part of the Bench Book.

She noted that a member had asked how often victims' personal or confidential information is requested, and said she did not know the answer. In surveying her colleagues, she learned that the type of private information most commonly requested is their client's own information, often from a state or local department of corrections, or a juvenile facility of some sort.

The Committee had heard from many people in the districts where there was already practice in line with the proposed rule. It had also heard from attorneys who could not ethically make an application for a subpoena because they would be required to disclose too much. Nowhere in the spectrum of information that the Committee had gathered had it heard, other than in the victim category, that this was an issue. Option One would address the concerns raised by the Committee and guide the court on what to look for in adopting new practices under the rule, if they indeed change their practice. But the practice would not change in the districts that already have robust subpoena practices. The member thought that the world currently followed many of the things that the rule would now incorporate.

A member noted that the original suggestion came from defense counsel in New York several years ago. She acknowledged that there may still be small issues that needed to be resolved, but this proposed amended rule was a significant improvement over the original rule. She was thrilled with the changes that the Committee had made.

Ms. Ralston asked for more detail on how the Bench Book is amended, and how much control this Committee has over the process. Can the Committee ensure that something is put into the book, or does it simply make a suggestion and hope that someone listens?

Judge Dever said that he would answer her question, but first reminded everyone that if the rule is changed, the AO form for subpoenas would also be changed. The AO form now begins, “Before requesting and serving a subpoena pursuant to Federal Rule of Criminal Procedure 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena.” That was the current reality of what attorneys were supposed to do. And based on what the Committee had heard in hearings, this *was* what attorneys actually do. The form goes on to quote the language in Rule 17(c)-(g), including the ability of the receiving party to object.

As to Ms. Ralston’s question, Judge Dever said that there was a committee that oversees the Bench Book, and the Criminal Rules Committee could certainly make recommendations. But the more immediate issue, in his mind, was that the language of the subpoena form would be immediately changed to reflect the current text of any change in the rule. It would continue to have the reminder that, if an attorney is going to issue a subpoena, the first thing they need to do is look to see whether there is a local rule or court order that governs this practice. The AO form would immediately change, if the rule changed, to reflect the new text.

Judge Mosman responded to Ms. Ralston by saying that the Committee could not rewrite the Bench Book, but it could make suggestions. It could also request the help of the FJC to study what is happening in various districts. The Committee itself could also monitor this issue, by holding hearings and inviting testimony. He committed to monitoring the situation within this Committee’s power as long as he was chair, because this issue was so important.

Professor Beale directed the Committee’s attention to footnote 6 on page 124 of the agenda book, which provides the historical example of Judge Raggi, the former chair of this Committee. At the Committee’s urging, she requested to sit with the Bench Book Committee; she reported back that the FJC’s Bench Book Committee had acted on the Criminal Rules

Committee's suggestion that a discussion of *Brady/Giglio* obligations be included in the next edition. A copy of that Bench Book comprehensive section was included in the agenda book for the spring 2013 Criminal Rules Committee meeting. At that meeting, Judge Raggi expressed her gratitude to the Bench Book Committee for allowing her to participate in the discussions. Professor Beale noted that she did not know the current schedule for revisions to the Bench Book, but it seemed like the Committee would be interested in exploring this.

Ms. Ralson asked about the process for amending local rules. Could that process proceed in districts in advance of the amended Rule 17 going into effect, such that a local rule would go into effect on the same date that amended Rule 17 does, or does Rule 57 require some sort of six- or twelve-month lag?

Judge Mosman answered that the local rules could be amended without any delay, so long as any amendment was consistent with the current rules. The courts could also anticipate changes, discuss them in advance of the rule change, and make anticipatory changes to local rules that would be effective immediately upon Rule 17's enactment. Judge Nguyen added that individual judges could amend their own standing rules as well.

A member said that the example with Judge Raggi, about the change to the *Brady* order, happened very quickly. It was anticipated on December 1, and multiple judges in her district put something together quickly. Her district's local rules committee then tried to create a district plan, but while that was happening, the AO sent out very specific language that is now read in every case, consistent with the rule. She said that this process happens very quickly and judges would be ready for this by December 1, because it would be a significant change.

A member said that he was persuaded to go with Option One. He asked whether the Committee intended to include the bracketed language in the committee note.

Judge Nguyen said that she had been planning to propose that the Committee vote on the options with or without the bracketed language, then decide whether it wants to include the bracketed language.

A member said that this was a difficult issue. He agreed with much of what Ms. Ralston had said. He also found Jonathan Wroblewski's article interesting and thought that it raised some real concerns. The member noted that he had said from the beginning that he was concerned about the application of other law to these subpoenas. To what extent does the Constitution or something like the Stored Communications Act apply to these subpoenas? It was unclear in his mind how they may be applicable. He appreciated that there was support for the idea that the Fourth Amendment was not applicable, as set forth in the reporters' memorandum in the agenda book. He said that this did not give him a great deal of comfort. The Stored Communications Act was pointed almost entirely at the government and restricting its ability. That act applies to all data held by third parties. It generally prohibits disclosure of content by internet service providers to anyone, with a few narrow exceptions not applicable here. But as he read the statute, there was no prohibition on providing anything less than content to a private party. There was a gap between what the government could get with a warrant and what an individual may be able to get with a subpoena. Anything less than content, someone could arguably get under the Stored Communications Act. That would include cell site location information, perhaps a tower dump,

and maybe even a geofence. The member noted that issues with respect to privacy in the Fourth Amendment change constantly; geofence warrants were before the Supreme Court this week. He was worried about how this would impact personal privacy and whether the Committee had set the right balance. On balance—especially given that a change at this time would require republication, and that the rule just sets a default and would permit local courts and individual judges to alter these rules with what they think is appropriate in their courtrooms—he would support the moving forward the with amendment without a revision providing oversight for personal or confidential information.

Judge Nguyen then asked whether there was a motion to approve Option One, with the amendment to the note and no change to the text, with or without the bracketed language. A motion was made, seconded, and approved unanimously.

Judge Nguyen then asked whether any committee members had a preference as to whether to include the bracketed language on page 164, lines 495 to 500.

Ms. Ralston said that she liked the bracketed language, but asked that it be introduced by dashes. It would read, “And to provide greater judicial oversight—for example, for subpoenas requiring the production of personal or confidential information—the rule permits a court, by local rule or court order, to require the return of such information to chambers before disclosure to the requesting party.”

Professor Beale said that this was a friendly amendment. She noted that after the subcommittee meeting, the reporters asked that members send them potential language. One member had done so. Professor Beale asked if she supported the amendment and the bracketed language, and the member said that she did.

A motion to amend the note with the specific language proposed by Ms. Ralston was made, seconded, and approved.

Judge Mosman asked the Committee to vote on the entire Rule 17 package. He asked for a show of hands, and all members voted in favor.

Judge Nguyen said that the reporters’ memorandum in the agenda book addressed the miscellaneous comments on Rule 17, but these did not warrant full discussion from the Committee.

Judge Mosman stated that these amendments to Rule 17 were a great accomplishment and applauded Judge Nguyen for her excellent work on this project over many years.

### **Rule 49.1**

Judge Mosman asked Judge Harvey to present the efforts of the Rule 49.1 Subcommittee. Judge Harvey said that the subcommittee was submitting proposed amendments to Rule 49.1 for approval for publication. In the subcommittee’s view, the amendments will strengthen privacy protections for minors and for social-security numbers (SSNs) and other taxpayer-identification numbers in public criminal filings. He directed the Committee’s attention to page 215 of the agenda book, where the reporters’ memorandum explained in detail the subcommittee’s efforts to

date. He thanked Professor Beale and Professor King for the memorandum and for their guidance throughout this process. Judge Harvey said that redline and clean versions of the proposed amendments began on page 225. The language in the proposed rule reflected input from subcommittee members, the reporters, the Rules staff, and the Style Consultants.

At the same time that the Rule 49.1 Subcommittee had been working on the amendments to the criminal rule, the Appellate, Bankruptcy, and Civil Rules Committees had been considering parallel amendments to their privacy rules. Maintaining uniformity across the rules, where appropriate, had been a consideration for all committees. There would be some differences; the Bankruptcy Rules would likely have fewer changes to their privacy rule because of the unique nature of bankruptcy filings.

Judge Harvey summarized the proposed changes to Rule 49.1. First, the proposed amendments responded to the DOJ's March 2024 request to better protect minors' privacy by requiring the use of pseudonyms, rather than minors' initials, in public filings. The subcommittee unanimously agreed that this change was appropriate and uncontroversial. The subcommittee reached that conclusion early in its first meeting several years ago based on a showing that the use of initials for minors in public filings did not adequately protect their identities. The subcommittee also unanimously supported, where feasible, a request from the American Association for Justice and the National Crime Victim Bar Association to encourage the use of gender-neutral pseudonyms in public filings. It concluded that doing so could further protect minors' identities in cases where other information in the record would otherwise make the identification of the minor possible if gendered terms were used. However, since it was not always feasible to require gender-neutral language in criminal cases—for example, where the evidence of the crime was inherently gender-specific—the subcommittee expressed this preference in the committee note rather than in the rule text.

The subcommittee also considered whether the rule should address situations in which a minor reaches the age of majority while the litigation is ongoing. The rule presented did not explicitly address that circumstance. Research conducted by Lara Venegas,<sup>2</sup> however, showed that courts have consistently extended privacy protections to minors who age out, typically through protective orders, which are permitted under Rule 49.1(e). For that reason, because it did not appear that courts were struggling to reach what the subcommittee believed was the right result, the subcommittee concluded that no amendment was necessary at this time. Judge Harvey said that this decision was admittedly influenced by the subcommittee's desire not to further delay publication of other important amendments to the rule that had been under consideration for several years. However, he said that the subcommittee had asked the reporters to explore whether public comment might be solicited on the need for the rule to expressly address the issue of minors aging out.

The second principal assignment of the subcommittee was to consider Senator Wyden's proposal to require full redaction of SSNs rather than permitting disclosure of the last four digits in public filings, as the present rule permits. Based on the very helpful research done by Kyle Brinker, the former Rules Law Clerk, the subcommittee concluded that full redaction of SSNs

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<sup>2</sup> Ms. Venegas was detailed from the Defender Services Office in the Administrative Office of the U.S. Courts to assist the Committee during a staffing shortage.

was warranted, for three reasons. First, the subcommittee identified no need to include even partial SSNs in public criminal filings. Second, there was good evidence that even partial disclosure could be misused for identity theft and by fraudsters. Finally, full redaction was widely recognized as the best practice by government agencies who probably understand the risk better than most, including the IRS. Thus, the proposed amendment requires full redaction of SSNs.

Next, the subcommittee considered whether other taxpayer-identification numbers should also be fully redacted. In the present rule, individual taxpayer-identification numbers (ITINs) were treated the same as SSNs in terms of redaction. Judge Harvey explained that there were three taxpayer-identification numbers at issue: ITINs, Adoption Taxpayer Identification Numbers (ATINs), and Employer Identification Numbers (EINs). The subcommittee ultimately concluded that all of those numbers should be fully redacted or omitted in public filings. ITINs presented the easiest decision for the subcommittee, which identified no reason to include any part of them in public filings. They raise privacy concerns comparable to SSNs in that they identify individuals, and like SSNs, they are often used for things other than filing taxes—for example, to open bank accounts and apply for credit cards. The subcommittee supported their full redaction. ATINs fell somewhere in the middle. They are temporary and less widely used, so identity theft and fraud risks appear lower. But like ITINs, they identify individuals and therefore raise privacy concerns. The subcommittee saw no reason to include them in public filings. For consistency and uniformity, it recommended treating ATINs the same as SSNs and ITINs.

EINs created the most discussion among the subcommittee. The subcommittee had agreed twice over the past year to propose their full redaction, just like SSNs and ITINs. Judge Harvey highlighted, however, that requiring their full redaction represented a change from the present rule. It was quite clear from the rule's history that when Rule 49.1 was initially promulgated some twenty years ago, the decision was made not to include EINs within the realm of protection. That was the DOJ's position in 2007, and it remained the DOJ's position today. The DOJ's view was that EINs should not fall within the rule's protection, meaning that there should be no redaction requirement for them. This was because there was limited evidence of their misuse, because some EINs were already publicly available from other sources, because requiring the redaction imposes some burdens on litigants, and because of the presumption of public access to court records. The subcommittee was not persuaded on those points, for a number of reasons. It believed that EINs may raise an interest in individual privacy, especially in cases where they were used for families who employ domestic workers, or for sole proprietorships and small businesses. Second, regardless of the situation in 2007, EINs were now widely used beyond tax filings, such as for opening bank accounts or applying for credit. Third, not requiring redaction would create meaningful risks of their misuse by fraudsters. The subcommittee considered government reports documenting significant fraud involving stolen EINs, which caused hundreds of millions or even billions of dollars of fraud on the U.S. Treasury. In the subcommittee's view, the rules should not facilitate fraud, regardless of whether the losses from misused EINs fall on the U.S. Treasury or on private parties. These fraud risks appeared to be increasing. Finally, there was no demonstrated need to include even partial EINs in public criminal filings. The subcommittee voted that the rules should be protective and forward-leaning, and therefore require full redaction of EINs. Notably, this was what the IRS and the Tax Court require.

Finally, Judge Harvey said that the amended rule would apply not only to briefs but also to all attachments and exhibits thereto. The subcommittee had learned that this was where most improper disclosures occur, so it was important to make this explicit in the rule.

Ms. Dubay then provided an update on the work of the Appellate, Bankruptcy, and Civil Rules Committees, which had met the week of April 13 to discuss amendments to their respective privacy rules. The Civil Rules Committee voted to approve for publication and public comment amendments to Civil Rule 5.2, which would include extending full redaction to not only SSNs and ITINs but EINs as well. There were concerns raised at that meeting about whether this was a necessary extension, but the Civil Rules Committee ultimately voted to approve that for publication. It also approved the amendments that would change the requirement of using initials for minors to pseudonyms and the extension to exhibits and attachments. The Bankruptcy Rules Committee had previously specified certain reasons why EINs were useful in the bankruptcy context, and why the last four digits of SSNs were important as well. That committee therefore voted to approve for publication amendments to Bankruptcy Rule 9037 only with respect to the use of pseudonyms for minors. They would make no change to the existing redaction requirements for taxpayer-identification numbers. The Bankruptcy Rules also have a rule that would apply in certain bankruptcy appeals that parallels Appellate Rule 25. There was a slight wrinkle because the last committee to meet on this issue was the Appellate Rules Advisory Committee. At that meeting, the DOJ and practitioners raised an issue with respect to the onerous work that would go into redacting the appendix on appeal, which can be quite voluminous. A decision was therefore made to further study the appellate rule amendment to determine whether there needed to be some carve out with respect to that redaction requirement. The Appellate Rules Committee voted to form a subcommittee to look into those amendments, and it would not be sending their appellate privacy rule to the Standing Committee in June.

Professor Hartnett, Reporter to the Standing Committee, clarified that the Appellate Rules Committee's decision should not affect this Committee at all. The Appellate Rules Committee had been deciding whether to layer additional protection. But the existing Appellate Rule 25(a)(5) incorporated Criminal Rule 49.1. There was therefore no reason for anyone to be concerned about the delay on amending the Appellate Rules.

A member asked whether the rule could be changed stylistically. Instead of saying, "if any of the following types of information appear in the filing, include only . . . the year of an individual's birth," could the rule instead spell out those following types of information?

Professor Beale explained that this decision had been made by the Style Consultants. Substantive rule changes were for the Committee to decide, but if an issue concerned grammar, structure, placement, and did not change the meaning of the rule, the Style Consultants controlled the revision. This particular language was negotiated with the Style Consultants. Judge Harvey added that this sentence was discussed with the Style Consultants three or four times, and the subcommittee was ultimately satisfied with this version of the amended rule.

A motion to approve amended Rule 49.1 and the committee note for publication, as set forth on pages 225-228 of the agenda book, was made, seconded, and approved unanimously.

Ms. Ralston asked whether the Committee could include a request for comment on the particular issue of minors aging out in the rule published for public comment. Professor Beale said that it could, and that the reporters and Rules Committee Staff would discuss how to do so.

## **Rules 11 and 32**

Judge Mosman asked Judge Boyle to present the proposed amendments to Rules 11 and 32. Judge Boyle explained that Rule 11 dealt with guilty pleas and set forth what a judge must do when taking a guilty plea. In subparagraph (b)(1)(M), the rule stated that the court must inform the defendant of, “in determining a sentence, the court’s obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a).” Rule 32(h) provided, “Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party’s prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.”

The 2025 amendments to the Sentencing Guidelines made sweeping changes to Section 5K, which dealt with departures. The amendments deleted most of those departure provisions and kept only those provisions under 5K1.1, which dealt with substantial assistance, and 5K3.1, which concerned early disposition programs. Judge Boyle stated that Judge Patricia Barksdale brought this issue to the Committee’s attention and said that Rule 11(b)(1)(M) should be amended to address the recent changes to the Guidelines. The subcommittee agreed and thought that Rule 32(h) should be amended as well, since it also mentions departures.

Professor King directed the Committee to pages 241-242 of the agenda book, which showed the redline of proposed changes to Rule 11, and page 243, which showed the proposed elimination of Rule 32(h). She explained that the committee note for Rule 32(h) was short because there was not much to say about it. For Rule 11(b)(1)(M), the rule now says that the court must discuss the factors under 18 U.S.C. § 3553(a), including the Sentencing Guidelines. The subcommittee worked at some length to come up with this particular phrasing. It considered putting the Sentencing Guidelines first and then the statutory factors; leaving the Sentencing Guidelines out; and other formulations. Ultimately, the subcommittee thought that this formulation would convey the appropriate prominence of section 3553(a) as the governing statute, but still remind judges that they must start with the Guidelines. This was faithful to the Guidelines’ description of Step 2, which was the subcommittee’s guide to accurately describing what the court must do. It begins with the statutory provisions, which is highlighted in the proposed amendment.

Professor King further explained that Rule 32(h) would be eliminated, but it was “reserved.” Professor Beale said that the advantage of reserving that subdivision was that it would not require re-lettering or re-numbering the rest of the provisions.

A member observed that the prior version of Rule 11(b)(1)(M) had more specificity—it said to look at the Guidelines, the range, possible departures, and section 3553(a) factors. The amended version would just say to consider section 3553(a) and the Guidelines. Professor Beale confirmed that this was an intentional choice, because Step 2 of the Guidelines analysis involves

not just the range, but also the type of sentence. Listing everything did not seem to the subcommittee to be productive or provide more specificity than just looking at section 3553(a), which lists all of the relevant information.

A member added that the Sentencing Commission was continuing to work on simplifying the Guidelines. Part of the subcommittee's consideration was that by using this broader language, it would incorporate any potential future changes to the Sentencing Guidelines. It would also ensure that 5K1.1 was not lost, which was still relevant even though it was no longer called a departure.

Judge Dever noted that the change to the Sentencing Guidelines would also involve a change to the Bench Book, because that provides the script that many judges use for their guilty pleas. Professor Beale stated that there was a different committee and a different process for revising the Bench Book, but since this Committee planned to speak with the Bench Book Committee about the Rule 17 changes, perhaps the Criminal Rules Committee could mention this as well.

Motions to approve the changes to Rule 11(b)(1)(M) and to approve the changes to Rule 32(h) were made, seconded, and approved unanimously.

#### **Rule 40**

Judge Mosman asked Judge Harvey to provide an update on Rule 40. Judge Harvey stated that the Rule 40 Subcommittee was presenting a discussion draft for the Committee's review today. This rule governed arrest of defendants on warrants issued by a district other than the arresting district which arise from violation of release conditions pending trial, sentencing, or appeal. Current Rule 40 does not say much about this, and the subcommittee had proposed significant rewrites to clarify what procedures were required for proceedings in the arresting district. He directed the Committee's attention to page 258 of the agenda book. The subcommittee's intention, with the Committee's permission, was to push out the rule to magistrate judges across the country (for example, the Magistrate Judges Advisory Group (MJAG) and the Federal Magistrate Judges Association (FMJA)) to get feedback on whether the subcommittee was headed in the right direction. Judge Harvey thanked the reporters, the staff, and the subcommittee members for their efforts on the draft.

At a high level, the discussion draft of Rule 40 did a number of things. It specified the core rights and procedures for a Rule 40 hearing in the arresting district, including requiring that a copy of the arrest warrant be produced, that the defendant's identity be established, and that the defendant be advised of the nature of the release violation, the right to remain silent, and the right to counsel. Importantly, with respect to counsel, the draft recognized that the defendant must be given the reasonable opportunity to consult with existing counsel. This was unique to the Rule 40 context, because counsel may have already been appointed for the defendant during initial proceedings in the case in the issuing district. The draft rule therefore reminded the magistrate judge and the litigants of the need for consultation and required reasonable opportunity for the defendant to consult with his or her attorney. The draft also recognized and permitted the use of stand-in counsel in the arresting district, which is often what happens in Rule 40 proceedings. The duty assistant federal public defender would speak to the defendant's

counsel in the issuing district, and then stand in for them in the Rule 40 proceeding in the arresting district, so that the proceeding could go forward without undue delay. The draft rule acknowledged and expressly permitted that practice.

Perhaps most importantly, the draft made clear that a defendant had a right to seek his release in the arresting district before being transferred to the issuing district, and that it was the magistrate judge in the arresting district who would make that decision. The draft also cross-referenced sections of the Bail Reform Act, where the detention or release standards could be found. The standard varies depending on whether the defendant's violation occurred while on pretrial release or post-conviction release, so the draft rule provided guidance on where to find those standards in the Bail Reform Act. This was one of the things that MJAG requested that the new rule accomplish, to assist magistrate judges.

Judge Harvey said that the draft did not require a preliminary hearing on the warrant, which was consistent with the case law. It also omitted certain Rule 5 advisements that did not fit well in the Rule 40 context—for example, there was no requirement to advise the defendant of his or her rights under Rule 20 or of counselor notification. Both of those make sense at the start of a case, and are included in Rule 5, but do not apply in a Rule 40 proceeding, which comes later or even near the end of a prosecution when the defendant is awaiting sentencing or appeal.

The other provisions—allowing for first appearance in the neighboring district if it can occur promptly and requiring transfer of the defendant to the issuing district if detained; for the clerk's office to provide the paperwork; and permitting video teleconferencing with the defendant's consent—were all drawn from either Rule 5 or present Rule 40 without substantial change.

A member asked what the biggest change was that this draft accomplished. Judge Harvey responded that it made clear that the defendant had a right to a hearing and that it would be the magistrate judge in the arresting district who would make that determination. There were some cases that had expressed confusion about this, and Judge Harvey thought that the confusion largely arose from Rule 5. But the new Rule 40 would make clear that this is a decision that needed to be made, and that the magistrate judge in the arresting district had the power to release someone regardless of what the warrant said. The warrant did not control the magistrate judge in the jurisdiction of arrest. It was also helpful to make clear where the standard comes from, and ensure that magistrate judges understand that it is more difficult for a defendant to obtain release when they are on release pending sentencing or pending appeal. The Bail Reform Act says that the standard gets increasingly difficult. Without the reminder, a magistrate judge might reflexively apply the normal factors under 18 U.S.C. § 3142. Those are appropriate if the individual was on pretrial release and was before a magistrate judge for violating those release conditions. He noted that Rule 32.1, which outlines the proceedings with respect to violations of supervised release, refers to the Bail Reform Act. The MJAG requested that this rule provide similarly, and Judge Harvey thought that this would assist magistrate judges.

Professor King stated that based on empirical data from multiple districts provided by the FMJA, somewhere between 6 and 40 percent of arrests for pretrial violations are out of district. That was the context in which the subcommittee was asked to investigate and clarify the rule. However, Rule 40 covers other things, including violations of release pending sentencing and

violations for failure to appear when ordered by subpoena as a witness. The subcommittee chose to set those less common things aside and focus on the pretrial context to start. The draft it presented to the committee encompassed release pre-sentencing and pending appeal as well, because there was so much overlap that it was easy enough to put those things together in one product. The witness aspect would be somewhat different and would require different kinds of procedures. The subcommittee had not yet tackled that issue.

Professor King said that the existing version of the rule could be quite unclear, so that was what the subcommittee was trying to fix. She had heard of a magistrate judge who was new to the bench and asked a more experienced judge how to handle Rule 40 arrests, and the experienced judge told the new judge to ignore the text of the rule, because it was unhelpful. This is not what the Committee wants; it wants a rule that tells judges clearly what to do.

Judge Harvey clarified that the draft covered almost the entirety of Rule 40, with failure to appear as required by subpoena as the sole exception. The subcommittee would look at that next and determine how best to address that—whether it needed to be in the rule and if so, whether the procedures should be any different.

Ms. Ralston said that the DOJ felt strongly that Rule 40 should address material witnesses and subpoena no-shows. She also asked whether it would be possible to get feedback from the Probation Officers Advisory Group at the same time as the subcommittee was getting feedback from magistrate judges. She had heard several times from U.S. attorneys that the probation and pretrial office in the arresting district typically does not have any information to provide for these hearings, which leaves everyone a bit at sea about what appropriate conditions or modifications should be made. This seems to be a record-sharing issue. But it may be useful to get their feedback.

Judge Harvey agreed. He noted that he had met with the clerk's office and with pretrial services in D.C., and they had not expressed confusion about the paperwork that they were supposed to provide or the process for doing so. He nonetheless thought broader feedback would be helpful. Judge Harvey noted that on page 262, line 72, the draft rule read, "Once the person is transferred or released, the clerk must promptly transmit the papers and any bail to the clerk in the district where the warrant was issued." He said that the subcommittee had discussed what this meant and thought that there was not much confusion about it among courtroom deputies and pretrial services. This language came directly from Rule 5.

Ms. Ralston explained that the confusion she had heard about was not about what happens after the proceeding, but instead what needed to happen before the proceeding, particularly to ensure that pretrial services would be able to provide information that would inform the release or detention decision. Judge Harvey thanked her for clarifying and said that this was a great point.

Judge Dever stated that, because these defendants are being processed under Rule 40, they necessarily had been arrested and released in their original districts. When they were arrested somewhere else, there must have been a pretrial services report created, which could be transmitted to the magistrate judge in the arresting district. The report would have the

defendant's criminal history, family issues, and anything that allowed them to be released in the first place.

Judge Harvey said that there was not always a warrant application. The best example was a bench warrant—someone is supposed to appear in court, and does not, so a judge issues a bench warrant because this was a violation of the defendant's condition of release. If that defendant appeared before a magistrate judge in a district two states away, there would not be any application for that judge to review. Or, if pretrial services calls a magistrate judge and says that a defendant removed his location device, the magistrate judge may just issue a bench warrant. But he agreed with Judge Dever that in a situation where a warrant was issued because someone was violating some other conditions of release, pretrial services would have prepared a report, and it would have been on that basis that the court issued a warrant.

A member pointed to Suggestion 23-CR-H from Judge Zachary Bolitho, which concerned the authority of the magistrate judge in the arresting district to conduct a detention hearing and the standard applied at any such hearing. She asked for Judge Harvey's view. Judge Harvey noted that in Judge Bolitho's case, as described in his suggestion, there was a question about whether a detention hearing should be held at all. He thought that yes, there certainly must be a detention hearing. This was not a change to Rule 40; this was a clarification. The existing rule says that the arresting judge "may modify any previous release or detention order issued in another district." The magistrate judge in the arresting district should make a detention determination regardless of what the judge in the issuing district had determined.

The member asked whether there was any difference in the standard that applied to the detention hearings. Judge Harvey answered that there was a difference, and it depended on the type of violation. The standards in section 3142 apply to violations of pretrial release. If someone had violated a condition of pre-sentence release, or release on appeal, the standard was more difficult to meet, because the defendant was closer to judgment.

A member agreed with Ms. Ralston that it was a good idea to solicit feedback from pretrial services. She asked whether the Committee could find out a bit more information from them about how these cases typically arise. If someone absconded from her district and was picked up somewhere else, that district would have no connection to her client. That district would need to contact the pretrial officer in her district and get the report. But many times, someone will be released and live in a different district. They will be supervised by that district's pretrial office, who will have a lot of information. And, for example, there may be a few positive drug tests, such that the judge in the member's district would want the issue addressed and issue a warrant or a summons. This was why the right to a hearing in the arresting district was important, so that the defendant could address whether conditions could be changed to allow them to remain on release. The member added that a third type of situation could occur if, following the positive drug tests, the judge in the member's district required the defendant to appear in that district. This would not implicate Rule 40. The member thought that getting perspective from pretrial services would be helpful, especially if they could provide information about the circumstances in which these Rule 40 proceedings regularly take place.

Another member said that she read the draft rule to say that the arrestee must be taken to a court in the district of arrest unless the arrestee could be brought back to the home district that

same day. What if, for example, a defendant was charged in the Central District of California and then arrested in Las Vegas? This was a six- to eight-hour drive, depending on traffic. She thought that there was some flexibility for the magistrate judge to tell the defendant to start the drive—even if he would not make it that same day. It did not sound to her as though this flexibility existed under the draft rule, because if a defendant could not get to the home district that same day, then the magistrate judge in the arresting district must hold a brand new detention hearing. She was interested to see how magistrate judges felt about what is potentially a lot of extra work for a defendant who was not under that district’s supervision, when they could very easily get the defendant to court the next day.

Judge Harvey responded that this language came from Rule 5. He reiterated that these were a relatively small portion of out-of-district warrants that magistrate judges must address. The vast majority arise under Rule 5, when an arrest warrant is issued for a complaint or indictment, and the defendant is arrested in a different state. The second most common category is for violations of supervised release. Those are more common than a Rule 40 scenario because there are many people out on supervised release. Judge Harvey said that this had been how Rule 5 treated the issue—he was not saying that this was the right way to do so, but simply that this was a longstanding practice.

The member said that she saw the Rule 5 context as slightly different than a Rule 40 arrest. She noted that she had had an experience many years ago where a defendant was arrested in another district and she was told that the defendant would appear in her district the following day. She thought that the rules therefore accounted for this flexibility. She did not have a view as to whether it was acceptable to remove that flexibility if magistrate judges thought that was the better course.

Judge Harvey said that the subcommittee would certainly get input from magistrate judges. He observed that it could often take several days for the U.S. Marshals to transfer a defendant to another district, and the defendant might be detained for far less time if they were simply brought before the magistrate judge in the arresting district. On the other hand, in cases involving bordering districts, it may help to provide a bit more flexibility in the rule. He said that the subcommittee would continue to look at this issue.

Judge Harvey asked whether there were any further questions from the committee members, and there were not. He stated that the subcommittee would reach out to magistrate judges, clerk’s office representatives, and pretrial representatives for informal feedback on the draft rule.

## **Rules 49 and 45**

Judge Mosman turned to Judge Burgess and Professor Struve to present the proposed changes to Rules 49 and 45. Judge Burgess directed the Committee to Professor Struve’s memorandum on page 281 of the agenda book and explained that the subcommittee had been focused on proposed amendments to Rule 49 relating to self-represented litigants. He also thanked the subcommittee members, Professor Struve, and the reporters for their hard work throughout this process.

Judge Burgess stated that the first proposed change was to make the filing provisions clear for self-represented litigants. Rule 49(a)(3) would now read, “For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service is complete as of the notice’s date.” The subcommittee wanted to ensure that self-represented litigants were not penalized if they submitted something to the clerk’s office but it was not posted until a later date.

The next proposed change was to Rule 49(b)(2)(B). This subparagraph previously used a four-part structure, as seen in the fall 2025 agenda book. The subcommittee received some suggestions to shorten it, and in March, came up with the language of what was now a two-part structure. This version was simpler and cleaner; it now read, “A court may set and enforce reasonable conditions and restrictions on self-represented parties’ access to the court’s electronic filing system (including by denying or revoking access for particular self-represented parties if they misuse the system). But the court may not prohibit all self-represented parties from using the court system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method . . . .” The subcommittee wanted to ensure that courts would not prohibit any access at all by self-represented litigants.

Finally, the subcommittee proposed three additional changes. First, for the provision on service of sealed filings in Rule 49(a)(3)(B), the subcommittee retained the provision for local control, and added a court order as an option. The provision would now read, “A court may provide by order or local rule that if a paper is filed under seal, it must be served by other means.” Next, in Rule 49(a)(5), the subcommittee decided to delete the provisions that addressed service of papers not filed, since it did not think those were necessary. Lastly, there was a recommendation to replace “person” with “party.” There was a concern that “person” could lead self-represented litigants to think that they could file something in a case that they have no relation to. Changing “person” to “party” would resolve that potential problem. Judge Burgess then turned to Professor Struve to provide additional comments.

Professor Struve thanked Judge Burgess; the subcommittee; Dr. Lonchena, Dr. Reagan, and their colleagues at the FJC; the Style Consultants; and the reporters, Professor Beale and Professor King, for their work on this project. She drew the Committee’s attention to the portion of the committee note concerning Rule 49(b)(2), which was on page 311, lines 253 to 258. This sentence discussed what would constitute reasonable exceptions if a court decided to have a provision that barred self-represented litigants from accessing the court’s electronic filing system. It said, for example, local provisions that require self-represented parties who seek to use the court’s electronic filing system to obtain permission from the judge to whom the case is assigned would count as including reasonable exceptions, so long as such permission is not unreasonably withheld in practice. This sentence addressed what would constitute compliance with the new flipped default presumption concerning access to the court’s e-filing system.

Rule 49(b)(2)(B)(i) said that presumptively, self-represented parties can use the court’s e-filing system unless a court order or local rule prohibits them. Then, in (B)(ii), the rule said that the court may set and enforce reasonable conditions and restrictions on that access, including by denying or revoking access for a particular party. “But the court may not prohibit all self-represented parties from using the system unless that prohibition includes reasonable exceptions

or the court permits the use of another electronic method” for filing and receiving electronic notices.

The committee note language honed in on the question of what would count as “reasonable exceptions,” and said that it would qualify for a court to say that it would require each self-represented litigant who wanted to use the court’s e-filing system to get permission from the court, so long as the permission was not unreasonably withheld in practice. Professor Struve noted that there was significant attention focused on this language from the Appellate, Bankruptcy, and Civil Rules Committees, which met two weeks ago. There were two schools of thought about this. One view was that this was an important piece of the committee note because there were many courts that currently say that if self-represented litigants want to use the e-filing system, they must get the court’s permission. There was value to validating that practice. The committees had heard from clerk representatives that an important way to run the system is to require a self-represented litigant who wants access to go and ask for permission. That allows for some gatekeeping and a dialogue with, most often, the clerk’s office. The other view, expressed in the Civil and Appellate Rules Committee meetings, was that this language risked undercutting the change to a default principle of access for self-represented litigants that the committees have worked so hard to present. The committee note language could be read as validating a court’s decision to have a permission-only system that operates in a mode of standardless discretion for the court. This could make it quite difficult for a self-represented litigant who believes that they reasonably should qualify for electronic access to challenge the court’s denial or practice of denials of that permission.

Professor Struve stated that, after a good deal of discussion, the Civil Rules Committee ultimately voted to proceed with this committee note language, even though some members expressed doubts. The Bankruptcy Rules Committee voted to proceed as well. However, the Appellate Rules Committee came up with different language, which appears on page 330 of the agenda book. This language would begin similarly to the existing language, but would then say that local provisions requiring permission would count as including reasonable exceptions, “so long as such permission is granted or withheld in accordance with the reasonable conditions and restrictions on access set by the court.” Professor Struve explained that this was a reference to the language a few paragraphs earlier in the committee note. The thought was that this language would validate the practices of courts that wish to have a permission-based system, but would do so in a way that would avoid blessing standardless, discretionary systems that could never be challenged in practice by a self-represented litigant who was denied access. She added that the proposed new language on page 330 of the agenda book would also change the requirement that self-represented litigants seek “permission from the judge to whom the case is assigned” to say that they must obtain “the court’s permission.” This was because the subcommittee had heard from clerk representatives that it was often the clerk’s office, not the judge, who played this role in practice. Professor Struve invited the Committee’s feedback on the changes.

Professor King stated that the proposed text said that “a court may set and enforce reasonable conditions and restrictions on self-represented parties’ access to the court’s electronic system,” which the committee note suggested could mean, for example, only to self-represented litigants who are not incarcerated, who satisfactorily complete required training, and who comply with other reasonable conditions on access. Did this mean that the court *must* set them, rather

than *may* set them? If compliance with the conditions and restrictions was a condition of having a policy of permission, then these conditions and restrictions must be in place.

Professor Struve agreed that conceptually, that was true. However, the way that it generally worked in practice was that the clerk's office would tell a self-represented litigant the court's requirements for electronic access, such as completing a training module. The idea was that the note would push courts towards creating policies—if a court wanted to have its policy be that self-represented litigants need to request permission, then it needed to have some idea of the bases on which it would withhold permission. She added that because the rule was now flipping the default presumption to allow electronic access to self-represented litigants, courts *would* need to do something to create a policy. A court could adopt a rule that says, “No self-represented litigants may ever use the system, but they can use our alternative method of using an upload portal and court-based electronic notice.” Thus, the courts would need to create something, and the implication in the note was that the court cannot create a policy that said that it might let self-represented litigants file electronically, but it would not disclose the standards it would use to make that determination.

Judge Burgess said that it made him nervous to look at brand new language for the first time in a committee meeting. He also stated that he liked the concept of a judge to whom the case was assigned making a decision as to electronic filing, rather than the court, as the new language stated. Lastly, he asked whether the rule sets needed to be consistent with one another.

Judge Dever stated that at the Appellate Rules Committee meeting, the clerk representative was very helpful. He told the committee that he and his staff would be the ones getting calls from self-represented litigants, and the clerks' offices want something in the rule language that they can point to when having these discussions. The clerk's office can tell the self-represented litigant that they do not need to call the judge's chambers; the clerk's office represents the court and can tell the self-represented litigant what to do. The clerk representative for the Appellate Rules Committee said that otherwise, a self-represented litigant might say, “Well, the committee note says ‘judge.’ So that means that I get to talk to the judge.” The representative thought that changing the language to refer to the court would result in fewer difficulties for the clerks' offices. As to the question about consistency, Judge Dever said that while the rules committees strive for consistency, the Bankruptcy Rules are often set apart, for various reasons.

Professor Struve added that the proposed change to refer to the “court's” permission still left the court perfectly free to have it be the individual judge who makes the determination, because the judge is the court. It simply broadened it to permit the practices of courts that want the clerk to handle it instead. She said that this particular feature of the rule really should mean the same thing across the rule sets, and the Standing Committee will want to make this uniform. If the Criminal Rules Committee felt differently from the Appellate Rules Committee, then it should let the Standing Committee know its reasons for taking a different approach, so that the Standing Committee could pick one or the other.

Professor Hartnett said that for the other three rules committees, the question was framed as, “Do you want this sentence at all?” The Civil and Bankruptcy Rules Committees decided that they did. The Appellate Rules Committee was troubled but thought that it had come up with

compromise language that would meet both concerns—so rather than eliminating the sentence entirely, or having it as originally drafted, there was a way that would get both sides’ support.

A member asked whether the Civil Rules Committee had considered the language proposed by the Appellate Rules Committee, and Professor Struve responded that it had not, because the Appellate Rules Committee was the last of those three committees to meet. Judge Harvey said that he shared Judge Burgess’s concern with the new language and wanted to give it further thought. The issue here was whether judges were going to be unfair and deny access to self-represented litigants across the board. He thought that this was unlikely to occur, and to the extent that it did, the fact that the committee note says that the permission should not be unreasonably withheld would enable interested stakeholders, both within the courthouse and outside, to take whatever action they want to, even informally, when it becomes clear that a judge is doing so. He thought that the existing language was sufficient and important.

Judge Burgess said that he understood the reasons the member gave for preferring the language that had been discussed by the subcommittee. However, Judge Burgess said that he liked the idea of referring to the court’s permission rather than the judge’s permission. The member responded that he had no objection to that and thought saying “the court’s permission” made sense. He objected only to the last newly proposed line.

The clerk representative said that she agreed with Judge Dever. In her court, the presumptive approach was that self-represented litigants could e-file with permission so long as they met certain criteria. The issue never went before a judge. On the other hand, the decision to revoke the permissions typically does come from a judge. She supported the change from “judge” to “court” because it allowed each district the flexibility to handle the situation as it saw fit.

Judge Burgess asked whether the Committee could vote first on the proposed modifications to Rule 49, then vote on the language in the Committee Note. Professor Struve first directed the Committee’s attention to page 303, line 14, of the agenda book, which contained bracketed language in paragraph (a)(3). She explained that this language would simply add “by a notice of case activity” to the rule, and that the other three committees had already voted to include this language in their respective rule sets. She asked that the Committee decide whether to include this language in its rule.

A motion to remove the brackets in Rule 49(a)(3) was made, seconded, and approved unanimously.

Judge Burgess asked whether the committee members favored making the suggested changes to the text of Rule 49, and all member agreed.

Judge Burgess then turned to the new language proposed for the committee note. He stated that he shared some of the concerns expressed earlier by another member, but also thought that the new language would have some advantages. It would create consistency across the rules, and was a step in the right direction, although it may not have individual accountability.

Professor Struve said that on the question of individual accountability, she understood that one concern with the proposed language from the Appellate Rules Committee was that it

would foreclose individual denials of electronic access on the basis that a particular litigant was not viewed as an appropriate person to be on the system. She did not think that this concern was warranted because the note language refers to the reasonable conditions and restrictions set by the court. In the text of the rule, in item (b)(2)(B)(ii), there is a parenthetical that says, “including by denying or revoking access for a particular self-represented party.” The language therefore could not be read to foreclose the court from saying that a particular litigant would cause trouble and should be restricted from electronic filing, because the text of the rule absolutely permits that as a reasonable condition or restriction.

A member said that when she initially read the agenda book, she questioned whether the phrase “so long as such permission is not unreasonably withheld in practice” was necessary, because the way the amendment was structured was that the court could set reasonable restrictions and conditions on access. The presumption should be that the court and court staff would act reasonably. She preferred the newer language, because it referred back to the standards set by the court. She agreed that the language should be changed to refer to “court” rather than the “judge,” and said that if the Committee wanted to include the last phrase, she preferred the newer version over the version originally in the memorandum.

The member made a motion to amend the committee note with the language suggested by the Appellate Rules Committee, as shown in the last full paragraph on page 330 of the agenda book. Judge Dever added that the clerk representatives had consistently said that they would prefer to deal with electronics than paper, and this project was designed with that in mind.

The motion was seconded and approved by all but one of the committee members.

Professor Struve said that there was one more issue in the committee note that needed the Committee’s attention. On page 311, line 219, the Committee had an option to say that a “district” or a “court” wished to restrict self-represented parties’ access to electronic filing. The Civil Rules Committee decided to use “district.”

A motion to use “district” was made, seconded, and approved unanimously.

A motion to recommend amended Rules 45, 49, and the committee notes for publication for public comment was made, seconded, and approved unanimously.

## **Rule 15**

Judge Mosman stated that many comments had come in on Rule 15, which were discussed in the agenda book. The Committee would not be discussing this issue today, but Judge Mosman had created a new Rule 15 Subcommittee, which would be chaired by Judge Burgess.

## **Attorney Admission**

Judge Mosman turned to Judge Birotte to present this item. Judge Birotte said that this project stemmed from a 2023 recommendation from Dean Alan Morrison to have a unified bar admission for all federal courts. The subcommittee created to address this issue consisted of members from the Bankruptcy, Civil, and Criminal Rules Committees. Dean Morrison had raised two primary issues. District courts’ admission requirements vary across the country, which can

cause some challenges for lawyers who practice in numerous federal courts. Additionally, with the increase in multi-district litigation, the suggestion was to make it easier to obtain access to courts across the country.

The subcommittee thoroughly examined this issue, considering various proposals and examining Appellate Rule 46. However, there were concerns among the subcommittee members about quality control across the different districts and the ability to discipline attorneys or to have access to information about whether lawyers had previously been disciplined. There were also concerns about revenue impacts on certain districts. Additionally, Professor Struve contacted some state bar counsel to get their input. They questioned whether it would be considered unauthorized practice of law in some jurisdictions if someone were allowed to practice in the district court, but the state would not permit this. Overall, there was a recognition that reducing the barriers to practice—especially for military spouses or people who travel in different districts—was important. But that was outweighed by the concerns regarding accountability, control, and culture across different districts. Ultimately, the subcommittee felt that there was not sufficient widespread concern to justify a national rulemaking proposal.

Accordingly, the subcommittee will recommend to the Standing Committee that the attorney admission project be terminated, and that the subcommittee be disbanded.

### **Closing Comments**

Judge Mosman announced that Judge Harvey had agreed to renew his term on the Committee. Judge Burgess had also agreed to a one-year extension of his term.

The next Committee meeting will be held in Boston, in the federal courthouse, in October.

Judge Mosman adjourned the meeting.

# TAB 4

## MINUTES

### COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

June 3-4, 2026

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in Chicago, Illinois, on June 3 and 4, 2026. The following members were present:

Judge James C. Dever III, Chair  
Judge Paul J. Barbadoro  
Elizabeth J. Cabraser, Esq.  
Louis A. Chaiten, Esq.  
Judge Colm F. Connolly  
Judge Joan N. Ericksen  
Judge Stephen Higginson

Justice Edward M. Mansfield  
Dean Troy A. McKenzie  
Andrew J. Pincus, Esq.  
Judge Allison J. Rushing  
Elizabeth J. Shapiro, Esq.<sup>1</sup>  
Judge Amul R. Thapar  
Bart H. Williams, Esq.

The following individuals also attended to support the work of the Standing Committee: Professor Edward Hartnett, Standing Committee Reporter; Carolyn A. Dubay, Secretary to the Standing Committee; Professor Catherine T. Struve (attended remotely), Professor Daniel R. Coquillette (attended remotely), Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee.

The following individuals attended on behalf of the Advisory Committees:

Advisory Committee on Appellate Rules:

Judge Allison H. Eid, Chair  
Professor Stephen Sachs, Reporter (attended remotely)

Advisory Committee on Criminal Rules:

Judge Michael W. Mosman, Chair  
Professor Sara Sun Beale, Reporter  
Professor Nancy J. King, Associate Reporter

Advisory Committee on Bankruptcy Rules:

Judge Rebecca B. Connelly, Chair  
Professor S. Elizabeth Gibson, Reporter (attended remotely)  
Professor Laura B. Bartell, Associate Reporter

Advisory Committee on Evidence Rules:

Judge Jesse M. Furman, Chair  
Professor Daniel J. Capra, Reporter

Advisory Committee on Civil Rules:

Judge Sarah S. Vance, Chair  
Professor Richard L. Marcus, Reporter  
Professor Andrew Bradt, Associate Reporter

Judge Robert J. Conrad, Jr., Director of the Administrative Office of the U.S. Courts, also attended. Other attendees (participating remotely) included: Bridget Healy, Esq. and Sarah A.

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<sup>1</sup> Ms. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Todd Blanche.

Sraders, Esq., Rules Committee Staff Counsel; Shelly Cox, Rules Committee Staff; and Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC).

## **1. OPENING BUSINESS**

### **A. Welcome and Opening Remarks**

Judge James C. Dever, III, Chair of the Standing Committee, called the meeting to order and welcomed the members, participants, and observers, including those attending remotely. Dean Zachary Clopton, Dean of Northwestern Pritzker School of Law, also welcomed the attendees.

Judge Dever also paid tribute to Standing Committee member Judge D. Brooks Smith (3<sup>rd</sup> Cir.), who retired effective May 31, 2026. Judge Dever recounted Judge Smith's impressive career, noting that he had served as chief judge of the district court and Third Circuit and as Chair of the Judicial Conference Space and Facilities Committee, and been a member of the Criminal Rules Committee, the Committee on Judicial Conduct and Disability, and the Executive Committee. Judge Dever also read for the members a letter from Judge Brooks reflecting upon his time on the Standing Committee. Judge Dever then welcomed Judge Smith's successor, Judge Amul Thapar (6<sup>th</sup> Cir.) and announced that Judge Michelle Harner (Bankr. D. Md.) would become the chair of the Bankruptcy Rules Advisory Committee upon the end of the term of Judge Rebecca Connelly on September 30, 2026.

### **B. Discussion and Approval of the Meeting Minutes**

Following these announcements, Judge Dever called for discussion and approval of the minutes of the January 6, 2026, meeting. After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee approved the minutes with one minor typographical correction.

### **C. 2025 Strategic Plan for the Judiciary**

Judge Dever next asked the members for feedback on a request from Chief Judge Michael A. Chagares (3<sup>rd</sup> Cir.), Judiciary Planning Coordinator, to identify any agenda items that align with the Judicial Conference Executive Committee's priority goals from the 2025 Strategic Plan for the Judiciary. Judge Dever expressed support for prioritizing the use of public resources. After giving the members an opportunity to discuss the issue, upon motion and a second, with no opposition, the Standing Committee authorized the Chair, working with the Secretary, to respond directly to Chief Judge Chagares that the Committee would generally prioritize the goal to allocate and manage public resources more efficiently and effectively through the rules process.

### **D. Status of Rule Amendments**

Carolyn A. Dubay, Chief Counsel and Secretary to the Standing Committee, gave a brief report on the status of proposed rule amendments, referencing the chart of proposed amendments included in the agenda book beginning on page 67. Ms. Dubay highlighted that final rule amendments had been delivered to Congress in April 2026, but that this package did not include Appellate Rules 29 and 32 and the Appendix of Length Limits, which were withdrawn for further consideration. Those amendments were withdrawn at the request of the Executive Committee of

the Judicial Conference for further consideration, and upon revision by the Appellate Rules Advisory Committee, they were submitted for final approval (see report of the Appellate Rules Advisory Committee).

#### **E. Legislative Update**

Ms. Dubay also provided an update on any pending legislation that directly or effectively amends the federal rules, referencing the chart of legislative proposals in the agenda book beginning on page 73. She drew the Standing Committee's attention to the Sunshine in the Courtroom Act of 2025, which would allow broadcasting in all court proceedings, including criminal proceedings, despite Criminal Rule 53's prohibition.

#### **F. Federal Judicial Center Update**

Dr. Tim Reagan provided the Standing Committee with an update on the FJC's activities relating to the work of the Rules Committees. The FJC Report is included in the agenda book beginning on page 79. In addition to the topics covered in the report, Dr. Reagan stated that the FJC had recently released on the judiciary's intranet a video documentary featuring courts that allow *pro se* electronic filing.

### **2. JOINT COMMITTEE BUSINESS**

Judge Dever then turned to joint committee projects and business.

#### **A. Joint Subcommittee on Attorney Admission**

Professor Bradt presented on behalf of the Joint Subcommittee on Attorney Admission. Professor Bradt explained that this project began in 2023 with a suggestion from Dean Alan Morrison of George Washington Law School arising from the challenges lawyers with nationwide practices face because of differing district court bar admission policies. For example, many districts require admission to the state bar in which the district sits, and that includes districts in a small number of states (four) that require taking the state bar exam in order to be admitted.

Professor Brandt then recounted how since 2023, the subcommittee engaged in a substantial amount of work, including six subcommittee meetings, formal and informal outreach to judges, state bars, and other important stakeholders. The results of this inquiry established that district courts do not favor national rule-making on this issue for a number of reasons, including their interest in sustaining their local court practices and ensuring adequate supervision of their own district bars. There was also some concern that, were such a proposal to be passed, district courts would enhance their local rules to require more engagement of local counsel. There were also various issues related to whether the proposal was appropriate for consideration under the Rules Enabling Act. With this background, Professor Bradt stated that it was the subcommittee's unanimous recommendation to end the project and disband the subcommittee. Professor Bradt also summarized Dean Morrison's comments in response to the subcommittee's recommendation.

The Committee then heard the views of various reporters and consultants, who expressed understanding of Dean Morrison's concern about the significant disparity among district court

admission practices (including local residency requirements), but also advised caution in proceeding with national rulemaking on this issue for a variety of reasons. The consultants and reporters noted the Committee's earlier efforts to consider national rules of attorney conduct, which proved unsuccessful in light of concern for sustaining local and state authority over the practice of law. A reporter underscored caution about adopting a "one-size-fits-all" approach.

The members then discussed the subcommittee's recommendation.

A judge member expressed support for the subcommittee's recommendation after sharing his concern that national admission rules may inhibit the ability of individual judges to require higher standards of conduct and professionalism in their courtrooms (as set forth in standing orders, for example). Another member raised the issue of admission fees and asked whether that issue had been driving concerns behind the district court judges' objections. Professor Bradt noted that the FJC had completed a study on the amount of those fees and their variation and the use of such fees to fund important operations and provide support for pro bono staff attorneys and libraries. Professor Bradt emphasized, however, that while the issue of fees did come up with judges, potential loss of fees was not the primary concern, which focused on supervisory responsibilities and preserving local legal culture and traditions.

With no further discussion, upon motion and a second, with no opposition, the Standing Committee voted to conclude the attorney admission project and disband the subcommittee.

#### **B. Electronic Filing and Service by Self-Represented Litigants**

Professor Struve presented the self-represented litigant filing and service project to the Standing Committee relating to Appellate Rule 25; Bankruptcy Rules 5005, 8011, and 9036 (with a conforming amendment to Bankruptcy Rule 9006); Civil Rule 5 (with a conforming amendment to Civil Rule 6); and Criminal Rule 49 (with a conforming amendment to Criminal Rule 45).

Professor Struve explained that the proposed amendments were focused on two issues. First, the proposed amendments eliminate the requirement for self-represented litigants to complete a burdensome and redundant paper service of court filings (other than the initial pleading) if the litigant to receive such service already receives such documents through the court's electronic filing system or electronic noticing system. Second, the proposed amendments presumptively permit self-represented litigants to file court documents electronically, unless a court order or local rule bars them from doing so. If a court adopts a local rule barring self-represented litigants from using the court's electronic filing system, the proposed amendments further provide that any such local rule must either include reasonable exceptions to that prohibition or permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

Professor Struve also informed the Committee that each of these proposed amendments was approved for publication by the relevant Advisory Committee, although the support of some members of the Bankruptcy Rules Advisory Committee extended only to publication for public comment with reserved skepticism as to whether the amendments would proceed to final approval. Professor Struve further explained that there are some variances in the proposed

amendments across the four rule sets to ensure consistency of language and application within the same rule set.

After providing this background, Professor Struve directed the Standing Committee's attention to language in the proposed common committee notes to Appellate Rule 25(a)(2)(C)(ii) (agenda book page 160), Bankruptcy Rule 5005(a)(3)(B)(ii) (agenda book page 139), Bankruptcy Rule 8011((a)(2)(C)(ii) (agenda book page 146), Civil Rule 5(d)(2)(B)(ii) (agenda book page 134), and Criminal Rule 49(b)(2)(B)(ii) (agenda book page 125). These committee note sections address whether a court may continue to require self-represented litigants to seek permission to use its electronic filing system under the new rule provisions. The Clerk of Court liaisons to the Advisory Committees had stressed that it would be useful for the committee note to expressly affirm the use of a permission-based system to help communicate clearly with self-represented litigants about the court's role in allowing such access. But some advisory committee members had raised concerns that the original proposed language might seem to approve standardless discretion concerning whether or not to grant permission. In response, the Appellate Rules Committee had approved revised note language that addressed those concerns. The Appellate Rules Committee's meeting occurred after the Bankruptcy Rules and Civil Rules Committees had met and approved the initial proposed language. The Criminal Rules Committee thereafter approved the language in the committee note as revised and approved by the Appellate Rules Committee.

To show the two versions of the language in the committee note, Professor Struve pointed to page 134 of the agenda book, the committee note for the proposed amendments to Civil Rule 5. The language in the first bracket (lines 220-223) is the language approved by the Bankruptcy Rules and Civil Rules Committees at their spring meetings. The language in the second bracket (lines 223-227) is the modified language approved by the Appellate Rules and Criminal Rules Committees. Professor Struve proposed that the Standing Committee approve the second bracketed alternative. Professor Marcus added that the Civil Rules Advisory Committee was not enthusiastic about the first bracketed language and did not have the second alternative before it at its spring meeting.

The members then discussed the proposed amendments.

A judge member asked whether there had been discussion about AI use among self-represented litigants and whether there were adequate protections to prevent disclosure of private information if documents are filed electronically and available for public access. Professor Struve responded that the surge in AI-assisted filings was not itself a topic of discussion, but that she believed that clerks would likely say that to the extent there are more filings, they would prefer not to receive them in paper form and scan them into the system. As for privacy, Professor Struve noted that the proposed rules would allow courts to establish a different system – such as an upload portal or requiring email submissions—that would allow the clerk's office to review filings from self-represented litigants before they are made available to the public. Further, Professor Struve added that any social security number in the filing would most likely be the filer's own number, in which case the filer would not be violating the privacy rules.

Another judge member expressed his support for the proposal, noting that it would save time and money and improve access to justice. As an example, he noted that one-third of all filings are

made after 5 p.m. Allowing self-represented litigants to use electronic filing and be able to file after 5 p.m. would make the system fairer. The judge member then asked whether the rule should be extended to allow self-represented nonparties to use electronic filing. Professor Struve responded that this issue had been discussed, particularly in the Criminal Rules context with respect to victims, and the choice was made to limit the presumptive access to e-filing to parties. This would not preclude a court from allowing electronic access to self-represented nonparties, but they would not receive the same presumptive right to use it as a default principle set forth in the revised rules.

Another judge member asked whether the Committee on Court Administration and Case Management (CACM) had been consulted on this project. Professor Struve explained that CACM had not been officially consulted, but CACM leadership and staff have been involved in a number of issues that overlap, including coordination on the Privacy Report to Congress. Judge Dever added that these proposed amendments are only at the publication stage, which will enable CACM to weigh in as well, and there will have to be coordination on training if the amendments are adopted, including training on privacy requirements.

The state judge member stated that his state recently moved to a rule that required self-represented litigants to file electronically unless they fell into an excepted group (such as confined persons) or filed a motion for good cause to not file electronically. He added that the state courts had not had problems with this new rule.

With no further discussion, upon motion and a second, with no opposition, the Standing Committee approved for publication and public comment the proposed amendments to Appellate Rule 25; Bankruptcy Rules 5005, 8011, and 9036 (with a conforming amendment to Bankruptcy Rule 9006); Civil Rule 5 (with a conforming amendment to Civil Rule 6); and Criminal Rule 49 (with a conforming amendment to Criminal Rule 45), as revised to include adoption of the second bracketed language approved by the Appellate and Criminal Rules Committees in the committee notes to Civil Rule 5(d)(2)(B)(ii) (page 134, lines 223-227), Bankruptcy Rule 5005(a)(3)(B)(ii) (agenda book page 139-140, lines 104-107), and Bankruptcy Rule 8011(a)(2)(C)(ii) (agenda book page 146, lines 151-154).

### **C. Privacy Rules Related to Taxpayer Identification Numbers and Minors**

Judge Dever then turned to Ms. Dubay to present the proposed amendments to the privacy rules. Ms. Dubay noted that there were two privacy-related items on the agenda: (1) the proposed amendments to the privacy rules (Bankruptcy Rule 9037, Civil Rule 5.2, Criminal Rule 49.1), and (2) the Judicial Conference's biennial report to Congress regarding the status of the judiciary's efforts to address privacy concerns in public court filings.

Turning to the rule amendments, Ms. Dubay explained that initially the Advisory Committees had hoped to present a package of privacy amendments including updated privacy rules applicable in appeals through proposed amendments to Appellate Rule 25 and a new provision in Bankruptcy Rule 8011. The Appellate Rules Committee, however, decided at its spring meeting to further consider the proposed amendments given some concerns expressed about the redaction requirement in voluminous appendices. Ms. Dubay further explained that because of the desire for consistency with the approach to appeals, the Chair and Reporter of the Bankruptcy Rules

Advisory Committee would not put forward proposed amendments to Rule 8011 at this time to allow the members of the Bankruptcy Rules Advisory Committee to consider changes that the Appellate Rules Advisory Committee may suggest as to appeals. These changes would not affect the pending proposed privacy amendments Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1.

Like the package of proposed amendments regarding access to electronic filing and notice for self-represented litigants, Ms. Dubay noted that there is common language in the proposed committee notes that requires attention in light of a suggested modification received from the Department of Justice after the agenda book was published. The suggested revised committee note language was provided as a handout and is found immediately after page 587 of the agenda book.

Professor Hartnett, Reporter to the Standing Committee, added that the proposed amendments involved the replacement of minors' names with pseudonyms (rather than the use of initials) and complete rather than partial redaction of social security numbers (SSNs) and individual taxpayer identification numbers (ITINs). The amendments (to the Civil and Criminal Rules) would also clearly apply the redaction requirement to adoption taxpayer identification numbers (ATINs) and employer identification numbers (EINs). Professor Hartnett explained that the Advisory Committees generally considered the risk of fraud in making these recommendations, and although ATINs are low risk they were included to avoid confusion and for completeness.

Professor Beale, Reporter to the Criminal Rules Advisory Committee, then advised the Standing Committee that, to the extent that members were concerned that a minor could be identified because the parents are named publicly, the current rule does not prevent this because it only requires using a minor's initials. DOJ, which proposed the use of pseudonyms for minors in criminal cases, raised the concern that the existing rule with initials made it too easy to determine a minor's identity. The proposed amendment was narrow and responded only to this concern. Professor Beale also stated that strong concerns had been raised regarding protecting EINs, because EINs are used by individuals and not only corporate entities. Professor Beale added that DOJ's position was that EINs should not be redacted, but the Criminal Rules Advisory Committee believed that there was utility and convenience in treating all such numbers similarly, which also avoided the possibility of fraud.

Professor Hartnett then turned to the changes to the common committee note that DOJ had proposed. The proposed revision concerned the impact of expanding the redaction requirement to document exhibits and attachments, and whether this conflicted with the exemptions from the redaction requirement under subsection (b) of the current rules (exempting records of administrative proceedings, records of state court proceedings, and other court records). DOJ's proposed revision to the committee note to Civil Rule 5.2, Criminal Rule 49.1, and Bankruptcy Rule 9037 would make clear that the exemptions in subsection (b) still apply. Professor Beale added that although the Criminal Rules Advisory Committee had not had the opportunity to consider this proposed clarification, the revision was acceptable to the Criminal Rules Chair and Reporters.

The members then discussed the proposed amendments.

A judge member asked whether the Advisory Committees had considered full redaction of financial account numbers with respect to the risk of fraud. Professors Beale and King, Reporters to the Criminal Rules Committee, explained although the Committee learned there was a risk that someone could replicate an entire SSN with access to the last four digits, it had received no information that the same risk existed for financial account numbers.

On the issue of pseudonyms for minors, another lawyer member said that in some cases, due to the sensitive nature of the allegations, courts have permitted non-minor plaintiffs to use pseudonyms rather than initials because of a concern that the plaintiffs would otherwise be identifiable. She offered an example of the Uber sexual assault MDL cases and said that this practice was working well there. Professor Beale said that her understanding was that the practice of using pseudonyms was already widespread in criminal cases. Professor Garner asked whether the proposed amendments should include any guidance to courts on devising pseudonyms. He expressed concern that a judge may create a distinctive pseudonym, causing an innocent person with that name to be misidentified as the person involved.

On the issue of exemptions and the requirement to redact exhibits and attachments, Ms. Shapiro, on behalf of DOJ, said that the discussion of the exemptions versus the redaction rule was one of the most significant items of debate when the privacy rules were originally drafted some twenty years ago. DOJ's concern was that the proposed amended note language regarding exhibits and attachments could create some confusion about whether it was meant to supersede the exemptions in subsection (b). DOJ had therefore suggested a friendly amendment to the committee note to make clear that the rest of the rule remains intact. Professor Capra, Reporter to the Evidence Advisory Committee, noted that CACM was involved with the privacy rules when they were originally adopted, and expressed deep concern about the burdens of redaction. He suggested that these burdens may not be as great today with the potential for AI to assist in the redaction process.

A lawyer member asked generally whether the exemptions from the redaction requirement in subsection (b) were so broad that they undermined the proposed rule amendments. Professor Hartnett responded that this issue had been discussed, and there was concern about imposing new requirements on state administrative records that previously were not required to be redacted. The lawyer member acknowledged that it would be difficult to redact a voluminous record, but the committee note to the privacy amendments referred to parts of the record that are attached as exhibits, which may be lengthy but not as lengthy as an entire administrative record or entire state court proceeding. Professor Beale added that the language requiring redaction in documents and exhibits flowed from the FJC research on when SSNs are most often erroneously included in public filings. Dr. Reagan added that the CACM study involved a very exhaustive investigation into unredacted SSNs, and he examined civil, criminal, and appellate cases. He found that unredacted SSNs appear most often in exhibits, not in briefs.

Professor Beale also noted that under the proposed amended rule, the parties would be responsible for redactions and for choosing a pseudonym. The committee note advises that where possible gender-neutral pseudonyms should be used, but provides flexibility because in some cases, gender may be relevant. A judge member asked whether self-represented litigants needed to use pseudonyms when identifying minors and expressed concern that in habeas proceedings, for example, a petitioner convicted of molesting a minor may be able to file a

habeas petition with the minor's name in the filing. Professor Beale responded that this was beyond the scope of the current proposal to change the use of initials to pseudonyms.

Another judge member added that she had no issue with the limited amendments proposed but thought that the time may have come to review the exemptions in subsection (b). A lawyer member agreed and proposed adding a question about exemptions when the proposed amendments are published for public comment. As to the committee note language, the lawyer member thought that the exemptions should not apply to something that would be filed electronically because it would undermine exactly what the privacy rules intend to do.

Judge Dever then asked Ms. Shapiro whether DOJ would oppose publication for public comment if the proposed amendments included the committee note language approved by the Advisory Committees. Ms. Shapiro responded that DOJ wanted the proposed amendments published for public comment to achieve the initial objective of using pseudonyms rather than initials for minors. If the additional language proposed by DOJ was not accepted, however, this would not change what the rule required and the exemptions would still apply. Judge Dever next asked the Advisory Committee Chairs and Reporters if they had anything further to add. Regarding the Criminal Rules, which had taken the lead on the privacy amendments project, Judge Mosman supported publication of the proposed amendments, with or without the proposed addition from DOJ, and reviewing the exemptions at a future date. Judge Connelly added that the proposed amendments to Bankruptcy Rule 9037 included the language about exhibits and attachments and replacing minors' initials with pseudonyms but did not include full redaction of SSNs because of the special needs in bankruptcy cases to identify the debtor. Professor Bartell added that EINs are also not included in the proposed amendments to Rule 9037 because EINs are affirmatively required on a petition and further, the Bankruptcy Rules Committee saw no reason to extend protections to non-individuals, which would happen if EINs were uniformly redacted.

A judge member then raised the issue of whether this amendment would require a judge to let a person proceed under a pseudonym, such as in a Title 9 or Individuals with Disabilities Education Act (IDEA) case, which may conflict with a body of law instructing judges on whether to allow someone to proceed under a pseudonym or not. Professor Marcus said that the existing case law was not meant to be changed by these amendments. Judge Dever asked whether the lawyer member who had previously shared her experience with pseudonyms in MDLs could respond to the judge member's question. The lawyer member responded that in the Uber MDL, there were different approaches to pseudonyms and it seemed to be an evolving practice. Judge Dever added that in his experience in criminal cases, DOJ had been using pseudonyms for quite some time.

Judge Dever then focused the discussion on whether the committee members preferred the new DOJ-proposed language in the committee note to the language approved by the Advisory Committees. A judge member said that she favored including the revised DOJ language. A lawyer member agreed and reiterated the suggestion to also ask a question in the published proposal about revising subsection (b) on exemptions and supported clarifying that amending the rule to address the exemptions in (b) would not apply to exhibits and attachments filed with a pleading. Professor Hartnett added that there had been occasions where questions were posed, and Professors Marcus, Beale, and Kimble suggested including the text of subsection (b) in the published version of the rule. Ms. Shapiro, on behalf of DOJ, agreed with including subsection

(b) in the published materials, but advised against including a question because this would distract from the changes being proposed for subsection (a). Another judge member, however, supported including a question because he thought that otherwise the exceptions would swallow the rule.

Judge Dever then observed that there was consensus on publishing the text of subsection (b) on exemptions even if it was not the subject of the proposed amendments and the proposed committee note as revised by DOJ. Judge Dever also expressed his view that it was rare for the committees to ask specific questions when publishing proposed amendments for public comment, and he thought the committees would receive robust commentary even without a specific question or prompt. Judge Dever also supported adding the text of subsection (c). As an additional note, Professor Hartnett added that there were minor technical differences in cross-references in the proposed committee notes because Criminal Rule 49.1 and Civil Rule 5.2 have their protective order provision in subsection (e), while Bankruptcy Rule 9037's protective order provision is in subsection (d). Professor Hartnett also pointed out a typographical error that required changing a cross-reference to Rule "5.2" and not "52."

With no further discussion, upon motion and a second, with no opposition, the Standing Committee approved for publication and public comment the proposed amendments to Criminal Rule 49.1, Civil Rule 5.2, and Bankruptcy Rule 9037, including publication of the entire text of each rule, the technical corrections, and the text suggested by the DOJ to be added to the end of the committee notes found on page 169 (Criminal Rules), page 172 (Civil Rules), and page 174 (Bankruptcy Rules) of the agenda book.

#### **D. Draft 2026 Privacy Report to Congress**

Following approval of the proposed privacy amendments for publication and public comment, Ms. Dubay presented the 2026 Privacy Report to Congress for the Standing Committee's approval. She explained that the report is required by law every two years, and that if approved by the Standing Committee, it would be transmitted to the Judicial Conference at its September session for approval, and if so approved, the Director of the Administrative Office of the U.S. Courts would transmit the report to Congress.

Ms. Dubay then provided background on the development of the report. She explained that the report was a product of work and coordination between the Rules Committee Staff, CACM staff, and the FJC. She also advised that the CACM Privacy Subcommittee had reviewed the draft report and recommended that CACM endorse the report, which it did at its May 27, 2026, meeting. Ms. Dubay also noted that CACM approved the FJC's most recent report on privacy issues, which appears at the end of the agenda book, and thanked Kristin Garri for her work on the project. Ms. Dubay also noted that the reporters had all weighed in on the report and thanked them for their work.

With no questions or further discussion, upon motion and a second, with no opposition, the Standing Committee approved the 2026 Privacy Report to Congress, including any necessary modifications to reflect the Committee's action on the privacy amendments, and recommended its adoption.

### 3. ACTION ITEMS – REPORTS OF THE ADVISORY COMMITTEES

The Standing Committee next heard reports on action items from each of the five Advisory Committees.<sup>2</sup> A list of changes made by the Standing Committee to proposed amendments presented for final approval are set forth in Appendix A to these minutes.

#### A. Advisory Committee on Appellate Rules – Judge Allison H. Eid, Chair

Judge Eid presented action items on behalf of the Advisory Committee on Appellate Rules, which last met on April 16, 2026, in Charlotte, North Carolina. The first item was to request final approval of amendments to Rule 29, and conforming amendments to Rule 32 and the Appendix of Length Limits, relating to amicus briefs. The second item was to request final approval of amendments to Rule 15 relating to petitions for review of agency decisions. The Advisory Committee had no proposed amendments for publication and public comment to present beyond the proposed amendments to Rule 25 as part of the package of amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning on page 190.

Prior to turning to the action items, Judge Eid introduced the Advisory Committee's new reporter, Professor Stephen Sachs of Harvard Law School. Judge Eid also thanked Professor Hartnett for his tremendous service while serving as reporter to the Appellate Rules Committee.

#### 1. *Amendments for Final Approval*

##### a. Rules 29, 32, and the Appendix of Length Limits (Amicus Briefs)

Judge Eid presented the Advisory Committee's request for final approval of amendments to Rule 29, along with conforming amendments to Rule 32 and the Appendix of Length Limits, found on page 231 of the agenda book. Judge Eid began with background as to why these proposed amendments were to be considered again after the Committee's final approval in June 2025 and subsequent approval by the Judicial Conference and transmission to the Supreme Court. Judge Eid explained that in early 2026, the Judicial Conference Executive Committee expressed concerns about language in proposed Rule 29(e)(2) relating to the disclosure requirements regarding new members of an amicus organization. To address these concerns, the Appellate Rules Advisory Committee and the Standing Committee voted to withdraw the proposed amendments for further consideration. The Supreme Court approved that request and the proposed amendments to Rules 29 and 32 and the Appendix of Length Limits were not forwarded to Congress.

The Advisory Committee then revisited the proposed amendments at its spring 2026 meeting, concentrating on the Executive Committee's concern about the new member provision. The proposed committee note had described this as an anti-evasion rule, treating new members of an amicus as if they were non-members. The concern about the rule was that an organizational amicus would have to disclose the identities of its contributing new members, which could dissuade either the organization or its new members from participating and filing a brief in the

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<sup>2</sup> Information items presented by the Advisory Committees are set forth in Part 4 of these minutes.

first place. At its spring meeting, the Advisory Committee also considered the extent of the negative reaction to the proposal not only from the Executive Committee, but from the public during the public comment period. The Advisory Committee voted 5-1, with one abstention, to remove the new member provision from the proposal.

Additionally, Judge Eid explained that two additional modifications were proposed. First, after the amendment package was submitted to the Supreme Court, an ambiguity was identified in the language of proposed Rule 29(c) requiring a party or its counsel to make certain disclosures if the amicus failed to do so (the backup disclosure requirements). After discussion, the Advisory Committee voted without opposition to rephrase the requirement, removing proposed Rule 29(c) and inserting clarifying language into proposed Rule 29(b). Second, the Advisory Committee approved the removal of an erroneous cross-reference to Rule 29(a)(5). Judge Eid also reported that the Advisory Committee considered whether to submit these revisions for an additional round of public comment. Because the issue of the new member provision had been exhaustively discussed by the Advisory Committee, the Standing Committee, and public commenters, and the other revisions were technical in nature, the Advisory Committee voted without opposition to seek final approval without republication.

Before turning to member discussion, Professor Beale raised a question about the removal of language on page 193 of the agenda book indicating that the new member provision was stricken along with the provision requiring a new organization to disclose the date of its formation. Professor Sachs responded that it was stricken because it was duplicative (with the other provision found on page 234, lines 61 to 63 of the agenda book).

The members then discussed the proposed amendments.

A judge member raised a question about the text on page 234, line 58 of the agenda book requiring the amicus to provide an explanation of both how the brief will help the court and how the perspective of the amicus will help the court. He asked why an amicus should have both obligations. Professor Sachs responded that this requirement puts the onus on the amicus to tell the court how its brief provides information in addition to what the parties have said. The judge member and an attorney member then briefly discussed how the timing provisions of the rule, which were not being amended, operated in practice.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rules 29 and 32 and the Appendix of Length Limits and recommended their adoption.

#### **b. Rule 15**

Judge Eid next presented the Advisory Committee's request for final approval of amendments to Rule 15, which concerns petitions for review or enforcement of agency orders. The text of the proposed amendment begins on page 227 of the agenda book, and the written report begins on page 195.

Judge Eid explained that the proposed amendments to Rule 15 were designed to address the "incurably premature" doctrine, under which certain petitions to rehear or reconsider an agency decision render the decision nonreviewable in a court of appeals; in such cases a pending petition

for review of the agency decision must be dismissed, and a new petition for review must be filed after the agency disposes of the rehearing petition. Judge Eid stated that the amendment was intended to mirror previous amendments to Rule 4, which deals with appeals from district court judgments. Rule 4 used to work in a similar way as Rule 15, with various post-judgment motions resulting in the dismissal of a premature notice of appeal, but Rule 4 was amended to provide that a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposed amendments to Rule 15 would do the same for a premature petition for review.

Judge Eid reported that the Advisory Committee received three public comments on the proposed amendments, all of which were broadly supportive and conveyed no specific concerns. Judge Eid also noted that the Advisory Committee made two post-publication changes. First, it renumbered the proposed new subdivision from (d) to (f) to avoid confusion with the existing rule structure. Second, to avoid attempts to obtain premature review of orders that are non-final for reasons other than a pending rehearing petition, the Advisory Committee added language reaffirming that the order in question must be otherwise reviewable. The Advisory Committee voted unanimously to seek final approval of the proposed amendments to Rule 15. Professor Hartnett added that there were a few minor technical corrections made to the text of the rule after the Advisory Committee met that were included in the updated agenda book materials.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 15 and recommended its adoption.

#### **B. Advisory Committee on Bankruptcy Rules – Judge Rebecca B. Connelly, Chair**

Judge Connelly presented action items on behalf of the Advisory Committee on Bankruptcy Rules, which last met on April 15, 2026, in Charlotte, North Carolina. These action items included requests for final approval of amendments to Rule 2002, Form 101, and Form 106C and a request for approval for publication and public comment on proposed amendments to Rule 2003. This latter request was in addition to the requests for publication and public comment on the proposed amendment packages relating to privacy and electronic notice and filing for self-represented litigants. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning on page 190.

Prior to turning to the action items, Judge Connelly thanked Judge Dever for his kind comments earlier in the meeting and for the opportunity to serve as chair of the Bankruptcy Rules Committee, which she described as a fabulous and enriching experience.

##### ***1. Amendments for Final Approval – Rule 2002, Form 101 and Form 106C***

Judge Connelly reported on the Advisory Committee's request for final approval of amendments to Rule 2002 and to Official Forms 101 and 106C. The text of the proposed amendments begins on page 286 of the agenda book, and the written report begins on page 252.

With respect to Rule 2002, which relates to notices, Judge Connelly explained that the current version of Rule 2002(o) requires that captions of every notice given under Rule 2002 comply with Rule 1005. Rule 1005 requires, among other things, the debtor's name and the last four digits of the social-security number or individual debtor's taxpayer-identification number. The

Advisory Committee received a suggestion from clerks of court to amend the rule to reduce the burden on the clerks by requiring captions of Rule 2002 notices to include only the name of the court, the names of the debtor, the case number, the chapter under which the case was filed, and a description of the document's character. Judge Connelly reported that after the proposed amendment was published no comments or opposition were received regarding this change.

Judge Connelly then turned to the Advisory Committee's request for final approval of amendments to Official Form 101, the initial petition for an individual's bankruptcy case. In the petition, a debtor must set forth identifying information, including who the debtor is, the last 4 digits of the debtor's SSN, the debtor's address, and if they have one, an EIN. Judge Connelly noted that the way the form asked for the EIN sometimes induced self-represented debtors to list the EIN of their employer rather than their own, triggering concerns when multiple bankruptcy petitions listed the same EIN. The amendment, suggested by a clerk of court, clarifies in the instructions that the petitioner is to disclose the petitioner's EIN, not the EIN belonging to someone else, including the petitioner's employer. Judge Connelly reported that no comments or opposition were received regarding this change after publication.

Finally, Judge Connelly presented the Advisory Committee's request for final approval of amendments to Official Form 106C, which relates to property that can be claimed as exempt. The form is part of the package that every debtor must file to initiate a bankruptcy case and is where an individual debtor claims property exemptions. In the current version of Form 106C does not contain the total value of the property claimed as exempt. This omission requires trustees to manually add up the claimed exemptions to prepare their final report. A suggestion was made to amend Form 106C to require a statement of the total value of the claim exemptions. The Advisory Committee proposed amending the form to require a total for all entries (in Column C) that are stated in a specific amount. It also considered a second change to Form 106C to provide a total dollar value for Column B (which identifies the dollar value of the debtor's portion of the property for which exemptions are claimed). Judge Connelly reported that when the proposed amendments were published, the National Association of Consumer Bankruptcy Attorneys objected to the wording of the requirement to total column B, and based on that opposition, the Advisory Committee decided that only the total for column C would be included in the amendment.

The members then discussed the proposed amendments.

A judge member raised a question about the committee note for Rule 2002(o) relating to captions for notices and asked why the committee note referred to "most" notices, and why in one part it states "may" use the caption in Official Form 416B and why the note goes on to state that debtor notices "must" include the information in Section 342(c) of the Bankruptcy Code. Professor Bartell and Judge Connelly explained that the committee note was referring to notices other than the initial notice of bankruptcy, so "most" means all other notices. As to the "may" versus "must" language, not all notices under Rule 2002 are sent by the debtor, such as the notice of a meeting of creditors, so the language includes the additional statutory requirement for debtors. Another member asked a style question about Rule 2002(o) where it refers "this Rule 2002" and not simply "this rule." Professor Garner explained that this reference follows the style guide to make clear that when a rule refers to itself in a subpart of the rule, it is referring to the rule in its entirety, not simply the subpart.

A judge member asked a question about Official Form 106C and whether every entry in Column C had to have a specific amount to include in the total. Judge Connelly and Professor Bartell explained that the total only includes those entries in Column C that have a specific amount. Debtors have the option in Column C to provide either a specific amount or claim 100% of the fair market value of an exemption, up to any applicable statutory limit, such as the debtor's proceeds from a personal injury case. The total amount in the revised Form 106C would total only those items where the specific dollar amount is listed and not those where the box is checked for the fair market value.

The following day, during discussion of information items, another judge member asked about another pending suggestion to amend Official Form 106C. Professor Bartell explained that, due to the order in which certain questions were asked on the current form, debtors in Florida — where there is an unlimited homestead exception—do not answer a question that could reveal that they are subject to a federal limit on their exemption. The Advisory Committee is considering modifying the form so this question is asked in a way that debtors in Florida have to answer.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 202, Official Form 101, and Official Form 106C and recommended their adoption.

## ***2. Preliminary Drafts for Publication and Public Comment – Rule 2003***

Judge Connelly next presented the Advisory Committee's request for approval for publication and public comment on proposed amendments to Rule 2003, which concerns holding a meeting of creditors. The text of the proposed amendments begins on page 301 of the agenda book, and the written report begins on page 254.<sup>3</sup>

Judge Connelly explained the meeting of creditors is required in Section 341 of the Bankruptcy Code and involves an examination of the debtor conducted by a trustee. Under the current rule, the meeting of creditors must be held no fewer than 21 and no more than 40 days after the order for relief in a chapter 7 or chapter 11 case, no fewer than 21 and no more than 35 days after the order for relief in a chapter 12 case, and no fewer than 21 and no more than 50 days after the order for relief in a chapter 13 case. The rule also requires that the meeting “be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.” A suggestion was made by trustees to amend the rule to allow the meeting of creditors to be held no more than 60 days after the order for relief in chapter 12 and chapter 13 cases, and to revise the language to recognize that these meetings may be held remotely. The U.S. Trustee raised concerns about this suggestion but reached an agreement with the trustees who made the suggestion and the Advisory Committee now recommends publication of these proposed amendments. Professor Gibson noted that after

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<sup>3</sup> As noted earlier in these minutes, this request was made in addition to the prior requests for approval for publication for public comment on the proposed amendments relating to privacy (Rule 9037) and electronic notice and filing by self-represented litigants (Rules 5005, 8011, and 9036, with a conforming amendment to Rule 9006).

approval by the Advisory Committee the last paragraph of the committee note was corrected to include a phrase that was previously left out.

The members then discussed the proposed amendments.

A judge member asked why there was a comma after the word “court” on page 302, line 31. Professor Kimble said that the comma made clear that “designated by the United States trustee” modified only “any place in the district,” not “a regular place for holding court[.]” The judge member and the Style Consultants then discussed other options for making the language clear, including by adding “either” before “at” on line 30. Judge Connelly preferred to solicit public comment on the version approved by the Advisory Committee, which had been approved by the Executive Office of U.S. Trustee. Ms. Shapiro, on behalf of DOJ, underscored that the proposed language was sensitive to the trustees and there was careful negotiation on this language. Dean McKenzie, as liaison from the Standing Committee to the Bankruptcy Rules Committee, concurred with the suggestion not to alter the language prior to publication for public comment.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 2003 for publication and public comment.

### **C. Advisory Committee on Civil Rules – Judge Sarah S. Vance, Chair**

Judge Vance presented action items on behalf of the Advisory Committee on Civil Rules, which last met on April 14, 2026, in Charlotte, North Carolina. The Advisory Committee’s report and the draft minutes of its last meeting are included in the agenda book beginning at page 305. The action items sought final approval of proposed amendments to Rule 7.1, Rule 41(a), Rule 45(b) and (c), Rule 26, and Rule 81. The Advisory Committee had no proposed amendments for publication and public comment to present beyond the proposed amendments to Rule 5.2 as part of the privacy amendments, and Rules 5 and 6 as part of the package of amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting.

#### ***1. Amendments for Final Approval***

##### **a. Rule 7.1**

Judge Vance presented the Advisory Committee’s request for final approval of amendments to Rule 7.1. The text of the proposed amendments appears on page 388 of the agenda book, and the written report begins on page 307.

Judge Vance explained that the proposed amendments were designed to facilitate judges’ compliance with recent guidance from the Code of Conduct Committee that a judge’s financial interest in an owner of ten percent or more of a party creates a rebuttable presumption of recusal. The proposed amendments (1) replace references to “corporations” with the broader term “business organization”; and (2) add a requirement that a party disclose business organizations that directly or indirectly own ten percent or more of the party (e.g., corporate parents or grandparents).

Judge Vance next informed the Committee that during the publication period, the Advisory Committee received eight written comments and four witnesses testified about the rule. Most of the commentary expressed support for the rule changes, noting that the rule would assist judges in making informed recusal decisions. Following this feedback, the Advisory Committee voted unanimously to recommend final adoption of the Rule 7.1 amendments as published.

After an opportunity for discussion and hearing no comments, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 7.1 and recommended its adoption.

**b. Rule 41(a)**

Judge Vance next presented the Advisory Committee's request for final approval of amendments to Rule 41(a). The text of the proposed amendments appears on page 394 of the agenda book, and the written report begins on page 308.

Judge Vance explained that the current rule refers to plaintiff's dismissal of an action, which led to conflicting interpretations of whether the rule permitted dismissal only of entire cases or narrower dismissal of claims or parties. The proposed amendments to Rule 41(a) would clarify that narrower dismissals are permitted to conform to the widespread practice developed in multi-claim and multi-party litigation to narrow the issues and facilitate settlement. The proposed amendments also clarify that only the parties who have appeared and remain in the case must sign a stipulation of dismissal.

Judge Vance further reported that during the publication period, three witnesses testified and 28 written comments were received. All of the feedback was favorable and lauded the amendments as eliminating procedural barriers to streamlining cases, facilitating settlements, and eliminating confusion among the circuits. The Advisory Committee voted unanimously to recommend final approval of the proposed amendments to Rule 41(a) as published.

After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 41(a) and recommended its adoption.

**c. Rule 45(c)**

Judge Vance then presented the Advisory Committee's request for final approval of amendments to Rule 45(c). The text of the proposed amendments appears on page 403 of the agenda book, and the written report begins on page 309.

Judge Vance reported that the main purpose of the amendments is to address the Ninth Circuit's decision in *In re Kirkland*, which interpreted Rule 45(c) to mean that a subpoena could not compel remote trial testimony from a witness outside the geographic limits in Rule 45(c)(1), even if a court found that the Rule 43(a) requirements for remote testimony had been satisfied. The proposed amendments would clarify that a court's subpoena power for remote trial testimony extends nationwide, so long as the witness is not required to appear and give the remote testimony from a location farther than the distance authorized in Rule 45(c)(1).

Judge Vance also reported that during the publication period, the Advisory Committee received 31 public comments and testimony from 10 witnesses, most of which favored the amendment. A few comments opposed the amendments on the merits and argued that they should be deferred until the Advisory Committee completed its consideration of proposed amendments to Rule 43(a) governing remote testimony in general. A few other comments offered stylistic changes.

Judge Vance then advised the Committee that after hearing the testimony and reviewing the public comments, the Advisory Committee concluded that there was no reason to defer amending Rule 45(c) in light of continued reliance on the *Kirkland* decision. The Advisory Committee decided, however, to modify the fourth paragraph of the committee note. These modifications included clarification to wording that suggested that Rule 43(a) standard for remote trial testimony could apply to non-trial remote testimony in hearings. Judge Vance also noted a technical change made later to delete the cross-reference to Rule 26(a)(3)(A)(i) as potentially confusing and unnecessary.

The members then discussed the proposed amendments briefly, with a judge member commenting that this was a very good rule amendment and that he was supportive of the changes.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 45(c) and recommended their adoption.

#### **d. Rule 26**

Judge Vance next presented the Advisory Committee's request for final approval of amendments to Rule 26(a)(3). The text of the proposed amendments appears on page 391 of the agenda book, and the written report begins on page 310.

Judge Vance explained that the proposed amendments to Rule 26(a)(3) would be a small change to clarify pre-trial disclosure of trial witnesses who are expected to testify remotely, which is necessary because of the need to address the issue of court permission for remote trial testimony under Rule 43(a). Judge Vance noted that the proposed amendments attracted very little public commentary, some of which were based on the misapprehension that the rule applied to initial disclosures, not the disclosures made at least thirty days before trial. The Advisory Committee voted unanimously to recommend final approval of the proposed amendment as published.

The members then discussed the proposed amendments.

A lawyer member asked whether the proposed amendment was intended to disclose earlier in the process whether a party was proffering a remote witness. Professor Marcus responded affirmatively. A judge member then asked about the word "will" on page 392, line 20 of the agenda book, when whether the person can be called as a remote witness depends on the court's permission. Professor Marcus acknowledged that a judge may deny a request for remote testimony, but the Rule 26 disclosure is accurate at the time it is made. Judge Dever added that the committee note on page 393, lines 37-39, talked about alerting the parties and the court that a party "proposes to present" witnesses remotely. The judge member suggested replacing the word

“will” with “is proposed to” to incorporate some concept of expectation as to what the party will present.

Another judge member asked whether there was any discussion about what lawyers would do to comply with this new disclosure because he could imagine lawyers disclosing that they expect to call a witness in person, but may later need to ask for the witness to appear remotely. A lawyer member added the concern that parties may start listing every witness as potentially remote to preserve the right to call that witness remotely later. Another lawyer member suggested that the adversary nature of the proceedings would result in parties specifying who they truly intend to present remotely, and counterintuitive trial strategy for a party to list all witnesses as remote if there was no need to present their testimony remotely. Judge Dever further added that in his experience, case management orders usually provide a period for people to object to pretrial disclosures.

As to the suggestion from the judge member to modify the text language to conform to the committee note, Professor Beale suggested that the language on page 392, line 20 be modified to read “it expects the testimony to be in person or remote.” Professor Kimble endorsed this language as a matter of style.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 26(a)(3)—as revised to read “it expects the testimony to be in person or remote” and set forth in the Appendix to these minutes—and recommended their adoption.

**e. Rule 45(b)**

Judge Vance presented the Advisory Committee’s request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rule 45(b)(1). The text of the proposed amendments appears on page 398 of the agenda book, and the written report begins on page 310.

Judge Vance explained that the proposed amendments were designed to clarify the authorized methods of delivery of a subpoena to the named person. First, the amendments would authorize service of a subpoena by the service methods permitted in Rule 4(e)(2)(A) and (B) for service of a summons and complaint. Second, the proposed amendments would authorize service by U.S. mail or commercial carrier, if the chosen method provided confirmation of actual receipt. Third, it would authorize the court, for good cause, to permit another method of service that was reasonably calculated to give notice. Judge Vance further explained that the proposed amendments would (1) add a 14-day notice requirement for subpoenas requiring appearances for trials, hearings, or depositions; and (2) allow the witness fee to be tendered at the time and place of appearance instead of at the time of service.

Judge Vance then reported that the Advisory Committee heard testimony from 11 witnesses and received close to 200 comments, most of which were from professional process servers who opposed the rule change as either detrimental to their business or having other fundamental defects. After review of these concerns, the Advisory Committee concluded that these objections were not persuasive and did not warrant a change to the published rule. The Advisory Committee

did vote, however, to modify the third paragraph of the committee note to address certain concerns raised by committee members regarding service by U.S. mail or commercial carriers. The Advisory Committee voted to modify the committee note to specify that for service by U.S. mail or commercial carriers, the person identified in either Rule 45(b)(1)(A)(i) or (ii) must receive the service. The modification to the committee note also removed a potentially confusing reference to Rule 45(b)(4). The Advisory Committee's changes to the committee note are identified on page 311 of the agenda book. With this change to the committee note after publication, the Advisory Committee voted unanimously to recommend final approval of the amendments to Rule 45(b)(1).

Professor Marcus added that several public comments raised concerns about the language that the subpoena must be delivered at an individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there, even though this language was taken directly from Rule 4. Additionally, many process servers commented that a process server is necessary. But the rule does not currently say this. It requires someone who is at least 18 years old and not a party to the action. Perhaps many people would prefer to have a professional handling service, but the rule does not require it.

The members then discussed the proposed amendments.

A judge member asked why the committee note was modified to address confirmation of actual receipt by the subpoena recipient but the text of the rule did not say this. A lawyer member added that the last paragraph of the committee note also suggested that tender of the fee at time of service was only required where practicable, but the rule text does not say this. As to the latter question, Professor Marcus responded that it is possible to change the rule language, but the rule does not make service ineffective if the fee is not tendered at the same time. As to the former question, Professor Marcus thought that the rule was clear that if a party had to confirm actual receipt, the receipt would need to be by someone who would have been a proper recipient. A judge member then asked why the rule no longer requires tender of payment at the time of service. Professor Marcus responded that the Advisory Committee had learned that delivering the check was sometimes an obstacle to fulfilling the service and that lawyers who want witnesses to appear would not want the cost of travel to stand in the way. Additionally, the Advisory Committee heard that attorneys may not want to serve those subpoenas with the fee if a case may settle and may prefer to instead to pay the fees when the witness appears. The judge member then asked whether there were ever instances of witnesses not being paid when they appeared to testify. Professor Marcus said that the rule requires payment at the time the witness appears, not after the testimony occurs, which prevents a party from saying that they would not pay a witness unless they like what the witness has to say.

Judge Dever suggested that revisions to the proposed rule text may be appropriate in accordance with the committee members' suggestions. After a break, Judge Vance and Professor Marcus proposed new language for the rule text on page 399, line 23 of the agenda book to add, after "of actual receipt," the following: "by a person identified in (i) or (ii)[.]" This change would align with the language in the committee note on page 401, line 67.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 45(b)(1)—as revised to include "by a

person identified in (i) or (ii)” and set forth in the Appendix to these minutes—and recommended their adoption.

**f. Rule 81**

Judge Vance presented the Advisory Committee’s request for final approval of amendments to Rule 81, which concerns jury demands after removal. The text of the proposed amendments appears on page 408 of the agenda book, and the written report begins on page 312.

Judge Vance explained that the proposed amendments were designed to eliminate uncertainty about whether and when a jury demand is required after a state case is removed to federal court. The proposed amendments: (1) preserve the right to a jury trial if a jury demand is made before removal; and (2) allow a jury demand under Rule 38(d) after removal if no demand was made in the state court if made within 14 days from when a party files a notice of removal or is served with a notice of removal by another party. Judge Vance added that there were four comments on the rule after publication, all favorable. The Advisory Committee voted unanimously to recommend final approval of the amendment to Rule 81(c)(3) as published.

Following this presentation, Professor Beale raised a question regarding language on page 409, lines 18 to 20, about whether the word “one” refers to a jury trial. Judge Vance confirmed that this was correct, and Professor Kimble said that he thought that the language was clear as a matter of style.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 81 and recommended their adoption.

**D. Advisory Committee on Criminal Rules – Judge Michael W. Mosman, Chair**

Judge Mosman presented action items on behalf of the Advisory Committee on Criminal Rules, which last met on April 29, 2026, in Washington, D.C. The Advisory Committee’s report and the draft minutes of its last meeting are included in the agenda book beginning at page 413. The action items sought final approval of amendments to Rule 17 and proposed amendments to Rules 11 and 32 for publication and public comment. The proposed amendments for publication and public comment were in addition to the proposed privacy amendments and amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting.

**1. *Amendments for Final Approval – Rule 17***

Judge Mosman presented the Advisory Committee’s request for final approval of amendments to Rule 17 relating to subpoenas for production in criminal cases. The text of the proposed amendments appears on page 490 of the agenda book, and the written report begins on page 414.

Judge Mosman explained the major changes proposed in the rule amendments, which are outlined on page 417 of the agenda book. First, the amendments expand the scope of proceedings for which a subpoena is available from trials to also include detention hearings, sentencing hearings, and the like. Second, the amendments relax the evidentiary standard for subpoenas to a “likely to be admissible” standard. Third, the amendments clarify when a motion and order is required to obtain a subpoena. Fourth, the amendments allow *ex parte* requests for subpoenas

upon a showing of good cause. Finally, the amendments allow direct production of responsive items to counsel in some instances. Judge Mosman further informed the Committee that the Advisory Committee received significant public comments, both written and oral, during the public comment period noting that the oral testimony was entirely from victims' representatives.

Judge Mosman next described the Advisory Committee's changes to the proposed amendments after publication, described in detail in the Committee Report starting at page 410 of the agenda book, noting that any changes were adopted unanimously after serious and substantial discussions. These post-publication changes included changes to Rule 17(a) (a technical correction making explicit that a subpoena can require testimony, production, or both testimony and production); Rule 17(c)(3)(A) (clarifying that a motion and order for a subpoena seeking personal or confidential information about a victim from a third party is required when the third party receiving the subpoena is a victim); and Rule 17(c)(5) (addition of presumptive requirement of return to the court for subpoenas requiring the production of personal and confidential information about a victim).

Judge Mosman added that the Advisory Committee also concluded that none of the proposed post-publication changes to Rule 17 required republication. Professor Coquillette later added that deciding whether republication is required depends on whether there are people who are interested in the rule change who are taken by surprise by a new rule, and he did not feel that in this context people would be taken by surprise by the proposed changes after publication.

On the Advisory Committee's post-publication changes to Rule 17(c)(3)(A) (and a corresponding change in the committee note), Judge Mosman explained that the Advisory Committee decided to add "including a victim" in this portion of the rule to make clear that victims are third parties for purposes of the protection of this particular rule. This change reflected concerns from a commenter, Professor Paul Cassell, that the rule, which requires a motion and order for subpoenas seeking personal and confidential information about victim from a third party, as well as notice to the victim whose information is sought, did not apply to subpoenas seeking such information from victims themselves, because they were not "third parties."

Judge Mosman next explained changes to Rule 17(c)(5) regarding the place of production with a corresponding change to the committee note. The commenters expressed strong concerns with privacy and safety based on information gained from records, such as medical or psychiatric records, that would reveal when and where recurring appointments were held. This information could make its way from counsel to the client putting the person in danger of unauthorized contact. As amended after publication, Rule 17(c)(5) added "unless the court orders otherwise" to clarify that the court would retain discretion to order otherwise. Judge Mosman also explained that absent the court ordering otherwise, the defaults set forth in the rule would apply (such as return to the court if the subpoena is issued by a self-represented party or requires the production of personal or confidential information about a victim). Professor Beale directed the Committee to page 422 of the agenda book, which contained a description of how the process had been working in many districts to allow victims the opportunity to ask the court to impose limitations or to negotiate with the party seeking that material. Professor Beale also explained that while this may be a substantial change to the published rule on place of production because it altered the default, republication was not required because this change put back in place the current

practice and there was no controversy in the Advisory Committee, from the defense lawyers, judges, or prosecutors, as to whether this should be done.

The members then discussed in detail the proposed amendments over the course of the first and second days of the meeting. Those discussions included the following comments and feedback.

First, a judge member asked about two potential language changes in proposed Rule 17(c)(2)(B) on page 493: (1) on line 53, change the word “seek” to match language elsewhere in the rule saying “requires production of” something; and (2) on lines 56-57, remove the words “to the party” to read simply “are not reasonably available from another source.” The judge member also asked about a change in proposed Rule 17(c)(2)(C) on page 493, line 66, to update the reference from “(3) or (4)” to include the subsection (c). Professors Beale and King supported the changes to the word “seek” and adding subsection (c) to the references to (3) and (4). As to the suggestion to remove “to the party,” Professors Beale and King explained that the language “to the party” is necessary because some information that the subpoena seeks may not be available to the defense but may be available to the government. For example, under the Stored Communications Act, the government could get information that an individual could not and therefore that information would not be reasonably available to the person who needed it. In light of this explanation, the judge member agreed that the language in proposed Rule 17(c)(2)(C) need not be changed.

Second, the judge member raised concerns about the committee note to Rule 17(c)(6), which he felt should address a timing issue with respect to the required disclosure of an item received in response to the subpoena and Rule 16, which is referenced in the committee note (page 511, line 527-531). The judge member had concerns about Rule 16, which only requires production of discoverable items “before trial,” and the timing of the disclosure under the proposed amendments to Rule 17(c)(6) at earlier proceedings (such as detention hearings and suppression hearings). This timing could lead to a surprise for the opposing party when the document received under the subpoena is introduced, and he anticipated disputes about timing issues like this that are not addressed in the committee note.

Professor King explained in response to these concerns that the point of the proposed amendments to Rule 17(c)(6) was to address case law from some districts that required a party seeking a subpoena to disclose everything received in response to that subpoena to the other side—even if the request for the subpoena was an *ex parte* application. The proposed amendments in Rule 17(c)(6) seek to maintain the protections and scope of discovery under Rule 16 when the items are received through a Rule 17 subpoena. With the focus on this goal, the timing of disclosures was not addressed in the proposed amendments in Rule 17(c)(6). That issue, as Professor King explained, would be determined by case law or another rule. Professor Beale added that Rule 17 reflects the notion that whatever a party gathers by subpoena or by its own investigative efforts is not discoverable until the trial itself. Judge Dever further added that Rule 16, and not amended Rule 17, would have to answer when the items are discoverable. Judge Mosman also responded that there may be a weakness in Rule 16, which only requires disclosure before trial, with the adoption of the proposed amendments to Rule 17 on pretrial subpoenas for production, but courts could continue to handle issues of timing through existing practices relating to discovery when suppression and detention hearings take place. Judge Dever added that in his experience, if information was received at a hearing that a party had not seen, it

would not be uncommon for a lawyer to ask for a brief adjournment of the hearing to review the evidence presented.

The members then discussed potential revisions to the text of Rule 17(c)(6) to address the concerns raised. On page 497, lines 133-137, the judge member suggested the following: (1) insert the word “only” after “party” on line 134; (2) remove the word “only” from line 136, and (3) add “and when” to lines 136-137. The suggested text would read, “[a] party only must disclose to an opposing party an item that the party receives from a subpoena recipient if and when the item is discoverable.” Professor Hartnett supported adding the language “if and when” to clarify the intent to refer readers to Rule 16 on the timing of discovery. Both Judge Mosman and another judge member said that they did not see any downside to including the “if and when” language, although this language would not address the timing issue. Professor Garner added that as a matter of style, if the addition of “if and when” is adopted, the “only” should not be moved within the provision and should say “only if and when.” He also offered two alternative language choices - that a party must disclose “as soon as the item becomes discoverable” or that a party “need not disclose to an opposing party an item receives from a subpoena’s recipient unless and until the item becomes discoverable.”

The judge member also raised concerns about use of the language “must” disclose in the beginning of the text to Rule 17(c)(6) (page 497, line 134), which he felt could raise an issue of reciprocal discovery that could be very concerning to both the government and the defense. Judge Mosman agreed that the word “must” could be removed.

The members also discussed whether reference to case law would be appropriate in the committee note to address the interplay between Rule 17 and Rule 16. A judge member asked whether reference to case law from judges who have already allowed pretrial subpoenas even without the amendments to Rule 17 would be helpful on the disclosure issue. Professor King said that there were districts where third-party subpoenas were allowed for non-trial hearings and judges had managed those situations as needed such as by allowing a recess if necessary to accommodate the other party or issuing a standing order addressing subpoenas for non-trial hearings. Professor Coquillette added that it was dangerous to reference case law to make a point in the committee note because the committee note could not be changed unless the rule was changed. If a case were overruled or changed in a significant way, the rule would still contain a clearly misleading committee note. Professor Capra added to this discussion by noting that the only case cited in the committee note was *Nixon*, which could not be avoided given the nature of the amendments. A lawyer member said that he thought the suggestion was not to add specific cases to the committee note, but to instead point out that there was case law governing the timing of discovery, which would not run afoul of the rule against citing cases.

Following this discussion, Judge Dever asked Professor Garner for his views on proposed revisions to the rule text to address the concerns discussed. Professor Garner responded that he understood the consensus to be that on page 497, line 134, the text in Rule 17(c)(6) would read, “party need not disclose to an opposing party an item the party received from a subpoena’s recipient unless and until the item becomes discoverable.” Alternatively, the rule could move “unless and until” to the beginning of the sentence, such that it would say that “unless and until it becomes discoverable, a party need not disclose . . .” A judge member however, felt that the

issue was the word “discoverable” in 17(c)(6), which does not answer the timing question. He did not think that adding “if and when” would solve the timing problem.

The members then discussed the committee note’s language with respect to Rule 17(c)(6) and discovery. Professor Beale and Professor King then offered suggestions for revisions to the committee note based on the feedback. This included revising the committee note (page 511, line 530) to refer to “other discovery rules and applicable case law”; to add “and the timing of such disclosure” after “subpoena” on page 511, line 529; and to restate the sentence as “Rule 16, other discovery rules, and applicable case law” on line 530. A judge member also noted that the existing committee text (page 511, line 530) stating that “Rule 17 does not modify that carefully developed law” was not accurate because one of the purposes of the change to Rule 17 was to modify case law holding that parties must deliver subpoena responses to each other regardless of discovery obligations. Professor Beale agreed the language could be changed regarding Rule 16 to be clearer. Professor Garner also noted generally referencing “case law” was unclear as to whether that referred to case law as it existed as of the adoption of the rule or referred to an ongoing evolution of case law that would come after adoption of the rule. A consensus was then reached to delete reference to the words “case law” in the committee note.

Professor Sachs suggested that instead of case law, the committee note could reference “other applicable sources of law” to make the point that there are other authorities which govern this issue. Professor Beale responded that a general reference would not work because the rule change was intended to limit the ability of courts to require things that were not governed by existing discovery requirements, especially on the part of defendants. A judge member then asked if Rule 17(c)(6) was needed if the only purpose was to stop judges from ordering defendants to disclose things that they otherwise would not need to under Rule 16. The judge member suggested that if it needed to be included, it could say that the rule does not create disclosure obligations separate from those that already exist. With this feedback, Judge Dever suggested returning to this issue the next day to give the reporters time to develop revised language for Rule 17(c)(6).

Judge Mosman then directed the Committee’s attention to the committee note to Rule 17(c)(3) (lines 422-436 on page 508 of the agenda book) regarding *ex parte* applications for subpoenas for personal and confidential information (a good cause standard to proceed *ex parte*) and the notice to victims requirement (required absent “exceptional circumstances”). The Advisory Committee revised language in this section of the committee note after it heard testimony from victims’ rights advocates that the “exceptional circumstances” exception to the notice requirement, if satisfied by the disclosure of sensitive defense strategy, will be interpreted too broadly to almost always apply. In an effort to strengthen protections to victims, the Advisory Committee revised the committee note accompanying the new provision allowing an *ex parte* subpoena for good cause to emphasize the important distinction between the good cause requirement for an *ex parte* motion—which does require laying out defense strategy to some degree—and the mere notice requirement—which requires only notice there is a subpoena but not an explanation of what was requested in the subpoena. Professor Beale and Professor King noted that the *ex parte* provision was not intended to create “exceptional circumstances” or erode the notice requirement, and that the new committee note explains how the new provision on good cause for *ex parte* applications relates to the existing notice requirement for victims. Finally, Judge Mosman noted that on line 426 of the committee note to Rule 17(c)(3), the words “a

showing” appear in brackets as a stylistic suggestion he made for the Standing Committee to consider.

As a final post-publication change, Judge Mosman next turned to the committee note’s discussion of Rule 17(c)(2)(B)(iii) (requiring that each item requested in the subpoena either be, or contain information that is, “likely to be admissible as evidence in the designated proceeding”), and revisions made to lines 326-328 on page 505. The Advisory Committee made changes to language in the committee note regarding the modified *Nixon* standard because the previous sentence had been wordy and unclear.

Judge Mosman then explained that the Advisory Committee recommended no change to the published rule on the expanded scope of proceedings in which subpoenas are available, despite hearing opposition from victims’ advocates who argued it would greatly expand the use of subpoenas for victim information. Judge Mosman noted that a substantial number of districts already did not limit Rule 17 subpoenas to trial, many cases are resolved without any pretrial hearings, and few sentencing hearings involve third-party information that involves a subpoena. Two lawyer members asked whether the testimony from victims’ advocates included specific examples of how expanded access to subpoenas in districts that allowed it had created a problem. Judge Mosman and Professor Beale responded that this question was asked at the hearings and no one could provide specific examples. The lawyer member then asked whether the victims’ advocates had an alternative proposal for Rule 17. Judge Mosman answered that they offered an unworkable suggestion to restrict it to trials and to have a carve-out for victims or certain kinds of crimes if it were expanded beyond trials. Professor Beale added that while the victims’ advocates opposed the amendments, if the rule were to be amended, they vociferously opposed the *ex parte* provisions, the expansion to proceedings other than trial, and the loosening of the *Nixon* standard.

A judge member then asked whether the Advisory Committee heard from any tribes on this issue. Professor Beale said that while the Advisory Committee had not heard from anyone in tribal government, when the Advisory Committee met in Phoenix at an earlier meeting to evaluate the proposed amendments, it heard from several local witnesses about their experiences with looser standards and more subpoena availability. Many of the people from Arizona, including the prosecutor, stated that they had not been applying *Nixon* strictly for years and had not had any difficulty. Judge Mosman added that the Advisory Committee heard from one witness from Oregon, whose responsibilities included working with tribal governments and victims from tribal cases, and the issue of tribes was not raised.

Judge Mosman then turned to another public comment that did not lead to a revision of the published rule. One commenter suggested that the Supreme Court precedent (*Carpenter*) regarding cell site location information suggested that the expansion of subpoenas would run afoul of the Fourth Amendment. Judge Mosman stated that while *Carpenter* may have been limited to its facts and not applicable to any kind of information that might be sought in Rule 17 subpoenas, the Advisory Committee was concerned about privacy interests in personal and confidential information. As a result, after a lengthy discussion, and as discussed on page 433 of agenda book, no text change was recommended for the rule, but the Advisory Committee added a short statement to the committee note about judicial oversight, reminding readers that judges have the ability in some instances to impose greater protections. The Advisory Committee also

suggested other approaches to protect privacy interests, including facilitating the development of best practices and working with the FJC to monitor the implementation of these amendments to see whether problems develop. Professor Beale added that the Advisory Committee expected that once the rule goes into effect, it would start to see the development of best practices, local options, and any problems that may arise and that by closely monitoring the situation, the Advisory Committee would be able to take appropriate action. Professor Coquillette expressed disagreement, however, with putting guidance in the committee note rather than a bench book. A lawyer member said that he supported the Advisory Committee's approach to privacy protection because personal and confidential information is now held by many third parties, and sometimes those third parties are not vigilant about protecting it. Judge Mosman also added that seeking personal and confidential information, independent of Rule 17, involved application of many state and federal privacy laws. A judge member also expressed support for the Advisory Committee's approach and noted that many judges look at the committee notes for guidance before exploring best practices. Judge Dever added that guidance in the committee note could remind judges that they also have the power to address issues in protective orders.

At the close of this discussion, a judge member spoke in favor of the proposed amendments and that hearing about how the current rule was being implemented in different ways across the country convinced him that significant amendments to Rule 17 were necessary. He also noted that there would likely still be variability in how judges approach it, but that this could be valuable as the Advisory Committee gained more information over time. He also stated his feelings that the rule did a careful job of balancing competing concerns.

With this feedback, and after adjourning until the next day to allow time to revise the rule, Judge Mosman presented a revised version to the text of Rule 17(c)(6) to solve the problem of judges who make Rule 17(c) subpoenas contingent upon disclosure to other parties. Judge Mosman added that the language in brackets was supported by the reporters but DOJ would like the bracketed language eliminated. Judge Mosman stated that the committee note, on page 510, line 512, quoted the former language in (c)(6), so that would need to be changed to match the new language.

The revised language to replace the text on page 497, lines 134-137, would read as follows:

Disclosure and discovery requirements [established by the Constitution, statute, and other rules] are not altered by this rule, and govern the disclosure of produced items to a party that did not request the subpoena.

Professor Garner said that if the bracketed language were removed, the comma after "rule" should be removed. Professor Beale added that the title of (c)(6) would be revised to, "Disclosing to Other Parties the Items Produced." Professor Bartell said that the revised language essentially said that disclosure and discovery requirements govern disclosure, and questioned whether that was the intent. Professor King said that the word "discoverable" in the formerly proposed (c)(6) raised concerns about how this applied to non-trial proceedings. Inserting "disclosure" not only added a set of law to the discovery rules for trial, but also added disclosure rules imposed by the Constitution that were not part of discovery. Professor Bartell said that she understood this, but questioned whether the end of the provision should say "govern

the disclosure and discovery,” or “govern the production of items to a party that is not requesting to see it.”

A judge member asked for more information on concerns about including the bracketed language. Judge Mosman said that his concern with deleting the language was that, if the rule simply says that “disclosure and discovery requirements are not altered by this rule,” it leaves open the possibility that a court order or other local rule might still remain in place. If the rule says that the only place a court can look for these requirements are the Constitution, statute, and other rules, it means that the court cannot find them in its own local rule requiring disclosure. Ms. Shapiro, on behalf of DOJ, stated her concern that by listing out sources in this new version, it would prevent judges from issuing orders with disclosure requirements that are not covered by the Constitution, statute, or other rules. A party might argue that the court cannot order something to be disclosed because it was not otherwise in the rule, statute, or Constitution.

Another judge member asked whether “other rules” in the bracketed language could be interpreted to mean “local rules.” Ms. Shapiro said yes, this was another concern, whether “other rules” referred only to federal rules. Professor Sachs suggested changing “other rules” to “other law,” given that there may be common law on this issue. He also suggested beginning the provision by saying “Any disclosure and discovery requirements,” to avoid suggesting that there are such requirements. Professor Capra suggested ending the sentence after “rule,” but committee members said that the second clause was the most important point in the provision. Professor Garner expressed his support for using “other law,” to foreclose the possibility of including local rules, which he thought would arguably be included in “other rules.” Other members argued that rules were law, and court orders would be considered law as well.

Another judge member had concern that about removing the strong language in the original draft stating that a party must disclose “only if” the information was discoverable. With the revised language, a judge could still conclude that revised Rule 17 did not change the parties’ obligations, but those obligations existed now, and courts had issued orders saying that a party must turn over any information obtained in response to its subpoena. Professor Beale responded that those who discussed the revisions considered saying that a court “must not” order disclosure unless discovery was otherwise required. A lawyer member asked whether the point was not to say that courts cannot do something, but instead that this particular rule does not authorize them to impose a disclosure requirement other than those established by other laws. Professor Beale said that some judges already thought that they had this authority and that fairness requires disclosure to the other party. That authority was not previously in Rule 17, so these judges may still find that authority elsewhere, outside of Rule 17. The lawyer member said that this proposed language would not prevent those judges from doing so, because it would confirm that other existing law gives courts authority to require disclosure.

With this additional feedback another draft version of Rule 17(c)(6) was provided for the Committee’s consideration:

This rule does not

(a) authorize the court to disclose—or require disclosure of—a produced item to a party that did not request the subpoena; or

(b) alter the disclosure requirements set by the Constitution, a statute, or other rule.

Professor Beale said that this language responded to the fact that if the material were produced to the court, the court could simply tell the clerk to send it to all parties. She thought, however, that the original language worked well. Ms. Shapiro, on behalf of DOJ, said that this language said that was incorrect, because it said that the rule did not authorize the court to disclose a produced item to a party that did not request it, but it may be that the item was discoverable, so the court should be ordering it disclosed. Professor Struve suggested that “other authorities” might be an option, rather than “other rules.”

A judge member strongly opposed this proposed language because he felt it stated the opposite of what the original draft Rule 17(c)(6) had said, which was that a party “must disclose.” The revised draft said that the rule did not even authorize the court to disclose. He suggested that the Committee focus instead on the first language suggested and debate whether to include the bracketed language. He favored removing the bracketed language so that courts retained whatever existing timing rules they had on reciprocal discovery. Professor Kimble added that the Standing Committee was trying to avoid saying that the court “must not,” do something but there were 22 uses of “must not” in the Criminal Rules and there was no strict policy against saying that the court “must not” do something. Another judge member said that he had also found a few instances of the Criminal Rules stating that “the court must not,” and those were situations where a statute explicitly prohibited the court from doing something. Here, however, the Committee would be saying that a court “must not” require disclosure, which would be difficult because it could not foresee all of the circumstances that could arise.

Taking this feedback, Judge Mosman agreed that neither revision completely accomplished what the Advisory Committee had hoped to accomplish, but the case law and the revised language and committee note would teach judges that they could not condition use of Rule 17 subpoenas categorically on disclosure of everything obtained through a subpoena. He then recommended moving forward with one of the two versions of the language first proposed this morning, either with or without the brackets. For further clarity, Judge Dever asked whether anyone other than DOJ was opposed to including the bracketed language and changing “rules” to “law.” Two judge members said that they preferred not to include the bracketed language but were not opposed to it. A third judge member agreed and suggested saying, “This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.” Professor Garner suggested instead saying, “Discovery and disclosure requirements, which are not altered by his rule, govern the disclosure.” Judge Dever then suggested that Judge Mosman and the reporters settle on another revision.

After additional break, Judge Mosman presented the following language for Rule 17(c)(6):

Disclosing to Other Parties the Items Produced. This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.

He also proposed two changes to the committee note: first, to change the quoted text of (c)(6) to match the new language, and second to add “regulation and timing regarding” before

“disclosure” on line 527 on page 511. Judge Mosman said that this language made the point that use of Rule 17 subpoenas should not be conditioned upon automatic disclosure to other parties. It also changed the title of (c)(6) to match the usage elsewhere in the rule. Professor Sachs clarified that the language in the committee note would now say that “the regulation . . . is regulated by . . .” He suggested changing “regulated” to “governed,” and others suggested changing “is” to “are,” since there were multiple subjects (regulation and timing).

Professor Beale then set forth the proposed changes. On page 493, line 53, “seek” would be changed to “require production of[.]” On that same page, line 66, “(c)” would be inserted before “(3)[.]” On page 506, line 376, “(c)” would be added before “(3)” and at line 384, “(c)” would be inserted before “(2)[.]” On page 508, line 426, the brackets would be deleted. On pages 510 and 511, the committee note would be changed as just discussed. Paragraph (c)(6) would be revised as just discussed.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 17— as revised to include the changes discussed in the prior three paragraphs and set forth in the Appendix to these minutes— and recommended their adoption.

## ***2. Preliminary Drafts for Publication and Public Comment***

### **a. Rule 11**

Judge Mosman next presented the Advisory Committee’s request for approval for publication for public comment on proposed amendments to Rule 11. The text of the proposed amendments begins on page 521 of the agenda book, and the written report begins on page 447. Judge Mosman began by explaining that the amendments to Rules 11(b)(1)(M) were driven by 2025 amendments to the U.S. Sentencing Guidelines, which eliminated the concept of departures. As a result, as Professor Beale added, the proposed changes would delete the language requiring the sentencing judge to inform the defendant of possible “departures under the Sentencing Guidelines.” Judge Mosman further added that tying language in Rule 11 to the Sentencing Guidelines was impractical because it would require a change every time the Sentencing Guidelines changed.

The members then discussed the proposed amendments.

A judge member raised concerns that the proposed amendments went further than removing the reference to departures and deleted the language requiring the judge to inform the defendant that the court has an obligation to calculate the applicable Sentencing Guideline range. Professor Beale responded that under the new two-step process in the Sentencing Guidelines, after determining the Guideline range, the court must consider the other applicable factors in § 3553. The Rule 11 Subcommittee felt that the rule text should follow this simplified instruction. The judge member agreed but said that some case law provides that a judge has an independent obligation to calculate the range, and if the rule just refers to the Sentencing Guidelines, then this suggests the judge has a smaller obligation than to accurately determine what the Guideline range is before applying the § 3553(a) factors.

Other judges then discussed their views on this issue, some saying that there is no independent obligation outside of what § 3553(a) provides, and others supporting the idea that the judge does have an independent obligation that should be recited to the defendant. During this discussion, Judge Mosman reminded members that Rule 11 refers only to what the court must tell a defendant at a plea colloquy. Professor King responded that DOJ, the defense bar, the subcommittee, and the Advisory Committee felt that the language in Rule 11 should not include calculating the advisory guideline range because of the simplification process that the Guidelines were currently undergoing and the proposed amendments were designed to avoid having to change Rule 11 again. Judge Vance stated, however, that the proposed amendment may communicate to judges that they no longer had to actually calculate the range by assessing the Guidelines.

Following this discussion, the members discussed possible changes to the language in the proposed rule text. Judge Furman suggested that the language “including the Sentencing Guidelines” at the end of the proposed rule was unnecessary because that factor is listed in § 3553(a) and did not need to be repeated. Professor King responded that the Rule 11 Subcommittee had debated whether to include a reference to the Sentencing Guidelines at all because they are part of the statute but decided to leave it in because judges are accustomed to it.

The members, advisory committee chairs, and reporters then discussed potential revisions that could be made to address the concerns raised about informing defendants of the obligation to calculate the range. Suggestions included bracketing some words or omitting only the words “possible departures under the Sentencing Guidelines.” A judge member suggested including more words in brackets so that the Advisory Committee could obtain more public feedback. Judge Mosman suggested that the Committee consider whether to approve the Advisory Committee’s proposed language with the addition of bracketing “calculate the applicable Sentencing Guidelines.” The provision would read, “in determining a sentence, the court’s obligation to [calculate the applicable sentencing guideline range and] consider the factors under 18 U.S.C. § 3553, including the Sentencing Guidelines.” Judge Furman asked whether it would be necessary to include two references to the Sentencing Guidelines. After further discussion, Judge Mosman said that he and the reporters would propose language for the Committee’s consideration the following morning.

After the midmorning break on the second day, Judge Mosman proposed language for the Standing Committee’s consideration that would remove “possible departures under the Sentencing Guidelines,” from Rule 11(b)(1)(M), such that the rule would read:

(M) in determining a sentence, the court’s obligation to calculate the applicable sentencing-guideline range and to consider that range and other sentencing factors under 18 U.S.C. § 3553(a);

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 11 as revised for publication and public comment.

## **b. Rule 32**

Judge Mosman then presented the Advisory Committee's request for approval for publication for public comment on proposed amendments to Rule 32. The text of the proposed amendments begins on page 523 of the agenda book, and the written report begins on page 450. Judge Mosman explained that this proposed amendment, which relates to the amendment to Rule 11, addresses current language in Rule 32(h) referring to possible departure under the Guidelines. The amendment would strike the language in Rule 32(h) and mark it reserved in order to preserve the numbering system in the rule.

With no questions or further discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 32 for publication and public comment.

## **E. Advisory Committee on Evidence Rules – Judge Jesse M. Furman, Chair**

Judge Furman presented the action items on behalf of the Advisory Committee on Evidence Rules, which last met on May 7, 2026, in Washington, D.C. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 525.

### **1. *Amendments for Final Approval***

#### **a. Rule 609**

Judge Furman presented the Advisory Committee's request for final approval of amendments to Rule 609. The text of the proposed amendments begins on page 572 of the agenda book, and the written report begins on page 526.

Judge Furman provided background on the proposed amendments to Rule 609, which governs impeachment through prior convictions. The proposed amendments add a single word, "substantially," to Rule 609(a)(1)(B), to make the balancing test a bit more favorable to a testifying defendant. The other proposed amendment was to address a split in authority under Rule 609(b) because the rule did not prescribe the endpoint of the ten-year period for older convictions. The proposed amendment to Rule 609(b) clarifies the end date to be the date trial begins.

During the public comment period, the Advisory Committee received fifteen comments, including comments from the Magistrate Judges Association, the American College of Trial Lawyers, the New York City Bar, the National Association of Criminal Defense Lawyers, and others. The comments were strongly supportive with the sole critical comment proposing a different endpoint under Rule 609(b), which the Advisory Committee had previously considered and rejected. Judge Furman also noted that one comment urged the Advisory Committee to address the Supreme Court decision that made the court's decision appealable only if the defendant took the stand, but the Advisory Committee had already decided not to do address that issue. With no changes after publication, the Advisory Committee recommended final approval of the amendments by a 7-2 vote, with DOJ in the majority.

The members then discussed the proposed amendments.

A judge member raised a question about language in the committee note and whether it would allow the prosecutor to explore details of the crime underlying the past conviction. Judge Furman responded that the rule amendment would not alter the existing law, but the committee note did address a problem in which some courts had allowed prosecutors to ask only about the fact of the conviction itself, which left the jury guessing what the nature of the felony was. Judge Furman said that the committee note did include, at the Standing Committee's suggestion, the language, "absent agreement by the parties," because there could be situations where the defendants preferred allowing more questions. Professor Capra added that there is substantial case law saying that the questioning cannot delve into the facts of the prior conviction, and the committee note states that Rule 608 cannot be used as an end-run around the limitations in Rule 609.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 609 and recommended their adoption.

## ***2. Preliminary Drafts for Publication and Public Comment***

### ***a. Rule 902(1)***

Judge Furman next presented the Advisory Committee's request for approval of publication for public comment on a proposed amendment to Rule 902(1). The text of the proposed amendment begins on page 582 of the agenda book, and the written report begins on page 527.

Judge Furman reported that the proposed amendment would add federally-recognized Indian tribes and nations to the list of entities in Rule 902(1)(A) whose sealed and signed public documents are self-authenticating. Judge Furman noted that this amendment was suggested by Judge Frizzell in the Northern District of Oklahoma and has gained more significance after the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), which expanded federal jurisdiction in Indian country. Judge Furman also noted that the Advisory Committee solicited input from the tribes themselves and Judge Furman wrote to the 578 federally recognized tribes and nations. Although only eight responses were received from the tribes and nations, all strongly supported the proposed amendment to recognize tribal sovereignty and dignity and address the burden and expense of sending people from the tribes long distances to authenticate records.

Judge Furman and Professor Capra then explained the difference of opinion on the issue expressed by Ms. Shapiro on behalf of DOJ in support of the amendment, and the Federal Defender, who opposes it and voted against moving forward with publication. The Federal Defender felt that such records could be admitted under either the business records exception or Rule 902(11) and that authentication problems in cases were the result of prosecutor problems and not the rules. The Federal Defender also cited inconsistent and problematic record-keeping among tribes and the fact that some tribes did not have robust FOIA-type disclosure rules and therefore restricted access to their records. Professor Capra added that the Federal Defender was concerned that a party would no longer receive a Rule 902(11) certificate signed by a real person that described how the records were kept. Judge Furman added that the FJC had done some research into how often this issue came up, and it was very rarely litigated.

The members then discussed the proposed amendment.

A lawyer member who practices in civil litigation added that federally recognized tribes are increasingly appearing as government entity plaintiffs in civil litigation, particularly environmental litigation. She supported the amendment for both symbolic dignitary inclusion and practical application to tribes as parties to civil cases because it would make the discovery burden they face equal to that of other government parties. Ms. Shapiro, on behalf of DOJ, expressed support for the rule to put federally-recognized tribes on the same footing as the smallest territories or municipalities. She also noted that the rule amendment would not prevent anyone from challenging the authenticity of these records at trial. Judge Furman added that the committee note underscored the point that the amendment did not preclude challenging the documents at trial.

With no questions or further discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendment to Rule 902(1) for publication and public comment.

#### **b. Rule 104**

Judge Furman presented the Advisory Committee's request for approval of publication for public comment on proposed amendments to Rule 104. The text of the proposed amendments begins on page 584 of the agenda book, and the written report begins on page 528.

Judge Furman explained that the proposed amendment to Rule 104(a) is intended to codify the Supreme Court's decision in *Bourjaily v. United States*, 483 U.S. 171 (1987), which held that the preponderance of the evidence standard applies in deciding preliminary questions under the rule. The proposed amendment to Rule 104(b) would eliminate the confusing concept of conditional relevance and incorporate the standard for determining whether evidence is relevant from the Supreme Court's holding in *Huddleston v. United States*, 485 U.S. 681 (1988). Judge Furman further added that the Advisory Committee considered adding the *Huddleston* standard into Rule 401 insofar as it defines relevance. Because there is a great deal of case law interpreting Rule 104(b), however, the Advisory Committee decided to simply amend Rule 104(b).

Professor Capra added the amendment to Rule 104(a) was also necessary because one of the concerns with proposed new Rule 707 (governing opinions generated by artificial intelligence) was whether the preponderance of the evidence standard needed to be put in new Rule 707 as found in Rule 702. Amending Rule 104(a) to include the preponderance standard would eliminate the need for this addition to new Rule 707 if adopted, or to any other rule that is amended in the future. Judge Furman also noted that at the Advisory Committee meeting, a Standing Committee member had suggested amending Rule 104(a) and not 104(b), but the Advisory Committee decided that without the amendment to Rule 104(b) to include the proper standard, a court could inadvertently conclude that relevance questions are subject to the preponderance standard.

During his presentation, Judge Furman also called the Committee's attention to two stylistic changes that needed to be made to the committee note to change the word "relevancy" to "relevance" (page 587, lines 87 and 94). Professor Kimble also raised a style point and said that

on lines 6-7, “Unless otherwise provided in these rules” should instead say, “Unless these rules provide otherwise.”

The members then discussed the proposed amendments.

A judge member asked whether there was a problem in courts applying the improper standard under Rule 104(b) that needed to be corrected. Professor Capra responded that there were many points of confusion in Rule 104(b), including that the term “condition” could be misinterpreted to mean any condition to admissibility, not just a conditional fact. Professor Capra also pointed to clarifying that the lower standard of proof applies.

Another judge member asked whether the explanation of relevance and examples set forth in the committee note (page 587, line 78) was necessary. Judge Furman said that it could be taken out, but said that this was only for publication, and was intended to explain the “common knowledge and experience” language set forth in the rule. A lawyer member said that he found the comment helpful to understand “common knowledge and experience.” The judge member agreed that for purposes of publication, the example was fine.

Another judge member raised a concern about language in the committee note (page 587, line 88) stating that the judge “would” overrule the objection, but on line 92, the committee note said that the judge “would likely” reach a certain conclusion. At his suggestion, Professor Capra agreed to add the word “likely” to line 88 as well.

With no further questions or discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 104 for publication and public comment, as revised to modify the rule text on page 584, line 6-7 (changing “Unless otherwise provided in these rules” to “Unless these rules provide otherwise”); and the committee note on page 587 (changing “relevancy” to “relevance” on lines 87 and 94, and adding “likely” after “would” on line 88).

#### **4. INFORMATION ITEMS – REPORTS OF THE ADVISORY COMMITTEES**

##### **A. Advisory Committee on Appellate Rules – Judge Allison H. Eid, Chair**

Judge Eid referred to the Advisory Committee’s report, which begins on page 196 of the agenda book, for information items. She also highlighted and solicited feedback on the Advisory Committee’s consideration of new Rule 12.2 governing intervention on appeal. Judge Eid summarized the information in the Advisory Committee’s report, noting that whether to create a rule about intervention on appeal had been discussed for quite some time, and concerns had previously been raised that creating such a rule would incentivize people to move to intervene. The Advisory Committee decided, however, that a rule was necessary to give structure to the practice through a narrow rule that would also avoid an onslaught of meritless motions to intervene. She also described the structure of the proposed rule as set forth in the Advisory Committee report.

The members then discussed the proposal for new Rule 12.2.

A judge member suggested that the description of intervention as “disfavored” in subdivision (b) might be superfluous, given the language in that subdivision reserving intervention for exceptional cases. As for timing, the judge member also suggested that the proposed language “as soon as is practical after the appeal is docketed” in (c)(1) may prove difficult when administrations change, because the government may take a different position at that point. As for the choice of language between “legally protected” or “legally cognizable” interest stated in subdivision (e)(4)(B), the judge member said that he would remove both modifiers. Finally, he asked why (e)(3) referred to the United States’ “foreign-relations interests” as a ground for intervention. Ms. Shapiro, on behalf of DOJ, later responded that subparagraph (e)(3) was proposed to accommodate specific government interests in things like state secrets privilege that can arise in private litigation, or protecting classified information, or uniquely governmental interest that relate to protection of national security.

The academic member raised the issue of whether this rule was truly necessary, given that courts of appeal had been using Civil Rule 24’s provisions and given that intervention on appeal is rare. A lawyer member stated that while he had only had a few matters involving intervention on appeal and had learned that appellate courts are essentially using a modified Civil Rule 24, he did not think that this was ideal. Another lawyer member added that she had only seen a few intervention requests in civil appeals, but that recently there has been a significant uptick in AI-assisted pro se filings for intervention at the appellate level such that creating a strict rule would be helpful.

During the members’ discussion, the reporters and consultants also provided suggestions. Professor Garner added that if the title of subdivision (d) were changed from “Grounds for Mandatory Intervention” to “Mandatory Intervention,” then the title of subdivision (e) should be changed from “Other Grounds for Intervention” to perhaps “Permissive Intervention” to make it parallel. A lawyer member suggested not using the term “permissive intervention” because, in the Civil Rules, permissive intervention required a lesser showing. Another judge member suggested merging (d) and (e) in the proposed rule and titling the new subdivision, “Grounds for Intervention.” Within that new subdivision, one paragraph could address when the court may permit intervention, and another paragraph could address when the court must permit intervention. Professor Sachs later clarified that Civil Rule 24 is much more flexible than what the Appellate Rules Advisory Committee was proposing and that the Committee had generally been averse to the concept of “permissive intervention” in appeals.

Professor Bartell suggested looking at Bankruptcy Rule 8013(g) on intervention on appeal. Professor Hartnett noted there are competing themes among circuit judges who either apply Civil Rule 24 on appeal and others who adhere to a more traditional notion that intervention on appeal was for rare and exceptional circumstances; the goal of the new rule would be to get ahead of this divide. Professor King pointed out that that the Rule 12.2 language proposed carving out § 2254 and § 2255 motions in subdivision (a) but should also include § 2241 motions.

Judge Eid thanked the Standing Committee members for their input on the draft proposed rule.

## **B. Advisory Committee on Bankruptcy Rules – Judge Rebecca B. Connelly, Chair**

Judge Connelly referred to the information items from the Advisory Committee report, beginning on page 255 of the agenda book. She then highlighted one of the issues under consideration involving potential amendments to Bankruptcy Rule 9031, which provides that Civil Rule 53—which authorizes the use of masters—does not apply in a bankruptcy case. The Advisory Committee had received two suggestions to amend the rule to permit masters in a bankruptcy case. The Advisory Committee was considering a draft amendment to allow masters, but on March 17, 2026, the DOJ Office of Legal Counsel issued a published opinion suggesting that the use of masters by bankruptcy judges would be unconstitutional. The Advisory Committee has decided to defer further consideration of this issue until its fall meeting.

Judge Connelly then explained the nature of the DOJ objection. Bankruptcy judges, who are Article I judges, are referred cases that fall within the district court's original jurisdiction. If it is a core bankruptcy proceeding, the bankruptcy judge has the authority to issue a final ruling. If it is not a core proceeding, the bankruptcy judge may issue a ruling with the parties' consent. If the parties do not consent, the bankruptcy judge may issue proposed findings of fact and conclusions of law, and the district judge enters a final judgment. One concern was whether, in a non-core proceeding where the parties do not consent to the bankruptcy court's final authority, the bankruptcy judge could appoint a special master when the bankruptcy judge could not enter a final ruling. Professor Gibson added that the rule would also apply to district judges who are exercising bankruptcy jurisdiction, but the constitutional issues would not apply in those cases.

A judge member noted his general skepticism regarding masters because of cronyism and paying the master could leave less money available for the estate. Another judge member echoed those concerns and added that bankruptcy judges in his court were uniformly against the proposal. Professor Bartell observed, however, that having a rule that explicitly barred the appointment of a special master in bankruptcy cases but not civil cases seemed strange, especially as the cronyism argument could be applied to many areas of the law, and further, she did not think that the DOJ opinion was persuasive as to why there was a constitutional concern with this rulemaking.

## **C. Advisory Committee on Civil Rules – Judge Sarah S. Vance, Chair**

Judge Vance reported on several information items detailed in the Advisory Committee report beginning on page 313 of the agenda book.

### ***1. Potential Amendments to Rule 43 on Remote Trial Testimony***

Judge Vance first highlighted the status of the Advisory Committee's work on potential amendments to Rule 43(c) regarding remote trial testimony, which the Standing Committee had already expressed concerns about loosening the standard for remote trial testimony at its January 2026 meeting.

Judge Vance reported that since that time, the Rule 43 Subcommittee had met three times to consider those concerns and had received research from Ms. Sraders, Counsel to the Civil Rules Committee. The research showed that judges were relying on the 1996 committee note to insist that unforeseeable last-minute developments were generally the only thing that could satisfy the

“compelling circumstances” standard in Rule 43. After much deliberation, the Rule 43 Subcommittee still favored removing the “compelling circumstances” requirement from the rule, but it had substantially revised the proposed committee note, found on page 316 of the agenda book. The revised note made clear that the rule does not authorize fully remote trials, and that the judge was not required to authorize remote testimony even if the parties agreed to it. A court can authorize remote testimony only on an individualized showing of good cause to a particular witness. The rule does not affect any other aspect of trial. The revised note stated that witness inconvenience alone was not grounds to authorize remote testimony, and emphasized that the good cause determination required an assessment of the circumstances in the particular case, always mindful of the importance of in-person testimony. The note explained why the 1996 requirement of “compelling circumstances” a term used nowhere else in the Civil Rules, warranted re-examination. It pointed out that when a witness cannot attend trial, the choice was not between in-court testimony and remote live testimony, but between remote live testimony and depositions.

A number of members expressed concern that removing the “compelling circumstances” language would be read as a softening of the rule to allow greater use of remote trial testimony. Judge Vance explained that one of the reasons to take it out was that the 1996 committee note explaining that language had been interpreted by some judges to confine remote testimony to last-minute emergencies. Other members did not feel that the language of Rule 43 was causing any problems, and that the practices of some judges who interpreted the rule strictly did not necessitate a rule change.

A judge member also offered specific feedback on the proposed committee note. First, he suggested explicit recognition in the rule text that allowing remote testimony is a case management issue in the trial judge’s discretion and not to be reviewed on appeal under a “good cause” standard. Even if the parties agree to it, the judge is not required to allow it. Second, on page 317, the proposed committee note states that judges had found the “compelling circumstances” requirement too constricting, but he did not know any judges who felt this way. Third, the following paragraph said that some jurors found video testimony easier to view than in-person testimony, but the judge member suggested that this seemed like a courtroom configuration problem, not an issue with the rule. Fourth, he disagreed with the conclusion in the proposed committee note that designating portions of a deposition was a time-consuming process that would be obviated by live remote testimony. Finally, where the last sentence of the proposed committee states “Court approval is essential to management of remote trial testimony,” the judge member questioned what it meant in the context of this rule amendment.

One member added that he supported a very limited amendment to the rule to address the concerns about interpretation of the 1996 committee note. He noted that the draft committee note on page 318 stated that remote testimony may be more acceptable for a less significant witness, and he agreed with this concept. He also asked whether any thought had been given to a preference for remote testimony in a more formal setting, such as a courthouse, compared to a witness’s basement. Judge Vance noted that the parties generally work these issues out on their own.

Other members noted disagreement with the existing committee note because if a witness cannot be in person, live remote testimony is better than a video deposition or reading a deposition

transcript. Judge Dever added, however, that remote testimony would not save the district judges time from resolving deposition designation objections because every attorney would designate portions of the depositions in case the technology failed. Another judge stated that he would support changing the committee note to say that deposition transcripts are not superior to live remote testimony. As to the rule text, however, he thought that while most judges would prefer remote testimony to depositions, that should be left to the trial court's discretion.

Another lawyer member also expressed her preference for live in-court testimony, but noted that there had been a lot of experimentation and experience with hybrid trials and remote depositions since the COVID-19 pandemic. The rule change, however, would signal to practitioners that there may be more flexibility if they could show good cause in a given case. This standard could also make trials less expensive, more accessible, and shorter. Overall, the lawyer member supported publishing a rule for public comment to see whether the legal community would support a change to enable courts to have trials more efficiently and less expensively.

A judge member suggested that the Advisory Committee review the Texas Supreme Court's rule on remote testimony. Judge Vance responded that Justice Jane Bland from the Texas Supreme Court is on the Rule 43 Subcommittee and supports remote testimony in Texas because of the huge distances in Texas and the types of cases in state courts. Another judge member added that almost all state civil trials in Minnesota are now fully remote.

As a practical matter, a judge member asked for clarification as to when the Committee can change the committee note for a rule if there are no changes to the rule itself. Several of the reporters responded that an existing committee notes cannot be changed, and new committee notes are intended to explain a change in the rule text. Professor Hartnett added that the Committee could consider revising the text of the rule to say that compelling circumstances need not arise at the last minute, or that, in determining whether there were compelling circumstances, live remote testimony was generally preferable to a deposition. Professor Capra agreed with Professor Hartnett's suggestion, and proposed using the term "foreseeable." He also thought that it might be helpful to structure the rule to accommodate different choices in testimony available to the court; for example, the standards a court might use when deposition testimony is available versus when it is not. Professor Bartell added that Bankruptcy Rule 7043 bore on this same topic and recommended that the reporters look at the public commentary received for that rule when it was published.

### **c. Third-Party Litigation Funding**

Judge Vance next directed the Committee's attention to the Advisory Committee's work on third-party litigation funding (TPLF), which is described on page 351 of the agenda book. Judge Vance reported that the TPLF Subcommittee continued to consider a disclosure rule for third-party litigation funding in Rule 26(a)(1) or including third-party litigation funding as a matter a court can consider and take action on under Rules 16 or 16.1. She also described the practice in the District of New Jersey, which requires certain disclosures and contemplates discovery under limited circumstances regarding the terms of the funding agreement. Judge Vance also noted that the FJC is currently studying the experience under the New Jersey rule and the TPLF Subcommittee continues to evaluate how to define the types of funding arrangements that would trigger disclosure, what should be disclosed to whom, whether it should go to the court alone or

to all parties, what the court can do with the information, and whether to authorize discovery. With that introduction, Judge Vance asked for the Standing Committee's views on the aforementioned issues.

A judge member asked for more information on the New Jersey disclosure rule. Judge Vance explained that both sides were told to make the disclosures, if any, on the record, and that judges were mostly concerned with knowing who had the power to settle and make decisions about case strategy. She added that in a class action or MDL case, the judges want to know whether any of the representatives have conflicts or would be compromised by funding arrangements. Later in the discussion, the academic member mentioned that he heard that it was not uncommon for funders to require their lawyer to approve the litigation strategy at every step.

Another judge member said that he issued a standing order based on the New Jersey rule, as had other districts. He added that the Northern District of California has a rule that essentially applies only to class actions; some Texas courts require disclosures; and more than 25% of appellate and district courts require some sort of real party in interest disclosure. He also shared that he had enforced the rule and uncovered real abuses and violations of professional conduct, such as aggregating a pool of clients to be represented by the same law firm. Later in the discussion, a lawyer member also raised ethical concerns in third-party litigation funding, adding that there was tremendous pressure for profitability within law firms, which is leading to more plaintiff-side contingency matters. At the same time, funders (as he understood the practice) would only provide funding if there were enough cases to aggregate (15-25). He thought this had negative effects on the lawyer's ethical duties in an individual case, and also wondered what judges thought about having a completely unrelated matter, with different parties and a different topic, potentially impacting the case in front of them. The judge member continued that he issued his standing order in 2022 and about 15% of his cases had made a disclosure of third-party litigation funding. The judge member also said that he had recently issued a standing order requiring anyone seeking pro hac vice to certify that they were complying with ABA Model Rule 5.4 that they were not sharing fees.

A lawyer member asked whether there was significant opposition to a disclosure rule. Judge Vance said that some funders had told her that they would not oppose a pure disclosure request, but the issue was with discovery. Another lawyer member noted that disclosure rules like the Northern District of California's rule had been in place for some time and that MDL transferee judges will often, as a matter of case management and selecting leadership, require at least disclosure in chambers of funding arrangements.

A judge member thought that it would be helpful to have something in the rule that specifically authorized the court to inquire about third parties. Professor Marcus responded that he did not think judges were currently unable to require disclosures of funding. Instead, Professor Marcus suggested that the question might be framed as whether disclosure should always be required even without a request from the presiding judge. Professor Marcus also noted that the EU was gradually moving towards regulating third-party funding.

With this feedback, Judge Vance thanked the Committee.

#### **D. Advisory Committee on Criminal Rules – Judge Michael W. Mosman, Chair**

Judge Mosman stated that the Advisory Committee’s work on Rules 15 and 40 was summarized in the agenda book and he had nothing further to add.

#### **E. Advisory Committee on Evidence Rules – Judge Jesse M. Furman, Chair**

Judge Furman reported on several information items contained in the Advisory Committee report, found beginning on page 530 of the agenda book.

##### ***1. Artificial Intelligence***

Judge Furman first provided an update on the Advisory Committee’s work concerning artificial intelligence in two areas: (1) the reliability of machine-generated output offered without an expert witness (either by a lay witness or pursuant to Rule 902(13)), and (2) the authenticity issue posed by “deepfakes.”

On the first issue, Judge Furman reported that after publication of new Rule 707 on machine-generated opinions, the Advisory Committee received 59 written comments and about a dozen witnesses testified at two hearings. The feedback from the public was mixed between unqualified support, supportive with revisions, and opposed. Judge Furman described some of the criticisms of the proposed rule, which focused on issues ranging from overbreadth or vagueness of terms and exceptions, the interaction with Rule 702, and general concerns about the prematurity or lack of need for the rule. Another issue raised was the potential need for the civil and criminal rules to be modified to require disclosure of AI-generated opinion evidence in advance of trial. Judge Furman also advised the Committee that in response to this feedback, the Advisory Committee revised the rule (as set forth in the Committee Report beginning on page 534). At the Advisory Committee’s spring meeting, however, and at the suggestion of Judge Dever, the Advisory Committee decided to take the potential rule amendment under further advisement and hold a mini-conference with panels of technical experts and experienced lawyers at its fall 2026 meeting.

On the second issue, Judge Furman reported that the Advisory Committee continues to consider a proposed amendment to Rule 901(c) to address authentication of an item of evidence that one side claims is a deepfake. Because the existing authenticity standard is relatively low, the Advisory Committee is considering a proposed amendment that would create a burden-shifting framework where the opponent of the evidence would have to make a threshold showing enough for a reasonable person to find that an item was fabricated or altered by generative artificial intelligence. If that showing were made, the burden would shift to the proponent of the evidence to show, by a preponderance of the evidence, that the item was authentic. Judge Furman also described the results of an FJC sent a survey at the request of the Advisory Committee. The survey results, discussed in the Advisory Committee’s report, showed that 15 judges reported that they have encountered a deepfake challenge and a strong majority indicated that if such an issue arose, they would require a showing akin to what the proposed rule provides (even without a rule in place). Judge Furman and Professor Capra also discussed a recent New York Court of Appeals decision relating to deepfakes indicating that the issue is coming up in state courts as well. To gather more expert input, however, the Advisory Committee decided to address the

issue of deepfakes at the mini-conference at the fall meeting along with its consideration of new Rule 707.

Following this report, Judge Furman solicited the Standing Committee's views on the need for rule amendments and whether the working drafts took the right approach. Professor Capra added that this was the first time in his experience that a rule published for public comment did not go forward. He expressed that he had hoped that the public feedback would be an opportunity for the Advisory Committee to learn from the comments, but he did not believe the Advisory Committee learned much because most of the practicing lawyers were misunderstanding the rule. For this reason, refining the rule with the help of experts at a mini-conference would be very helpful in drafting a better rule.

A judge member supported the approach and thought information gathering was exactly what the Advisory Committee needed. Judge Furman noted that there was a concern that the technology was moving very quickly and the rules would not be adequate to address it given that the rulemaking process takes a long time. A lawyer member supported moving forward to demonstrate that the rules process is not merely reactive and suggested not waiting until the problem became unbearable to try to address it. Professor Marcus added that he and Professor Capra had discussed some coordination with the Civil Rules Advisory Committee on definitions and to determine if the civil disclosure rules would need to be amended if Evidence Rule 707 went forward in order to get those issues before the court in a timely fashion.

**d. Rules 703 and 606(b)**

Judge Furman concluded his report on information with an update on the Advisory Committee's consideration of two other potential amendments to address Supreme Court decisions potentially impacting the constitutionality of Rule 703 and Rule 606(b). First, the Advisory Committee is considering potential amendments to Rule 703 to add a "red flag" noting possible constitutional concerns in light of the Supreme Court's decision in *Smith v. Arizona*, 602 U.S. 779 (2024). The Advisory Committee is concerned that if construed broadly, it could prohibit reliance on a non-testifying expert, but is waiting to see if the Supreme Court takes up a circuit split on this issue. Second, in light of potential action on Rule 703, the Advisory Committee also revisited whether to add "red flag" language to Rule 606(b) in light of the Supreme Court's decision in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), but decided that it was not warranted.

**5. CONCLUDING REMARKS AND ADJOURNMENT**

Judge Dever concluded by thanking the Standing Committee members for their hard work and adjourned the meeting. The next meeting would take place in Washington, D.C. on January 5, 2027.

## APPENDIX

### Summary of Standing Committee Revisions to Final Amendments

The following list identifies revisions made at the Standing Committee meeting to amendments presented for final approval, as set forth in the agenda book available on the [uscourts.gov](https://uscourts.gov) website.

#### **Civil Rule 26(a)(3)**

The proposed amendments to Civil Rule 26(a)(3) begin on page 391 of the agenda book. The Standing Committee discussed and approved one change to the rule text:

1. Page 392, line 20: “it expects” was inserted before “whether” and the word “will” was changed to “to.” Lines 20-21 as revised read “whether it expects the testimony to be in person or remote.”

#### **Civil Rule 45(b)(1)**

The proposed amendments to Civil Rule 45(b)(1) begin on page 398 of the agenda book. The Standing Committee discussed and approved one change to the rule text:

1. Page 399, line 23: “by a person identified in (i) or (ii)” was inserted after “actual receipt.”

#### **Criminal Rule 17**

The proposed amendments to Criminal Rule 17 begin on page 490 of the agenda book. The Standing Committee discussed and approved the following changes to the rule text:

1. Page 497, lines 133 through 137, were replaced with the following: “(6) *Disclosing to Other Parties the Items Produced*. This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.”

The Standing Committee discussed and approved the following changes to the committee note:

1. Page 510, lines 512 through 515: “A party must disclose to an opposing party an item the party receives from a subpoena’s recipient only if the item is discoverable under these rules” was replaced with “This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.”
2. Page 511, line 527: “the regulation and timing regarding” was inserted before “disclosure.”
3. Page 511, line 529: “is” was replaced by “are.”

# TAB 5

**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:

1. Approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law .....p. 4
2. Approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 5-8
3.
  - a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and
  - b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date ..... pp. 9-10
4. Approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law..... pp. 13-15
5. Approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law..... pp. 18-19

|                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>NOTICE</b></p> <p><b>NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE<br/>UNLESS APPROVED BY THE CONFERENCE ITSELF.</b></p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|

(Rev. 8/27/26)

The remainder of the report is submitted for the record and includes the following items for the information of the Judicial Conference:

- E-Filing and Service by Self-Represented Litigants..... pp. 2-3
- Privacy Rules for Taxpayer Information and Minors’ Names.....p. 3
- Federal Rules of Appellate Procedure ..... pp. 8-9
- Federal Rules of Bankruptcy Procedure ..... pp. 10-13
- Federal Rules of Civil Procedure..... pp. 16-18
- Federal Rules of Criminal Procedure..... pp. 20-22
- Federal Rules of Evidence ..... pp. 23-26

**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:**

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 3-4, 2026. All members participated. Representing the advisory committees were Judge Allison H. Eid (10th Cir.), chair, and Professor Stephen Sachs, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly (Bankr. W.D. Va.), chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Sarah S. Vance (E.D. La.), chair, Professor Richard L. Marcus, Reporter, and Professor Andrew Bradt, Associate Reporter, Advisory Committee on Civil Rules; Judge Michael W. Mosman (D. Or.), chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Jesse M. Furman (S.D.N.Y.), chair, and Professor Daniel Capra, Reporter, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Edward Hartnett, Standing Committee Reporter; Professor Catherine T. Struve, Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Carolyn A. Dubay, Secretary to the Standing Committee; Sarah Sraders, Rules Committee Staff Counsel; Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC); and Elizabeth J.

**NOTICE**

NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE  
UNLESS APPROVED BY THE CONFERENCE ITSELF.

Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of the Deputy Attorney General.

In addition to its general business and consideration of the Advisory Committee reports and recommended action items as discussed below, the Committee also received an update on the work of its subcommittee concerning uniform attorney admissions in the trial courts and concluded that no further action on the project is warranted. The Committee further authorized the Chair, working with the Secretary of the Committee, to respond to the request of the Judiciary Planning Coordinator, Chief Judge Michael A. Chagares (3d. Cir.), to identify any agenda items of the Rules Committees that align with the Executive Committee's priority strategies and goals in the *Strategic Plan for the Federal Judiciary*. The Committee's views were communicated to Chief Judge Michael A. Chagares, the judiciary planning coordinator, by letter dated June 11, 2026.

### **E-FILING AND SERVICE BY SELF-REPRESENTED LITIGANTS**

The Standing Committee unanimously approved, with minor revisions to the committee notes to make them more uniform, the recommendations of the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to electronic service and filing by self-represented litigants (SRLs). The proposed amendments (collectively, "proposed SRL rules") seek to: (1) increase SRL access to a court's electronic-filing system (or allow a form of electronic filing by alternative means) to file pleadings and other court documents; and (2) after a complaint is filed and served, allow SRLs to achieve service of subsequently filed documents in the electronic-filing system through the electronic notice of filing or through a court-based electronic noticing program. The proposed SRL rules relate to Appellate Rule 25; Bankruptcy Rules 5005, 8011, 9006, and 9036; Civil

Rules 5 and 6; and Criminal Rules 45 and 49. With minor differences,<sup>1</sup> these proposed amendments are uniform across the four sets of rules. Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

### **PRIVACY RULES FOR TAXPAYER INFORMATION AND MINORS' NAMES**

The Standing Committee unanimously approved, with the addition of clarifying revisions in each of the committee notes, the recommendations of the Advisory Committees on Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to the redaction of social security and individual taxpayer identification numbers and the use of pseudonyms to reference minors. The proposed amendments (collectively, the “proposed privacy amendments”) seek to: (1) expand the redaction requirement of taxpayer identifying information in civil and criminal cases; (2) require the use of pseudonyms rather than initials when referencing minors in bankruptcy, civil, and criminal cases; and (3) clarify that these rules apply to exhibits and attachments to electronically filed court documents. The proposed privacy amendments relate to Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1.<sup>2</sup> Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

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<sup>1</sup>For example, the Bankruptcy, Civil, and Appellate Rules proposals use the term “unrepresented,” while the Criminal Rule uses “self-represented.” (Many existing Bankruptcy, Civil, and Appellate Rules already use “unrepresented.”) The Civil, Criminal, and Appellate Rules use the term “parties,” while the Bankruptcy Rules use the term “individual.” (In the Bankruptcy context, there is a concern that some small business entities might think that the use of “parties” would enable them to proceed without counsel, while in the other contexts the greater worry is that nonparties might think that they could file in any case they want.) Finally, the Civil, Criminal, and Appellate Rules refer to “the party’s case,” while the Bankruptcy Rules refer simply to “the case.” (In the Bankruptcy context, “the party’s case” might suggest that only the debtor is covered by the amendment.)

<sup>2</sup>Any amendments to these rules will apply on appeal through existing Appellate Rule 25, which incorporates them by reference. As set forth in the information items for the Appellate Rules Advisory Committee, there is ongoing consideration of potential privacy amendments relating to certain aspects of appeals.

## PRIVACY REPORT TO CONGRESS 2026

Following the Standing Committee’s approval of the proposed privacy amendments for publication and comment, the Committee also considered a draft 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002 (the “2026 Privacy Report to Congress”). Section 205(c)(3)(C) of the E-Government Act directs that, every two years, “the Judicial Conference shall submit to Congress a report on the adequacy of [the privacy rules] to protect privacy and security.” The most recent prior report was submitted to Congress in 2024.

The 2026 Privacy Report to Congress covers the period from June 2024 to June 2026. Part I of the report describes the proposed privacy amendments, as well as the status of other privacy-related proposals to amend the Rules of Practice and Procedure. Part II of the report describes ongoing judiciary implementation efforts by the Committee on Court Administration and Case Management (CACM Committee), the Administrative Office of the U.S. Courts, and the FJC to protect privacy in court filings and opinions. Part III of the 2026 report discusses the FJC’s recent studies relating to privacy concerns in court filings.

The CACM Committee at its May 2026 meeting reviewed the draft 2026 Privacy Report to Congress and endorsed a recommendation from the Standing Committee to the Judicial Conference to approve the report (see Report of the Committee on Court Administration and Case Management, at Agenda E-6). The Standing Committee then approved the report at its meeting, to include any necessary changes to address the revisions to the privacy amendments approved by the Standing Committee or other minor stylistic or technical changes.

**Recommendation:** That the Judicial Conference approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law.

## FEDERAL RULES OF APPELLATE PROCEDURE

### *Amendments Recommended for Approval and Transmission*

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits. The Standing Committee unanimously approved the Advisory Committee’s recommendations, with minor revisions correcting the placement of a sentence in the committee note to Rule 15 and correcting cross-references in Rules 29 and 32(g) and the Appendix of Length Limits.

#### Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention)

The proposed amendments to Rule 15 address issues that may arise when a petition for review or enforcement of an agency decision is filed prematurely. In circuits that apply the “incurably premature” doctrine, if a pending motion to reconsider an agency decision makes the decision unreviewable in the court of appeals, then a new petition to review that agency decision must be filed in the court of appeals once the agency decision becomes final. The proposed amendments to Rule 15 would eliminate the need to refile the petition by adding a subdivision providing that the original petition for review becomes effective upon the agency’s disposition of the last reconsideration request. These changes would align Rule 15 with Rule 4(a)(4)(B)(i), which relates to the effectiveness of a notice of appeal filed after a judgment is entered or announced in the district court, but before the district court disposes of certain post-judgment motions authorized under the Federal Rules of Civil Procedure. The proposed amendment also makes clear that it applies only when the agency order is “otherwise reviewable.”

#### Rule 29 (Brief of an Amicus Curiae)

At its September 2025 session, the Judicial Conference approved final amendments to Rule 29, together with conforming amendments to Rule 32 and the Appendix of Length Limits, and authorized their transmittal to the Supreme Court with a recommendation that they be

adopted by the Court and transmitted to Congress in accordance with the law (JCUS-SEP 2025, p. 20). The amendments addressed several issues with respect to the contents of amicus briefs, particularly as to required disclosures of relationships between the amicus and parties or nonparties. In particular, the amendments would have required disclosure of whether a party or its counsel has a majority ownership interest in or majority control of an amicus. In addition, whereas the current rule requires disclosure of whether any nonparty (other than the amicus, its members, or its counsel) contributed money intended to fund preparation or submission of the brief, the proposed amendments would have limited this disclosure requirement to instances in which the amount contributed or pledged to be contributed is greater than \$100. The proposed amendments also would have added a broader disclosure concerning the background of the amicus—including its identity, history, experience, and interest. Finally, the proposed amendments would have imposed an express word limit of 6,500 words on amicus briefs at the initial merits stage rather than reference to “one half the maximum length authorized . . . for a party’s principal brief.”

After the amendments were transmitted to the Supreme Court, the Executive Committee of the Judicial Conference raised concerns about a provision in what was then proposed Rule 29(e) relating to disclosures as to new members of amicus organizations. That provision would have obligated amicus organizations to disclose brief-related contributions or pledges over \$100 not only from nonmembers, as the current rules require, but also from relatively new members who joined the organization within the previous 12 months. The Executive Committee noted that this provision could interfere with the privacy of those organizations and of their members, who may be chilled from contributing to their organization’s amicus briefs if they were required to announce their membership to the public. Additionally, after transmission to the Supreme Court, two other ambiguities or errors were separately identified in the proposed amendments:

first, a potential ambiguity in what was then proposed Rule 29(d) regarding what required disclosures a party or counsel must make when an amicus is required to disclose certain information but fails to do so; and second, an unrevised cross-reference in the Appendix of Length Limits. To address the Executive Committee's concerns and to make appropriate corrections, the Advisory Committee and the Standing Committee voted in March 2026 to withdraw the amendment package, and the proposed amendments were not forwarded to Congress.

After further consideration by the Advisory Committee and the Standing Committee, the revised proposed amendments to Rules 29 and 32 and the Appendix of Length Limits are presented for approval. Specifically, the Advisory Committee and Standing Committee removed the requirement of new-member contribution disclosure from the proposed amendments to Rule 29 and corrected the identified ambiguity by clarifying that the requirement that parties and counsel disclose information that an amicus must but has failed to disclose does not extend to information about nonmember contributions. The Advisory Committee further determined that republication of the amendments to Rule 29, with the conforming changes to Rule 32 and the Appendix of Length Limits, was not required given the extensive public comment on the issue of member disclosures and the technical nature of the additional revisions.

The remainder of the proposed amendments to Rule 29, as revised, are the same.

Rule 32 (Form of Briefs, Appendices, and Other Papers) and Appendix of Length Limits

The proposed amendment to Rule 32 conforms Rule 32(g)'s cross-references to the updated sections of amended Rule 29. Similarly, the proposed amendment to the Appendix of Length Limits conform the length limits for amicus briefs identified in the Appendix to the proposed amendment to Rule 29.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

### ***Rules Approved for Publication and Comment***

#### **Rule 25 (Filing and Service)**

As part of the proposed SRL rules package, the Advisory Committee on Appellate Rules recommended that a proposed amendment to Rule 25 be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

The proposed amendments to Appellate Rule 25 provide that an unrepresented party is presumptively authorized to use the court's electronic-filing system to file documents in the case and receive notice of case filings. The proposed amendments further provide that a court may set reasonable conditions on an unrepresented party's access to the court's electronic-filing system, but a court may not bar all unrepresented parties from using a court's electronic-filing system unless the court either includes reasonable exceptions to the prohibition or permits unrepresented parties to use another electronic method for filing documents and for receiving notice of court filings and orders. Finally, the proposed amendment would eliminate the requirement for an unrepresented party (who files other than through the court's electronic-filing system) to make a separate (paper) service on a litigant who is registered to receive notice of case activity from the court's electronic-filing system. Service by the notice of case activity is not effective if the filer learns that the filing did not reach the person to be served. In addition, the proposed amendment provides that a court may require by local rule or court order a different method of service for filings under seal and/or filings that initiate a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21.

### ***Information Items***

The Advisory Committee met on April 16, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continuing its consideration of possible amendments to Rule 25 (Filing and Service) to require complete redaction of taxpayer identifying information and the use of pseudonyms for minors, so that some of the exemptions from privacy requirements at the trial level (Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1) would not carry forward on appeal. The Advisory Committee also continues its consideration of potential amendments to Rule 4 (Appeal as of Right—When Taken) regarding reopening the time to appeal, Rule 8 (Stay or Injunction Pending Appeal) regarding limits on administrative stays, and a possible new Rule 12.2 regarding intervention on appeal, as well as the treatment of tribes in the Appellate Rules. Finally, the Advisory Committee considered several new issues including a possible amendment to Rule 28 (Briefs) regarding introductions in briefs.

### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

#### ***Amendments Recommended for Approval and Transmission***

The Advisory Committee on Bankruptcy Rules recommended for final approval amendments to Bankruptcy Rule 2002 and amendments to Official Forms 101 and 106C. The Standing Committee unanimously approved the Advisory Committee’s recommendations.

#### **Rule 2002 (Notices)**

The proposed amendment to Rule 2002(o) would simplify the caption of most notices given under Rule 2002 by requiring that they include only the information required by Form 416B (the court’s name, the debtor’s name, the case number, the chapter under which the case was filed, and a brief description of the document’s character) rather than the more extensive information required under Rule 1005. As noted in the 2026 Privacy Report to

Congress, this change would mean that most Rule 2002 notices would no longer be required to include the last 4 digits of the debtor's social-security or individual taxpayer-identification number.

Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy)

The proposed amendment to Official Form 101 relates to the prompt in Question 4 in Part 1 and clarifies that the question is attempting to elicit only the Employer Identification Number (EIN), if any, of the individual filing for bankruptcy and not the EIN of any other person (such as the debtor's employer). The modification will help debtors avoid the error of providing their employer's EIN. Because multiple debtors have the same employer, deterring such debtors from erroneously providing their employer's EIN will avoid triggering an erroneous automated report that the debtor has engaged in repeat filings.

Official Form 106C (Schedule C: The Property You Claim as Exempt)

The proposed amendment to Form 106C requires the debtor to add the total dollar value of the exemptions with a specific amount claimed under Column C in the form.

**Recommendation:** That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
- b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

***Rules Approved for Publication and Comment***

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Bankruptcy Rules 2003, 5005, 8011, 9006(f), 9036, and 9037 with a recommendation that they

be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 2003 (Meeting of Creditors or Equity Security Holders)

The proposed amendments to Rule 2003 would allow more time to convene the meeting of creditors in chapter 12 and 13 cases, extending the deadline in chapter 12 cases from 35 to 60 days, and in chapter 13 cases, from 50 to 60 days, after the order for relief. The proposed amendments would also expressly authorize meetings of creditors to be “conducted in person or remotely” and would allow the U.S. trustee to designate in which manner a meeting would be conducted.

Rules 5005 (Filing Papers and Sending Copies to the United States Trustee), 8011 (Filing and Service; Signature), 9006(f) (Computing and Extending Time; Motions), and 9036 (Electronic Notice and Service)

As part of the SRL rules package, the proposed amendments to Rules 5005 and 8011 would provide that unrepresented individuals are presumptively authorized to use the court's electronic-filing system to file documents. The proposed amendments would permit courts to set reasonable conditions and restrictions on access by unrepresented individuals to the court's electronic-filing system. However, the proposed amendments would not permit a bar on all unrepresented individuals from using a court's electronic-filing system, unless the court also either includes reasonable exceptions to the prohibition, or permits unrepresented individuals to use another electronic method for filing documents and an alternative electronic means for receiving notice of court filings and orders.

In addition, the proposed amendments to Rule 8011 would make service via a court's electronic-filing system the primary means of service. The proposed amendments would eliminate the requirement of separate (paper) service (of papers filed other than through the court's electronic-filing system) on a litigant who is registered to receive a notice of case activity

from the court's electronic-filing system. However, service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide an order or local rule that the document be served by other means.

The proposed amendments to Rule 9006 would change a cross-reference to conform the rule to match proposed amendments to Civil Rule 5.

The proposed amendments to Rule 9036 would address filings by unrepresented individuals, providing that because documents filed in paper form are uploaded by the court into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. In addition, Rule 9036(d), like Rule 8011(c)(3), deals with the impact of delays between filing and uploading to the court's electronic-filing system.

#### Rule 9037 (Protecting Privacy for Filings)

As part of the package of proposed privacy amendments, the proposed amendments to Bankruptcy Rule 9037 share two features with the proposed amendments to Criminal Rule 49.1 and Civil Rule 5.2. First, the proposed amendments would make clear that the redaction requirement applies to attachments, exhibits, and all other documents in a court filing. Second, the proposed amendments would require the use of pseudonyms for minors. Because of the unique context of bankruptcy proceedings and practice, the proposed amendments do not adopt the complete redaction requirement for taxpayer identifying information or the extension of the redaction requirement to EINs that is proposed in the privacy amendments to the civil and criminal rules.

### ***Information Items***

The Advisory Committee on Bankruptcy Rules met on April 15, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several matters, including continued consideration of a suggestion to amend Rule 9031 (Using Masters Not Authorized) to permit the use of special masters in bankruptcy cases and new suggestions regarding possible amendments to Rule 4004 (Granting or Denying a Discharge) and possible amendments to Form 106C (Schedule C: The Property You Claim as Exempt (individuals)).

## **FEDERAL RULES OF CIVIL PROCEDURE**

### ***Rules Recommended for Approval and Transmission***

The Advisory Committee on Civil Rules recommended for final approval proposed amendments to Civil Rules 7.1, 26, 41(a), 45(b), 45(c), and 81. After minor clarifying revisions to the proposed amendments to Rules 26 and 45(b), the Standing Committee unanimously approved the Advisory Committee's recommendations.

#### **Rule 7.1 (Disclosure Statement)**

The proposed amendment to the disclosures required under Rule 7.1(a)(1) requires any party or would-be intervenor that is a private business organization to disclose any publicly held business organization that “directly or indirectly” owns 10 percent or more of the party or intervenor. The proposal responds to concerns raised that the current rule, which requires disclosure only of “any parent corporation and any publicly held corporation owning 10 percent or more of its stock,” may result in nondisclosure of a “grandparent” corporation. This change is intended to assist judges in evaluating if recusal is appropriate consistent with updated guidance in Committee on Codes of Conduct Advisory Opinion No. 57, which explains that corporate ownership of at least 10 percent of a party creates a rebuttable presumption of parental control and that a judge must recuse if they “conclude that a party is controlled by a corporation in which

the judge owns stock.” Another change substitutes the term “business organization” for the word “corporation” to clarify that the disclosure requirement applies to different forms of business entities.

#### Rule 26 (Duty to Disclose; General Provisions Governing Discovery)

The proposed amendment to Rule 26(a) relating to pretrial disclosures requires disclosure of the party’s expectation as to whether each of its witnesses’ testimony will be in person or remote. The Committee made a minor revision to the language in the proposed amendment to clarify that it relates only to the party’s expectations as to whether testimony will be in person or remote at the time the disclosure is made.

#### Rule 41(a) (Dismissal of Actions)

The proposed amendments to Rule 41(a) clarify that a plaintiff may obtain a voluntary dismissal of one or more claims raised in a complaint without dismissing the entire action. This change responds to decisions in some courts interpreting the current language to mean that only an entire case, that is, all claims against all defendants, or only all claims against one or more defendants, could be dismissed under the rule. The proposed amendments also provide that a stipulation of dismissal need be signed only by parties who remain in the action at the time of the dismissal.

#### Rule 45(b) (Subpoena—Service)

The proposed amendment to Rule 45(b) clarifies how a subpoena for testimony may be served and whether the witness fee must be tendered simultaneously with service. The proposed amendment borrows two methods of service from Rule 4(e)(2)’s methods for serving a complaint on an individual—personal service or leaving a copy at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there. The proposed amendment also adds an additional method of service through the mail or commercial carrier if confirmation

of actual receipt can be provided, and further authorizes the court to approve another means of service for good cause. The proposed amendment also includes two other changes: (1) relaxing the current requirement that witness fees be tendered at the time of service, and (2) providing a 14-day notice period (subject to shortening by the court for good cause) when the subpoena requires attendance at a trial, hearing, or deposition. The Committee made a minor revision to the language in the proposed amendment to move clarifying language in the committee note into the rule text relating to confirmation of actual receipt when a subpoena is served by mail or commercial carrier.

#### Rule 45(c) (Subpoena—Remote Testimony)

The proposed amendment to Rule 45(c) adds a new subsection (c)(2) to address subpoenas for remote trial testimony. The proposed new subsection clarifies that the “place of attendance for remote testimony is the location where the person is commanded to appear in person.” Under new Rule 45(c)(2), the court’s subpoena power for in-court remote testimony extends nationwide so long as the subpoena does not command the witness to travel farther than the distance authorized under Rule 45(c)(1). The proposed amendment does not affect the standards governing whether to permit in-court remote testimony.

#### Rule 81 (Jury Demand After Removal)

The proposed amendment to Rule 81(c) would provide that a jury demand must always be made after removal if no such demand was made before removal and a party desires a jury trial. It would also set the time limit to make the required demand.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Civil Rules submitted proposed amendments to Civil Rule 5 with conforming amendments to Rule 6(d), and Civil Rule 5.2, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

#### **Rules 5 (Serving and Filing Pleadings and Other Papers) and 6(d) (Computing and Extending Time; Time for Motion Papers)**

As part of the SRL rules package, the proposed amendments to Rule 5 are generally consistent with the proposed amendments to the Bankruptcy Rules and the Criminal Rules and would presumptively allow unrepresented parties in civil cases to use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or local rule provides otherwise. The courts would be expressly authorized to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice.

The proposed amendments to Rule 5 retain the existing authority to require electronic filing by a self-represented litigant by case-specific order or by local rule with reasonable exceptions. Additionally, Rule 5 would state that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. Finally, proposed amended Rule 5 would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the

court's electronic-filing system, and deals with the impact of delays between filing and uploading to the court's electronic-filing system.

The proposed amendments to Rule 6 would conform cross-references to Rule 5.

#### Rule 5.2 (Privacy Protections for Filings Made with the Court)

As part of the package of proposed privacy amendments, the proposed amendments to Civil Rule 5.2 are generally consistent with the changes to Criminal Rule 49.1 and require complete redaction of social security numbers (SSNs) and individual taxpayer identification numbers (ITINs), as well as EINs and adoption taxpayer identification numbers in civil cases. The proposed amendments to Rule 5.2 would further require the use of pseudonyms when a filed document references a person who is a minor at the time of filing. Finally, the proposed amendments would clarify that the redaction requirements apply to all documents in the court filing, including exhibits and attachments. The proposed committee notes make clear, however, that existing exemptions to the redaction requirement, or additional redactions required pursuant to a protective order, are not altered by the proposed amendment.

#### ***Information Items***

The Advisory Committee on Civil Rules met on April 14, 2026. In addition to the matters discussed above, the Advisory Committee continued to discuss proposals to require disclosures regarding third-party litigation funding and to amend Rule 43 (Taking Testimony) to relax the standards governing permission for remote testimony. The Advisory Committee also continues to study suggestions relating to Rule 23 (Class Actions), Rule 35 (Physical and Mental Examinations), and Rule 58's "Separate Document" requirement.

The Advisory Committee decided to remove from its agenda proposals concerning Fair Labor Standards Act collective actions, artificial intelligence "hallucinations," algorithmic

spoliation of discoverable material, protective order templates, and mandatory assistance for self-represented litigants.

## **FEDERAL RULES OF CRIMINAL PROCEDURE**

### ***Rules Recommended for Approval and Transmission***

The Advisory Committee on Criminal Rules recommended for final approval proposed amendments to Criminal Rule 17. The Standing Committee unanimously approved the Advisory Committee's recommendation after rephrasing proposed paragraph (c)(6), making a minor stylistic change to the rule, and clarifying the committee note (as described below).

#### **Rule 17 (Subpoena)**

The proposed amendments focus primarily on Rule 17(c), which governs subpoenas for production. The proposed amendments clarify that third-party subpoenas for production may be issued for proceedings in addition to trial. This includes proceedings where such subpoenas are most likely to be needed or are already used regularly in many districts, as well as proceedings for which there is statutory or rule authority for parties to present evidence (i.e., detention, revocation, suppression, and sentencing). With the court's permission, the rule also authorizes such subpoenas for other evidentiary hearings.

The proposed amendments also set forth a modified version of the test announced in *Nixon v. United States*, 418 U.S. 683 (1974), as the standard for the issuance of third-party subpoenas for production. The modified test as proposed is intended to provide both prosecution and defense with an adequate and more uniform opportunity across districts to obtain needed evidence from third parties.

Other proposed amendments to Rule 17 clarify when a party must file a motion requesting the court's permission to serve a subpoena for production of documents: when the subpoena requests personal or confidential information about a victim, when the subpoena is

requested by a self-represented party, or when a local rule or court order requires a motion.

When no motion is required, a party may serve a subpoena for production on an ex parte basis.

When a motion is required, the proposed amendments provide that the court “must” allow a party to file it ex parte if good cause is shown. The proposed amendments further address ex parte subpoena practice by setting a default rule that a party need not disclose its subpoena to another party if no motion is required.

The proposed amendments also state the circumstances under which the recipient of the subpoena must produce the designated items to the court rather than directly to the requesting party. In addition, the amendments address the disclosure of material produced in response to a subpoena, disapproving the practice in some courts in which all produced items must be provided to the opposing party, regardless of whether the items would otherwise be subject to discovery. By providing that the rule does not require the disclosure of produced items to a party that did not request the subpoena, the proposed amendments seek to ensure that Rule 17 is not interpreted to disturb the law regulating disclosure between the parties found in Rule 16 and elsewhere. Finally, the proposed amendments clarify, as to each subdivision of Rule 17, whether it applies to subpoenas for testimony, subpoenas for production, or both.

The Standing Committee rephrased proposed paragraph (c)(6) to make clear that Rule 17 does not require disclosure of produced items to a party that did not request them and does not alter existing disclosure and discovery requirements. It revised the corresponding section of the committee note to clarify that the amendments to Rule 17 do not modify existing law regarding the timing of any disclosures.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Criminal Rules submitted proposed amendments to Rule 11 (with conforming amendments to Rule 32), Rule 49 (with conforming amendments to Rule 45(c)), and Rule 49.1, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations, with revisions to clarify language in the text of the rule (as described below).

#### **Rule 11 (Pleas)**

Rule 11(b)(1)(M) requires the court to advise the defendant at the plea proceeding of “the court’s obligation to . . . consider . . . possible departures under the Sentencing Guidelines.” However, the 2025 amendments to the U.S. Sentencing Commission Guidelines Manual deleted most of the provisions in Chapter Five, Part K (Departures), and revised U.S.S.G. § 1B1.1(a) to eliminate the requirement that the court consider departures at step two of a three-step sentencing process. As revised, § 1B1.1 now provides for a two-step process, considering at step one “the kinds of sentence and the guideline range as set forth in the guidelines,” and at step two, “other applicable factors in 18 U.S.C. § 3553(a).” The proposed amendment to Rule 11(b)(1)(M) would remove the reference to “possible departures under the Sentencing Guidelines,” thus reflecting the current two-step sentencing process. The Standing Committee revised the proposed rule text to ensure that defendants would continue to be advised of the court's obligation to calculate and consider the sentencing-guideline range.

#### **Rule 32 (Sentencing and Judgment)**

Rule 32(h) requires the court to provide the parties with reasonable notice of a possible departure from the Sentencing Guidelines range on a ground not identified for departure in the presentence report or in a party's prehearing submission. Because the Sentencing Guidelines no longer employ the concept of departures, the proposed

amendment to Rule 32 would eliminate subdivision (h). To avoid re-lettering the remainder of the rule, subdivision (h) would be reserved.

#### Rules 49 (Serving and Filing Papers) and 45(c) (Computing and Extending Time)

As part of the SRL rules package, the proposed amendments to Rule 49 and conforming amendments to Rule 45(c) are generally consistent with the proposed amendments to the Bankruptcy and Civil Rules regarding electronic filing and service by self-represented litigants. The proposed amendments to Rule 49 would allow self-represented parties to use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or local rule provides otherwise. They would expressly authorize courts to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice. Unlike the Bankruptcy and Civil Rules, and in accordance with the current Criminal Rule, proposed amended Rule 49 would not authorize a court to require self-represented litigants to file electronically.

The proposed Rule 49 amendments would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the court's electronic-filing system, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. The amendments also provide that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions.

Criminal Rule 45(c) would be amended to conform cross-references to Rule 49.

Criminal Rule 49.1 (Privacy Protections for Filings Made with the Court)

As part of the package of proposed privacy amendments, the proposed amendments to Rule 49.1 addresses two privacy-related issues—redaction of taxpayer-identification information and the use of pseudonyms for minors—in criminal filings that are available to the public through the judiciary’s electronic-filing system. These proposed amendments are consistent with the proposed amendments to the parallel privacy provisions in Civil Rule 5.2.

First, the proposed amendment requires complete redaction of taxpayer identifying information rather than redaction of all but the last four numbers. Second, the proposed amendments expand the covered taxpayer identifying information that must be redacted to include not only SSNs and ITINs, but also EINs. Third, the proposed amendment clarifies that the redaction requirement applies not only to pleadings and briefs, but also any attachments and exhibits. Fourth, the proposed amendment changes the requirement to provide initials for minors when they are referenced in filings and would now require the use of a pseudonym.

***Information Items***

The Advisory Committee on Criminal Rules met on April 29, 2026. In addition to the matters discussed above, the Advisory Committee continued its discussions regarding proposed amendments to Rule 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District). The Advisory Committee also formed a new subcommittee to consider proposed revisions to Rule 15, which governs depositions.

## FEDERAL RULES OF EVIDENCE

### *Rules Recommended for Approval and Transmission*

The Advisory Committee on Evidence Rules recommended for final approval proposed amendments to Evidence Rule 609. The Standing Committee unanimously approved the Advisory Committee’s recommendations.

#### Rule 609 (Impeachment by Evidence of a Criminal Conviction)

The proposed amendment to Rule 609(a)(1)(B) addresses the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant’s character for truthfulness. Under the proposed amendment, evidence of a non-falsity based prior conviction would not be admissible to impeach a criminal defendant unless its probative value “substantially” outweighs the risk of unfair prejudice to the defendant. The proposed amendment would result in the provision becoming more exclusionary, because many courts have erred in allowing broad impeachment with prior non-falsity based convictions, contrary to the original intent of the rule—a problem compounded by the fact that a ruling admitting convictions is not appealable unless the defendant takes the stand and gets impeached. With this amendment, the Advisory Committee aims to reduce the risk that Rule 609 will unduly deter criminal defendants from exercising their right to testify. In addition, the proposed amendment to Rule 609(b) would clarify that the 10-year time period for the rule’s applicability is measured from the date of conviction or end of confinement, whichever is later, until the date of trial.

In August 2026, the Executive Committee, during its preparation of the proposed discussion and consent calendars for the September 2026 Judicial Conference session, called the Standing Committee’s attention to several concerns with the proposed amendments and

requested further examination. The Executive Committee's concerns relate primarily to the explanations in the committee note for inserting the word "substantially" into the rule. If changes are made to the committee note to address those concerns, then the question becomes what justifies the proposed change to the rule. These concerns include the following:

- First, the Executive Committee raised concerns that Congress in enacting Rule 609(a) did not impose "a reverse balancing test" as stated in the committee note. Instead, Congress imposed a neutral balancing test allowing admissibility "if the probative value of the evidence *outweighs* its prejudicial effect" (emphasis added). In the Executive Committee's view, the proposed amendment would create a presumption of inadmissibility contrary to the intent of Congress reflected in the text of the rule adopted in 1975.
- Second, the Executive Committee raised concerns about language in the proposed committee note that the new proposed test "is more protective so as not to infringe on the accused's constitutional right to testify." The Executive Committee does not believe that the Supreme Court has held that impeachment by prior felony conviction infringes on a constitutional right to testify.
- Third, the Executive Committee raised concerns about the fourth paragraph of the proposed committee note, which may be perceived as setting forth rule-like guidance rather than explaining the proposed rule. Specifically, the paragraph purports to guide district courts on how to admit "evidence of a criminal conviction" without a rule to support the guidance.

In response to these concerns, the Standing Committee in August 2026 unanimously voted to withdraw the recommendation and to return the proposal to the

Advisory Committee on Evidence Rules to allow it to further consider the proposed amendments in light of these concerns.

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 902 and 104 with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations with a minor revision to Rule 104.

#### **Rule 902 (Evidence That Is Self-Authenticating)**

The proposed amendment to Rule 902 would add Indian Tribes and Nations to the list of entities in Rule 902(1)(A) whose public records are self-authenticating, as the Advisory Committee saw no reason to differentiate the Tribes and Nations from the many other government entities whose records are currently self-authenticating under the rule.

#### **Rule 104 (Preliminary Questions)**

The proposed amendment to Rule 104(a) would codify the holding in *Bourjaily v. United States*, 483 U.S. 171, 175 (1987), that preliminary questions of fact under Rule 104(a) are to be determined by a preponderance of the evidence. The proposed amendments to Rule 104(b) would eliminate the concept of “conditional” relevance and provide that the standard of proof for all questions of relevance is whether a jury could reasonably find that the evidence has a tendency to make a fact of consequence more or less probable than without the evidence. In addition, the proposed amendments would eliminate the phrase “proof sufficient to support a finding” from Rule 104(b); but the rule does not change the standard of proof established by the Supreme Court in *Huddleston v. United States*, 485 U.S. 681, 687 (1988), that the court must decide whether the “jury could reasonably find” that the evidence is relevant.

***Information Items***

The Advisory Committee met on May 7, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continued consideration of a possible New Rule 707 to address evidence that is the product of artificial intelligence and a possible new subsection (c) in Rule 901 (Authenticating or Identifying Evidence) to address deepfake evidence. Finally, the Advisory Committee considered the implications of *Smith v. Arizona* on Rule 703 (Bases of an Expert’s Opinion Testimony).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James C. Dever III". The signature is fluid and cursive, with the first name "James" and last name "Dever" being the most prominent parts.

James C. Dever III, Chair

Paul J. Barbadoro  
Todd Blanche  
Elizabeth J. Cabraser  
Louis A. Chaiten  
Colm F. Connolly  
Joan N. Ericksen  
Stephen A. Higginson

Edward M. Mansfield  
Troy A. McKenzie  
Andrew J. Pincus  
Allison J. Rushing  
Amul Thapar  
Bart H. Williams

\* \* \* \* \*

# TAB 6

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

**Effective (no earlier than) December 1, 2026**

Current Step in REA Process:

- Transmitted to Congress (Apr 2026)

REA History:

- Transmitted to Supreme Court (Oct 2025)
- Approved by the Judicial Conference (Sept 2025)
- Approved by Standing Committee (June 2025 unless otherwise noted)
- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

| Rule      | Summary of Proposal                                                                                                                                                                                                                                                                                                                                                | Related or Coordinated Amendments |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| AP Form 4 | The proposed amendments to Form 4 simplify the form to reduce the burden on individuals seeking <i>in forma pauperis status</i> (IFP) while providing the information that courts of appeals need and find useful when deciding whether to grant IFP status.                                                                                                       |                                   |
| BK 1007   | The proposed amendments to Rule 1007(c)(4) eliminate the deadlines for filing certificates of completion of a course in personal financial management.                                                                                                                                                                                                             | BK 9006                           |
| BK 3018   | The proposed amendments to Rule 3018(c) allow for more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case.                                                                                                                                                                                |                                   |
| BK 5009   | The proposed amendments to Rule 5009(b) provide an additional reminder notice to debtors that the case may be closed without a discharge if the debtor's certificate of completion of a personal financial management course has not been filed.                                                                                                                   |                                   |
| BK 9006   | The proposed amendments conform Rule 9006 to the proposed amendments to Rule 1007.                                                                                                                                                                                                                                                                                 | BK 1007                           |
| BK 9014   | The proposed amendments to Rule 9014(d) relax the standard for allowing remote testimony in contested matters to "cause and with appropriate safeguards." The existing rule imports Civil Rule 43(a), requiring a showing of "good cause in compelling circumstances and with appropriate safeguards") and applies in contested matters and adversary proceedings. | BK 7043; 9017                     |
| BK 9017   | The proposed amendments to Rule 9017 remove the reference to Civil Rule 43 to conform to the proposed amendments to Rule 9014(d) and new Rule 7043.                                                                                                                                                                                                                | BK 7043; 9014(d)                  |
| BK 7043   | New Rule 7043 provides that the standard set forth in Civil Rule 43 applies to remote testimony in adversary proceedings.                                                                                                                                                                                                                                          | BK 9014; 9017                     |
| EV 801    | The proposed amendments to Rule 801(d)(1)(A) provide that all prior inconsistent statements admissible for impeachment are also admissible as substantive evidence, subject to Rule 403.                                                                                                                                                                           |                                   |

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

| Effective (no earlier than) December 1, 2027                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <p><u>Current Step in REA Process:</u></p> <ul style="list-style-type: none"> <li>Approved by Standing Committee (June 2026 unless otherwise noted)<sup>1</sup></li> </ul> <p><u>REA History:</u></p> <ul style="list-style-type: none"> <li>Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)</li> <li>Approved for publication by Standing Committee (June 2025 unless otherwise noted)</li> </ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                     |
| Rule                                                                                                                                                                                                                                                                                                                                                                                                                         | Summary of Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Related or Coordinated Amendments   |
| AP 15                                                                                                                                                                                                                                                                                                                                                                                                                        | The proposed amendment to Rule 15 would remove the requirement that a party who files a petition for review of an agency order must refile or amend the petition after filing a request for rehearing before the agency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                     |
| AP 29                                                                                                                                                                                                                                                                                                                                                                                                                        | The proposed amendments to Rule 29 set forth in renumbered Rule 29(a)-(d) would expand the disclosure obligations in amicus briefs filed at the initial stage of an appeal. Among other things, the amicus brief would be required to disclose whether the amicus is newly created and other information relating to its relationship to a party (such as whether a party has a majority ownership interest in the amicus) and nonparties (such as earmarked contributions to the amicus of more than \$100). Rule 29(e) incorporates most of these expanded disclosures to amicus briefs filed during the rehearing stage. The proposed amendments also set the length limit for amicus briefs at the initial stage to a specific word limit of 6,500 words. | AP 32;<br>Appendix of Length Limits |
| AP 32                                                                                                                                                                                                                                                                                                                                                                                                                        | The proposed amendments to Rule 32 conform to the proposed amendments to Rule 29.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | AP 29;<br>Appendix of Length Limits |
| AP Appendix of Length Limits                                                                                                                                                                                                                                                                                                                                                                                                 | The proposed amendments to the Appendix of Length Limits conform to the proposed amendments to Rule 29.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | AP 29; 32                           |
| BK 2002                                                                                                                                                                                                                                                                                                                                                                                                                      | The proposed amendment to Rule 2002(o) would provide that the caption of a notice given under Rule 2002 must include the information that Official Form 416B requires.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |
| BK Official Form 101                                                                                                                                                                                                                                                                                                                                                                                                         | The proposed amendment to Question 4 in Part 1 of Form 101 would clarify that the requested EIN (employer identification number) is the debtor's EIN and not the EIN of any separate legal entity such as an employer, corporation, partnership, or LLC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                     |
| BK Official Form 106C                                                                                                                                                                                                                                                                                                                                                                                                        | The proposed amendments to Form 106C would amend Form 106C to provide a total of the specific-dollar exemption amounts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |

<sup>1</sup> Proposed amendments to Evidence Rule 609 were approved by the Standing Committee in June 2026, but approval was subsequently withdrawn in August 2026 to allow the Advisory Committee on Evidence Rules to further consider the proposed amendments.

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

**Effective (no earlier than) December 1, 2027**

Current Step in REA Process:

- Approved by Standing Committee (June 2026 unless otherwise noted)<sup>1</sup>

REA History:

- Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)
- Approved for publication by Standing Committee (June 2025 unless otherwise noted)

| Rule   | Summary of Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Related or Coordinated Amendments |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| CR 17  | The proposed amendments to Rule 17 address third-party subpoenas for production. Among other things, the proposed amendments would expand the availability of such subpoenas for proceedings other than trial; alter the standard for when such subpoenas may be obtained; and address when a motion and order are required for third-party subpoenas and when a party may make its request <i>ex parte</i> . The proposed amendments would further address the place of production, procedures when information regarding a victim is sought, and other issues.                                                                                                                                                                                                                                                   |                                   |
| CV 7.1 | The proposed amendments to Rule 7.1(a) would substitute “business organization” for the term “corporation” and require disclosure of business organizations that “directly or indirectly own 10% or more of” a party rather than disclosure based on ownership of “stock” in a party.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                   |
| CV 26  | The proposed amendment to Rule 26 would require parties to state in their pretrial disclosures whether they expect any witness they call at trial to testify in person or remotely.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | CV 45(c)                          |
| CV 41  | The proposed amendments to Rule 41(a) would clarify that the rule permits the dismissal of one or more claims in an action rather than only allowing dismissal of the entire action and that only the signatures of active parties who remain in a case are required to sign a stipulation of dismissal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                   |
| CV 45  | <p>The proposed amendments to Rule 45(b) would specify that the methods for service of a subpoena are personal delivery, leaving it at the person’s abode with someone of suitable age and discretion who resides there, sending it by mail or commercial carrier if it includes confirmation of receipt, or another method authorized by the court for good cause. The amendment would also add a default 14-day notice period and provide that the tender of witness fees is not required to effect service of the subpoena so long as the fees are tendered upon the witness’s appearance.</p> <p>The proposed amendments to Rule 45(c) would add a “place of compliance” for subpoenas for remote testimony and would specify that it is “the location where the person is commanded to appear in person.”</p> | CV 26                             |
| CV 81  | The proposed amendment to Rule 81(c) would clarify whether and when a jury demand must be made after removal and makes clear that Rule 38 applies to removed cases. The proposed amendment also removes the prior exemption from the jury demand requirement in cases removed from state courts in which an express demand for a jury trial is not required.                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                   |

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

**Effective (no earlier than) December 1, 2028**

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

| <b>Rule</b>                 | <b>Summary of Proposal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Related or Coordinated Amendments</b>      |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| AP 25                       | The proposed amendments to Rule 25 would provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to file documents electronically and receive electronic notices of case activity. The proposed amendments would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system.                                                                                                                                                                                                                                                                                                                                                              | BK 5005, 8011, 9006, 9036; CV 5, 6; CR 45, 49 |
| BK 2003                     | The proposed amendments would allow more time to convene the meeting of creditors in chapter 12 and 13 cases, extending the deadline in chapter 12 cases from 35 to 60 days, and in chapter 13 cases, from 50 to 60 days, after the order for relief. The proposed amendments would also expressly authorize meetings of creditors to be "conducted in person or remotely" and would allow the U.S. Trustee to designate in which manner a meeting would be conducted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                               |
| BK 5005, 8011, 9006, & 9036 | The proposed amendments to Rules 5005 and 8011 would provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system in bankruptcy cases and bankruptcy appeals, subject to any reasonable conditions on access that a court may establish. In addition, the proposed amendments to Rule 8011 and Rule 9036 would eliminate the requirement of separate (paper) service on a litigant who is registered to receive electronic notices of case activity. Further, the proposed amendments would provide that if a document is filed under seal, a court may provide an order or local rule that the document be served by other means. In addition, Rule 8011(c)(3) and Rule 9036(d) would deal with the impact of delays between filing and uploading to the court's electronic-filing system. The proposed amendments to Rule 9006 would change a cross-reference to conform to the proposed amendments to Civil Rule 5. | AP 25; CV 5, 6; CR 45, 49                     |
| BK 9037                     | The proposed amendments to Rule 9037 would require the use of pseudonyms rather than initials when referencing minors in bankruptcy cases, and would clarify that the redaction and pseudonym requirements apply to exhibits and attachments to electronically filed court documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | CV 5.2; CR 49.1                               |
| CV 5 & 6                    | The proposed amendments provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to both file documents electronically and receive notices of case activity and would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | AP 25; BK 5005, 8011, 9006, 9036; CR 45, 49   |

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

**Effective (no earlier than) December 1, 2028**

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

| <b>Rule</b> | <b>Summary of Proposal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Related or Coordinated Amendments</b>  |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
|             | registered to receive a notice of case activity from the court’s electronic-filing system.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                           |
| CV 5.2      | The proposed amendments would require complete redaction of taxpayer identifying information, to include social security numbers, taxpayer identification numbers, employer identification numbers, and adoption taxpayer identification numbers, and would require the use of pseudonyms rather than initials when referencing minors. The proposed amendments would also clarify that these rules apply to exhibits and attachments to electronically filed court documents.                                                                                                    | BK 9037; CR 49.1                          |
| CV 55       | The proposed amendments to Rule 55(a) and (b)(1) would remove the requirement that the clerk “must” enter a default or default judgment, respectively, whenever the rules empower the clerk to do so. Instead, the proposed amendment would provide that the clerk “may either” enter default or default judgment, respectively, “or refer the matter to the court for directions.” The proposed amendment also changes the reference to “the party” in Rule 55(b)(2) to “a party” for greater clarity.                                                                           |                                           |
| CR 11       | The proposed amendments to Rule 11(b)(1)(M) would remove the requirement that the court inform the defendant of possible departures under the U.S. Sentencing Guidelines in light of 2025 changes to the Guidelines eliminating most provisions on departures and revising the sentencing process.                                                                                                                                                                                                                                                                                | CR 32                                     |
| CR 32       | The proposed amendment to Rule 32 would eliminate in its entirety subdivision (h) regarding possible departure from the U.S. Sentencing Guidelines in light of the 2025 changes to the Guidelines.                                                                                                                                                                                                                                                                                                                                                                                | CR 11                                     |
| CR 45 & 49  | The proposed amendments to Rule 45 and Rule 49 provide that an unrepresented party is presumptively authorized to use a court’s electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to both file documents electronically and receive notices of case activity and would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is registered to receive a notice of case activity from the court’s electronic-filing system. | AP 25; BK 5005, 8011, 9006, 9036; CV 5, 6 |
| CR 49.1     | The proposed amendments require complete redaction of taxpayer identifying information, to include social security numbers, taxpayer identification numbers, employer identification numbers, and adoption taxpayer identification numbers in criminal cases, and would require the use of pseudonyms rather than initials when referencing minors. The proposed                                                                                                                                                                                                                  | BK 9037; CV 5.2                           |

## PROPOSED AMENDMENTS TO THE FEDERAL RULES

**Effective (no earlier than) December 1, 2028**

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

| Rule   | Summary of Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Related or Coordinated Amendments |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
|        | amendments would also clarify that these rules apply to exhibits and attachments to electronically filed court documents.                                                                                                                                                                                                                                                                                                                                                                 |                                   |
| EV 104 | The proposed amendments to Rule 104(a) would codify the holding in <i>Bourjaily v. United States</i> that preliminary questions of fact are to be determined by a preponderance of the evidence standard. The proposed amendments to Rule 104(b) would eliminate the concept of “conditional” relevance and provide that to establish that evidence is relevant, the proponent must demonstrate that the trier of fact could reasonably find that requirements of Rule 401 have been met. |                                   |
| EV 902 | The proposed amendment to Rule 902(1)(A) would add Indian Tribes and Nations to the list of entities whose signed and sealed public records are self-authenticating.                                                                                                                                                                                                                                                                                                                      |                                   |

# TAB 7

**Legislation That Directly or Effectively Amends the Federal Rules  
119th Congress  
(January 3, 2025–January 3, 2027)**

Ordered by most recent legislative action; most recent first

| Name                                                               | Sponsors & Cosponsors                                                                                                                                                               | Affected Rules   | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Legislative Actions Taken                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Sunshine in the Courtroom Act of 2025</b>                       | <a href="#">S. 1133</a><br><i>Sponsor:</i><br>Grassley (R-IA)<br><br><i>Cosponsors:</i><br>Klobuchar (D-MN)<br>Durbin (D-IL)<br>Blumenthal (D-CT)<br>Markey (D-MA)<br>Cornyn (R-TX) | CR 53            | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/s1133/BILLS-119s1133is.pdf">https://www.congress.gov/119/bills/s1133/BILLS-119s1133is.pdf</a><br><br><b>Summary:</b><br>Would permit court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.                                                                                                                                                       | <ul style="list-style-type: none"> <li>6/23/2026: Placed on Senate Legislative Calendar under General Orders. Calendar No. 444</li> <li>6/23/2026: Reported by Senator Grassley without amendment</li> <li>6/18/2026: Ordered to be reported without amendment favorably</li> <li>3/26/2025: Introduced in Senate; referred to Judiciary Committee</li> </ul>                                                                                                        |
| <b>Protecting Our Courts from Foreign Manipulation Act of 2025</b> | <a href="#">H.R. 2675</a><br><i>Sponsor:</i><br>Cline (R-VA)<br><br><i>Cosponsors:</i><br><a href="#">26 bipartisan cosponsors</a>                                                  | CV 26            | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr2675/BILLS-119hr2675rh.pdf">https://www.congress.gov/119/bills/hr2675/BILLS-119hr2675rh.pdf</a><br><br><b>Summary:</b><br>Would require additional disclosures under Civil Rule 26(a) for any non-party foreign person, foreign state, or sovereign wealth fund that has a right to receive payment that is contingent on the outcome of a civil action. Would also prohibit third-party litigation funding by foreign states and sovereign wealth funds. | <ul style="list-style-type: none"> <li>6/15/2026: Placed on the Union Calendar, Calendar No. 608</li> <li>6/15/2026: Reported (Amended) by the Committee on Judiciary</li> <li>11/20/2025: Ordered to be Reported (Amended)</li> <li>11/20/2025: Committee consideration and mark-up session held</li> <li>11/18/2025: Committee consideration and mark-up session held</li> <li>4/7/2025: H.R. 2675 introduced in House; referred to Judiciary Committee</li> </ul> |
| <b>Protecting Our Democracy Act</b>                                | <a href="#">H.R. 8831</a><br><i>Sponsor:</i><br>Raskin (D-MD)<br><br><i>Cosponsors:</i><br><a href="#">108 Democratic cosponsors</a>                                                | CV – New Rule(s) | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/bill/119th-congress/house-bill/8831/text">https://www.congress.gov/bill/119th-congress/house-bill/8831/text</a><br><br><b>Summary:</b><br>Companion to S. 2838. Would require the Judicial Conference to create rules of procedure to ensure expeditious treatment of civil actions brought by Congress to enforce compliance with a subpoena.                                                                                                                        | <ul style="list-style-type: none"> <li>5/14/2026: Introduced in House and referred to the Committee on Oversight and Government Reform, the Judiciary, House Administration, the Budget, Transportation and Infrastructure, Rules, Foreign Affairs, Ways and Means, and Intelligence</li> </ul>                                                                                                                                                                      |

| Name                                                                | Sponsors & Cosponsors                                                                                                                              | Affected Rules | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Legislative Actions Taken                                                                                                             |
|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| <b>Closing Bankruptcy Loopholes for Child Predators Act of 2026</b> | <a href="#"><u>H.R. 8589</u></a><br><i>Sponsor:</i><br>Ross (D-NC)<br><br><i>Cosponsors:</i><br>Tenney (R-NY)<br>Sykes (D-OH)<br>De La Cruz (R-TX) | BR 2004, 9018  | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr8589/BILLS-119hr8589ih.pdf"><u>https://www.congress.gov/119/bills/hr8589/BILLS-119hr8589ih.pdf</u></a><br><br><b>Summary:</b><br>Would amend Rule 2004 to allow for examination of abuse allegations against the debtor in Chapter 11 cases related to the alleged sexual abuse of a child, and amend Rule 9018 to restrict the court's ability to seal evidence of alleged crimes relating to the sexual abuse of a child (other than to protect the individual alleging abuse).                                                       | <ul style="list-style-type: none"> <li>4/29/2026: Introduced in House and referred to the House Committee on the Judiciary</li> </ul> |
| <b>No Free Passes for Cronies Act</b>                               | <a href="#"><u>H.R. 8392</u></a><br><i>Sponsor:</i><br>Scanlon (D-PA)                                                                              | CR 48          | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr8392/BILLS-119hr8392ih.pdf"><u>https://www.congress.gov/119/bills/hr8392/BILLS-119hr8392ih.pdf</u></a><br><br><b>Summary:</b><br>Would amend Criminal Rule 48(a) to clarify that federal judges have the authority to accept or reject the government's motion to dismiss in "the interests of justice."                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>4/20/2026: Introduced in House and referred to the House Committee on the Judiciary</li> </ul> |
| <b>Prohibiting Political Prosecutions Act of 2026</b>               | <a href="#"><u>H.R. 7575</u></a><br><i>Sponsor:</i><br>Goldman (D-NY)<br><br><i>Cosponsors:</i><br>Norton (D-DC)<br>Gomez (D-CA)<br>Larson (D-CT)  | CR 6, 16, 48   | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr7575/BILLS-119hr7575ih.pdf"><u>https://www.congress.gov/119/bills/hr7575/BILLS-119hr7575ih.pdf</u></a><br><br><b>Summary:</b><br>Would amend Criminal Rules 6 (to require the government to inform the grand jury of exculpatory evidence and things that may impact a witness's credibility), 16 (to require the government to inform the defendant of the grand jury vote) and 48 (to allow dismissal based on politically-motivated prosecution).                                                                                    | <ul style="list-style-type: none"> <li>2/13/2026: Introduced in House and referred to Committee on the Judiciary</li> </ul>           |
| <b>Litigation Funding Transparency Act of 2026</b>                  | <a href="#"><u>S. 3826</u></a><br><i>Sponsor:</i><br>Grassley (R-IA)<br><br><i>Cosponsors:</i><br>Tillis (R-NC)<br>Kennedy (R-LA)<br>Cornyn (R-TX) | CV 26          | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/s3826/BILLS-119s3826is.pdf"><u>https://www.congress.gov/119/bills/s3826/BILLS-119s3826is.pdf</u></a><br><br><b>Summary:</b><br>Would require disclosure of third-party funding in MDL, class action, and other large litigations (100+ consolidated or coordinated cases). Disclosure of the identity of the funder and the agreement must be made to the court and the parties. Would also prohibit funders from exerting control over the litigation or viewing materials produced in discovery, unless ordered otherwise by the court. | <ul style="list-style-type: none"> <li>2/11/2026: Read twice and referred to the Committee on the Judiciary</li> </ul>                |

| Name                                                               | Sponsors & Cosponsors                                                                                                                                                    | Affected Rules | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Legislative Actions Taken                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Trafficking Survivors Relief Act</b>                            | <p><a href="#"><u>H.R. 4323</u></a><br/> <i>Sponsor:</i><br/> Fry (R-SC)</p> <p><i>Cosponsors:</i><br/> 19 bipartisan cosponsors</p>                                     | CR 29          | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/plaws/publ73/PLAW-119publ73.pdf">https://www.congress.gov/119/plaws/publ73/PLAW-119publ73.pdf</a></p> <p><b>Summary:</b><br/> Permits a person convicted of certain federal offenses as a result of having been a victim of trafficking to move the convicting court to vacate the judgment of conviction, to enter a judgment of acquittal, and to order that references to the arrest and criminal proceedings be expunged from official records.</p>                  | <ul style="list-style-type: none"> <li>1/23/2026: Signed by President; became Public Law No. 119-73.</li> <li>12/18/2025: Passed Senate without amendment by unanimous consent.</li> <li>12/2/2025: Received in Senate; read twice.</li> <li>12/1/2025: Passed by voice vote</li> <li>10/17/2025: Placed on the Union Calendar, Calendar No. 299</li> <li>9/10/2025: Committee Consideration and mark-up Session Held. Ordered to be Reported (Amended) by Voice Vote</li> <li>7/10/2025: Introduced in House and referred to Committee on the Judiciary</li> </ul> |
| <b>Protecting TPLF From Abuse Act</b>                              | <p><a href="#"><u>H.R. 7015</u></a><br/> <i>Sponsor:</i><br/> Issa (R-CA)</p> <p><i>Cosponsors:</i><br/> Fitzgerald (R-WI)<br/> Baumgartner (R-WA)<br/> Flood (R-NE)</p> | CV 26          | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/hr7015/BILLS-119hr7015ih.pdf">https://www.congress.gov/119/bills/hr7015/BILLS-119hr7015ih.pdf</a></p> <p><b>Summary:</b><br/> Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to produce to the court and other parties any such agreement.</p> | <ul style="list-style-type: none"> <li>1/12/2026: Introduced in House; referred to Judiciary Committee</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Sunshine for Regulatory Decrees and Settlements Act of 2025</b> | <p><a href="#"><u>H.R. 6622</u></a><br/> <i>Sponsor:</i><br/> Cline (R-VA)</p> <p><i>Cosponsor:</i><br/> Tiffany (R-WI)</p>                                              | CV 24, 41      | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/hr6622/BILLS-119hr6622ih.pdf">https://www.congress.gov/119/bills/hr6622/BILLS-119hr6622ih.pdf</a></p> <p><b>Summary:</b><br/> Would impose additional requirements for consent decrees or dismissals pursuant to settlement agreements in agency actions. Would also create additional considerations for the court for motions to intervene in agency actions.</p>                                                                                                | <ul style="list-style-type: none"> <li>1/8/2026: Committee Consideration and Mark-up Session Held. Ordered to be Reported (Amended) by the Yeas and Nays: 18-8.</li> <li>12/11/2025: Introduced in House; referred to Judiciary Committee</li> </ul>                                                                                                                                                                                                                                                                                                                |

| Name                                                               | Sponsors & Cosponsors                                                                                                                                                    | Affected Rules      | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Legislative Actions Taken                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Back the Blue Act of 2025</b>                                   | <p><a href="#">S. 3366</a><br/> <i>Sponsor:</i><br/>           Cornyn (R-TX)</p> <p><i>Cosponsors:</i><br/> <a href="#">38 Republican cosponsors</a></p>                 | § 2254<br>Rule 11   | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/s3366/BILLS-119s3366is.pdf">https://www.congress.gov/119/bills/s3366/BILLS-119s3366is.pdf</a></p> <p><b>Summary:</b><br/>           Would amend Rule 11 of the Rules Governing Section 2254 Cases by adding: “Rule 60(b)(6) of the Federal Rules of Civil Procedure shall not apply to a proceeding under these rules in a case that is described in section 2254(j) of title 28, United States Code.”</p>                                                                   | <ul style="list-style-type: none"> <li>12/4/2025: Introduced in Senate; referred to Judiciary Committee</li> </ul>                                                                                                                                                     |
| <b>Litigation Transparency Act of 2025</b>                         | <p><a href="#">H.R. 1109</a><br/> <i>Sponsor:</i><br/>           Issa (R-CA)</p> <p><i>Cosponsors:</i><br/> <a href="#">28 Republican cosponsors</a></p>                 | CV 5, 26            | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf">https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf</a></p> <p><b>Summary:</b><br/>           Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to produce to the court and other parties any such agreement.</p> | <ul style="list-style-type: none"> <li>11/19/2025: Committee consideration and mark-up session held</li> <li>11/18/2025: Committee consideration and mark-up session held</li> <li>2/7/2025: H.R. 1109 introduced in House; referred to Judiciary Committee</li> </ul> |
| <b>Protecting Our Courts from Foreign Manipulation Act of 2025</b> | <p><a href="#">S. 3180</a><br/> <i>Sponsor:</i><br/>           Kennedy (R-LA)</p> <p><i>Cosponsor:</i><br/>           Ricketts (R-NE)</p>                                | CV 26               | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/s3180/BILLS-119s3180is.pdf">https://www.congress.gov/119/bills/s3180/BILLS-119s3180is.pdf</a></p> <p><b>Summary:</b><br/>           Would require additional disclosures under Civil Rule 26(a) for any non-party foreign person, foreign state, or sovereign wealth fund that has a right to receive payment that is contingent on the outcome of a civil action. Would also prohibit third-party litigation funding by foreign states and sovereign wealth funds.</p>      | <ul style="list-style-type: none"> <li>11/18/2025: Introduced in Senate; referred to Judiciary Committee</li> </ul>                                                                                                                                                    |
| <b>Protecting Our Democracy Act</b>                                | <p><a href="#">S. 2838</a><br/> <i>Sponsor:</i><br/>           Schiff (D-CA)</p> <p><i>Cosponsors:</i><br/> <a href="#">10 Democratic and Independent cosponsors</a></p> | CV –<br>New Rule(s) | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/s2838/BILLS-119s2838is.pdf">https://www.congress.gov/119/bills/s2838/BILLS-119s2838is.pdf</a></p> <p><b>Summary:</b><br/>           Would require the Judicial Conference to create rules of procedure to ensure expeditious treatment of civil actions brought by Congress to enforce compliance with a subpoena.</p>                                                                                                                                                       | <ul style="list-style-type: none"> <li>9/17/2025: Introduced in Senate; referred to Committee on Homeland Security and Governmental Affairs</li> </ul>                                                                                                                 |

| Name                                                               | Sponsors & Cosponsors                                                                                                                                 | Affected Rules             | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Legislative Actions Taken                                                                                                   |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Lawsuit Abuse Reduction Act of 2025</b>                         | <a href="#">H.R. 5258</a><br><i>Sponsor:</i><br>Collins (R-GA)<br><br><i>Cosponsors:</i><br><a href="#">6 Republican cosponsors</a>                   | CV 11                      | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr5258/BILLS-119hr5258ih.pdf">https://www.congress.gov/119/bills/hr5258/BILLS-119hr5258ih.pdf</a><br><br><b>Summary:</b><br>Would amend Civil Rule 11 to require the court to issue sanctions for Rule 11 violations, which shall consist of an order to pay the amount of the reasonable expenses incurred as a direct result of the violation.                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>9/10/2025: H.R. 5258 introduced in House; referred to Judiciary Committee</li> </ul> |
| <b>Restoring Artistic Protection Act of 2025</b>                   | <a href="#">H.R. 4678</a><br><i>Sponsor:</i><br>Johnson (D-GA)<br><br><i>Cosponsors:</i><br><a href="#">21 Democratic cosponsors</a>                  | EV 416                     | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr4678/BILLS-119hr4678ih.pdf">https://www.congress.gov/119/bills/hr4678/BILLS-119hr4678ih.pdf</a><br><br><b>Summary:</b><br>Would create a new Evidence Rule (416, Limitation on Admissibility of Defendant's Creative or Artistic Expression) that would make a defendant's creative or artistic expression inadmissible unless the government proves by clear and convincing evidence that one of several exceptions applies.                                                                                                               | <ul style="list-style-type: none"> <li>7/23/2025: H.R. 4678 introduced in House; referred to Judiciary Committee</li> </ul> |
| <b>Rape Shield Enhancement Act of 2025</b>                         | <a href="#">H.R. 3596</a><br><i>Sponsor:</i><br>Mace (R-SC)                                                                                           | EV 412;<br>CV 26;<br>CR 16 | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/hr3596/BILLS-119hr3596ih.pdf">https://www.congress.gov/119/bills/hr3596/BILLS-119hr3596ih.pdf</a><br><br><b>Summary:</b><br>Would require the Judicial Conference to submit to Congress reports reviewing Evidence Rule 412, Civil Rule 26, and Criminal Rule 16. Would also require the Judicial Conference to identify potential rules amendments that further limit the admissibility of or scope of discovery regarding information of an alleged sexual assault victim and that increase privacy protections for sexual assault victims. | <ul style="list-style-type: none"> <li>5/23/2025: H.R. 3596 introduced in House; referred to Judiciary Committee</li> </ul> |
| <b>Supreme Court Ethics, Recusal, and Transparency Act of 2025</b> | <a href="#">S. 1814</a><br><i>Sponsor:</i><br>Whitehouse (D-RI)<br><br><i>Cosponsors:</i><br><a href="#">35 Democratic and Independent cosponsors</a> | AP 29                      | <b>Most Recent Bill Text:</b><br><a href="https://www.congress.gov/119/bills/s1814/BILLS-119s1814is.pdf">https://www.congress.gov/119/bills/s1814/BILLS-119s1814is.pdf</a><br><br><b>Summary:</b><br>Would require the Judicial Conference to prescribe rules of procedure requiring certain amicus disclosures and for prohibiting the filing of or striking an amicus brief that would result in the justice, judge, or magistrate judge's disqualification.                                                                                                                                                             | <ul style="list-style-type: none"> <li>5/20/2025: S. 1814 introduced in Senate; referred to Judiciary Committee</li> </ul>  |

| Name                                       | Sponsors & Cosponsors                                                                                                                          | Affected Rules | Text and Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Legislative Actions Taken                                                                                                                             |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Alexandra's Law Act of 2025</b>         | <p><b><a href="#">H.R. 780</a></b><br/> <i>Sponsor:</i><br/> Issa (R-CA)</p> <p><i>Cosponsors:</i><br/> Kiley (R-CA)<br/> Oberholte (R-CA)</p> | EV 410         | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf">https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf</a></p> <p><b>Summary:</b><br/> Would permit a previous nolo contendere plea in a case involving death resulting from the sale of fentanyl to be used as evidence to prove in an 18 U.S.C. § 1111 or § 1112 case that the defendant had knowledge that the substance provided to the decedent contained fentanyl.</p> | <ul style="list-style-type: none"> <li>1/28/2025: H.R. 780 introduced in House; referred to Judiciary and Energy &amp; Commerce Committees</li> </ul> |
| <b>Protect the Gig Economy Act of 2025</b> | <p><b><a href="#">H.R. 100</a></b><br/> <i>Sponsor:</i><br/> Biggs (R-AZ)</p>                                                                  | CV 23          | <p><b>Most Recent Bill Text:</b><br/> <a href="https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf">https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf</a></p> <p><b>Summary:</b><br/> Would add a requirement to Civil Rule 23(a) that a member of a class may sue or be sued as representative parties only if "the claim does not allege the misclassification of employees as independent contractors."</p>                                                              | <ul style="list-style-type: none"> <li>1/3/2025: H.R. 100 introduced in House; referred to Judiciary Committee</li> </ul>                             |

# TAB 8



Date: August 27, 2026

To: Advisory Committees on Rules of Practice and Procedure

From: Tim Reagan (Research)  
Maureen Kieffer (Education)  
Christine Lamberson (History)  
Federal Judicial Center

Re: Federal Judicial Center Research and Education

This memorandum summarizes recent efforts by the Federal Judicial Center relevant to federal-court practice and procedure. Center researchers attend rules committee, subcommittee, and working-group meetings and provide empirical research as requested. The Center also conducts research to develop manuals and guides; produces education programs for judges, court attorneys, and court staff; and provides public resources on federal judicial history.

## **RESEARCH**

### **Completed Research for a Rules Committee**

#### *Deepfakes and Authenticity*

The Evidence Rules Committee has been exploring whether the authenticity standard should be made more stringent than it is now for potentially fabricated evidence created by artificial intelligence. The committee asked the Center to survey all federal judges to ascertain their experiences and views. In a memorandum submitted to the committee in time for its spring 2026 meeting, the Center reported fifteen occurrences of a deepfake challenge.

### **Current Research for Rules Committees**

#### *Depositions in Criminal Litigation*

The Criminal Rules Committee is considering amendments to Rule 15 on depositions in criminal litigation following suggestions that the rule should facilitate more depositions. The Center has been asked to prepare research protocols.

### *Subpoenas in Criminal Litigation*

The Criminal Rules Committee has asked the Center to prepare research on Rule 17 subpoenas in light of amendments approved by the Standing Committee that are expected to go into effect in December 2027.

### *Discharge in Bankruptcy Rule 4004(a) and (c)*

The Bankruptcy Rules Committee is considering a suggestion that the current wording of Bankruptcy Rule 4004(a) and (c) may lead to disparate applications of the rule. A subcommittee has approved a research plan to gather information on current interpretations and implementations of the rule.

### *Third-Party Litigation Funding*

The Center is providing the Civil Rules Committee with research support as the committee considers possible rules amendments on disclosure of litigation funding by third parties.

### *Temporary Administrative Stays in the Courts of Appeals*

The Appellate Rules Committee has requested research on temporary administrative stays issued by courts of appeals following motions for stays pending appeals.

## **Completed Research for Other Judicial Conference Committees**

### *Unredacted Personally Identifiable Information in Federal Court PACER Documents*

At the request of the Committee on Court Administration and Case Management, the Center (1) enumerated, in a large sample of public filings, unredacted Social Security numbers, individual taxpayer identification numbers, birthdates, minors' names, financial account numbers, and, in criminal cases, individuals' home addresses; (2) determined whether unredacted personally identifiable information is more common in particular types of court filings and proceedings, especially pro se filings, guardian ad litem documents, filings in Social Security actions, notices of removal from state court, and proof-of-claim filings in bankruptcy cases; and (3) assessed how often full nongovernment party names are included in opinions and orders in Social Security and immigration cases ([www.fjc.gov/content/399402/unredacted-personally-identifiable-information-federal-court-pacer-documents](http://www.fjc.gov/content/399402/unredacted-personally-identifiable-information-federal-court-pacer-documents)).

### *Case Weights for Bankruptcy Courts*

The Center has completed analyses for updating bankruptcy-court case weights. Case weights are used in the computation of weighted caseloads, which in turn are used when assessing the need for judgeships. The research was requested by the Committee on the Administration of the Bankruptcy System. The weights were approved by the Judicial Conference in March.

## **Current Research for Other Judicial Conference Committees**

### *Pro Se Parties in Bankruptcy Litigation*

The Center is providing the Committee on the Administration of the Bankruptcy System with research on pro se participation in bankruptcy litigation.

### *Potential Adjustment to the Case Weight for Mega Chapter 11 Cases*

Following the Center's recently updated bankruptcy-court case weights, which are used when assessing the need for judgeships, the Committee on the Administration of the Bankruptcy System asked the Center to conduct a targeted study to determine whether the weight for mega Chapter 11 cases should be modified to address the level of activity in those cases and to account for the number of jointly administered cases under a lead mega Chapter 11 case.

### *Harm to Cooperators*

At the request of the Committees on Court Administration and Case Management, Criminal Law, and Defender Services, the Center is updating its 2016 research on harm and threats of harm to government cooperators in criminal prosecutions ([www.fjc.gov/content/310414/survey-harm-cooperators-final-report](http://www.fjc.gov/content/310414/survey-harm-cooperators-final-report)).

### *Evaluation of a Pilot Program in Which Comparative Sentencing Information Is Included in Presentence Investigation Reports*

At the request of the Committee on Criminal Law, the Center is evaluating a two-year pilot program in which selected districts incorporated comparative sentencing information from the Sentencing Commission's Judiciary Sentencing Information (JSIN) platform into presentence investigation reports.

## **JUDICIAL GUIDES**

### **Completed Judicial Guide**

#### *Manual on Recurring Issues in Criminal Trials*

The seventh edition of what previously was called *Manual on Recurring Problems in Criminal Trials* was published in July ([www.fjc.gov/content/400176/manual-recurring-issues-criminal-trials](http://www.fjc.gov/content/400176/manual-recurring-issues-criminal-trials)). The manual addresses seven topics: Sixth Amendment rights, jury issues, witness statements and exculpatory evidence, enforcement of trial orders, trial performance of counsel, multiple defendants, and jury verdicts.

### **Judicial Guide in Preparation**

#### *Manual for Complex Litigation*

The Center is preparing a fifth edition of its *Manual for Complex Litigation* (fourth edition, [www.fjc.gov/content/manual-complex-litigation-fourth](http://www.fjc.gov/content/manual-complex-litigation-fourth)).

## HISTORY

### *Court of Appeals in Cases of Capture, 1780–1789*

The Center’s history webpages include information about various special federal courts, including the local courts for the District of Columbia, the Foreign Intelligence Surveillance Court, and the U.S. Court for Berlin ([www.fjc.gov/history/courts/other-federal-courts](http://www.fjc.gov/history/courts/other-federal-courts)). Recently added is information about the first federal court, the Court of Appeals in Cases of Capture, which heard appeals from state-court cases seeking maritime prizes ([www.fjc.gov/history/courts/court-appeals-in-cases-capture-1780-1789](http://www.fjc.gov/history/courts/court-appeals-in-cases-capture-1780-1789)).

### *Spotlight on Judicial History*

Since 2020, the Center has posted twenty-seven short essays about judicial history on a variety of topics ([www.fjc.gov/history/spotlight-judicial-history](http://www.fjc.gov/history/spotlight-judicial-history)). Recently posted is “Early Radio in the Federal Courts” ([www.fjc.gov/history/spotlight-judicial-history/early-radio-in-federal-courts](http://www.fjc.gov/history/spotlight-judicial-history/early-radio-in-federal-courts)).

### *Summer Institute for Teachers*

In June 2026, the Center collaborated with the ABA to present a weeklong professional-development conference for teachers, focusing on three famous historical trials: Sedition Act Trials, *U.S. v. Guiteau*, and *Clay v. United States*. The Center presents information about these and other famous federal trials on its website ([www.fjc.gov/history/cases/famous-federal-trials](http://www.fjc.gov/history/cases/famous-federal-trials)).

## EDUCATION

### **Specialized Workshops**

#### *Workshop on Science-Informed Decision Making*

This three-day workshop provided judges and probation and pretrial-services officers with insights from behavioral sciences on decision making in ordinary criminal cases.

#### *The Constitution and the Courts at the 250th*

This two-day workshop offered in collaboration with the National Constitution Center explored a variety of perspectives in the early national period about the best approach to interpret and implement the Constitution.

#### *Search and Surveillance Warrants in the Digital Age*

This three-day workshop recruited national experts from the technology industry and the legal community—judges, academics, and practitioners—to provide magistrate judges with instruction on the application of evolving Fourth Amendment law to digital search and surveillance warrants.

#### *Antitrust Judicial Law and Economics Institute for Federal Judges*

This two-day workshop provided judges with instruction on various antitrust issues, including market definition, market power, competitive effects, horizontal and vertical restraints, and monopoly power.

## **Distance Education**

### *Court to Court: Access to the Courts—Electronic Filing for Pro Se Litigants*

In this episode of the Center’s periodic series of short documentaries, the District of Maryland and the Northern District of Illinois share their experiences with electronic filing by pro se litigants. A supplemental compilation of all ninety-four district courts’ related local rules and procedures was published in 2025: “United States District Courts’ Local Rules and Procedures on Electronic Filing by Self-Represented Litigants” ([www.fjc.gov/content/391989/united-states-district-courts-local-rules-and-procedures-electronic-filing-self](http://www.fjc.gov/content/391989/united-states-district-courts-local-rules-and-procedures-electronic-filing-self)).

### *Court Web*

This periodic webcast included as recent episodes “Generative Artificial Intelligence and the Federal Judiciary” (featuring Professor Gary Marchant, Arizona State University Sandra Day O’Connor College of Law Center for Law, Science and Innovation and Southern District of West Virginia Chief Judge Frank W. Volk), “Commemorating the 75th Anniversary of Judge J. Waties Waring’s Visionary Dissent in *Briggs v. Elliott*” (featuring District of South Carolina Judge Richard Gergel), and “Navigating the Labyrinth: Immigration Court Fundamentals” (featuring District of Utah Magistrate Judge Dustin B. Pead).

### *Supreme Court Term in Review for Bankruptcy Judges*

This annual webcast discusses some of the most significant Supreme Court decisions, including key bankruptcy cases.

### *Consumer Case-Law Update for Bankruptcy Judges*

This quarterly webcast features discussions of consumer-bankruptcy case-law updates prepared by retired Western District of Tennessee Bankruptcy Judge William H. Brown.

### *Business Case-Law Update for Bankruptcy Judges*

This quarterly webcast features Professor Bruce Markell (a retired bankruptcy judge).

## **General Workshops**

### *National Workshops for Trial-Court Judges*

Three-day workshops are held for district judges in even-numbered years and annually for magistrate judges and bankruptcy judges. A recent workshop for bankruptcy judges included the session “How the Federal Judicial Center’s Research Division Supports the Bankruptcy Courts.”

#### *Mid-Career Seminar for U.S. Magistrate Judges*

In partnership with the University of California, Berkeley Law School, the Center has developed this two-day program for magistrate judges with roughly eight to twelve years of experience.

#### *Circuit Workshops for U.S. Appellate and District Judges*

The Center has recently put on a three-day workshop for Article III judges in the Eleventh Circuit.

### **Orientation Programs**

#### *Orientation Programs for New Trial-Court Judges*

The Center invites newly appointed trial-court judges to attend two one-week conferences focusing on skills unique to judging. The first phase includes sessions on trial practice, case management, and judicial ethics. In addition, district judges learn about the sentencing process, magistrate judges learn about search warrants, and bankruptcy judges learn about the bankruptcy code. The second phase includes sessions on such topics as civil-rights litigation, employment discrimination, security, self-represented litigants, relations with the media, and ethics.

#### *Orientation for New Circuit Judges*

Orientation programs for new circuit judges include a three-day program hosted by the Center and a program at New York University School of Law for both state and federal appellate judges.

#### *Orientation for New Term Law Clerks*

The Center offers online orientation to new term law clerks. Phase I is offered before the clerkship begins, and phase II is offered after the clerkship has begun.

# TAB 9

**To:** Advisory Committee on Criminal Rules  
**From:** Brittany Ripper, PhD, JD, Federal Judicial Center  
**Re:** Rule 17 Monitoring Research  
**Date:** September 10, 2026

The Committee has asked the Federal Judicial Center to monitor the implementation of the Rule 17 amendments in the district courts.

We have begun by collecting and reviewing all districts' local rules and standing orders. All local rules, and any standing orders pertaining to Rule 17, were collected in June 2026. They will be collected again after the amendments go into effect to ascertain any changes in districts' local rules.

Additionally, we plan to survey attorneys about their experiences with Rule 17. We have begun this part of the research by conducting pilot interviews with defense attorneys, including those selected at random. The goal of these pilot interviews is to determine whether written survey questions can gather useful information about local Rule 17 policies and practices.

The Committee knows that districts have a wide range of policies and practices regarding Rule 17. However, the Committee has not heard from attorneys in all 94 districts. Therefore, we are preparing a short survey of Federal Defenders to learn about Rule 17 policies and practices in each district.

Finally, we plan on developing a method to learn about judges' perspectives on Rule 17. This development will begin by conducting pilot interviews with judges.

# TAB 10

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Carolyn Dubay and Sarah Sraders, Rules Committee Staff

**RE:** Procedures of the Rules Committees

**DATE:** September 22, 2026

This memorandum is intended to provide an overview of the rulemaking process and the role of the chair, reporters, members, and Rules Committee Staff. It first describes the Advisory Committee’s authority under the Rules Enabling Act (REA), 28 U.S.C. §§ 2071-2077. It then walks members through the Advisory Committee’s procedures and the steps in the rulemaking process from initial intake of a proposal to enactment by Congress, with a sidebar of where currently proposed Criminal Rule amendments stand in that process.

### **I. Overview of Authority and Procedures for Federal Rulemaking for the U.S. Courts**

The REA grants the Supreme Court the statutory authority to “prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.” 28 U.S.C. § 2072(a). There are two important limitations on this authority. First, a rule promulgated under the REA may only regulate “practice and procedure” and must not “abridge, enlarge or modify any *substantive* right.” 28 U.S.C. § 2072(a), (b) (emphasis added). Although there is a clear division between procedural law and substantive law in the REA, it is not always as clear in practice and this is an important consideration in evaluating proposed rule amendments. Second, because federal rulemaking is a delegated power from Congress, Congress has retained the ultimate authority to review and enact the rules approved by the Supreme Court. Even so, Congress must affirmatively reject or modify a rule adopted by the Supreme Court. If Congress takes no action after transmittal from the Court (due before May 1 each year), the rule adopted by the Court becomes effective December 1.

To carry out this rulemaking function, the REA requires the Judicial Conference to create within the Judicial Conference a Standing Committee to evaluate proposals from any other Judicial Conference committees to amend the rules. This oversight ensures consistency among the rule sets. *See* 28 U.S.C. § 2073(b). The REA also allows the Judicial Conference to create specific committees to evaluate proposed rule amendments under § 2073(a). The Judicial Conference exercised that authority in creating the five Advisory Committees we have today (Appellate Rules, Bankruptcy Rules, Civil Rules, Criminal Rules, and Evidence Rules). The REA also gives the Judicial Conference the authority to “prescribe and publish the procedures for the consideration of proposed rules.” 28 U.S.C. § 2073(a)(1). The procedures are publicly available on the [judiciary’s website](#). The REA has two important requirements for the judiciary’s rulemaking procedures. First, committee meetings must be open to the public (except in narrow circumstances) and minutes of meetings must be publicly available. Second, there must be adequate public notice of such meetings. 28 U.S.C. § 2073(c).

Today, the Standing Committee and the five Advisory Committees have a mixed membership that allows a variety of perspectives on the rules of practice and procedure and the rules of evidence. For the Advisory Committee on Criminal Rules, there are federal judges, practicing lawyers from the defense bar, a representative from the Department of Justice, a representative from the Federal Public Defender community, a law professor, and a state chief justice. Each Rules Committee also has one or more reporters, who are law professors responsible for coordinating the committee's agenda and drafting any proposed rule amendments (including the corresponding committee notes and reports explaining the proposed changes). *See* Procedures for the Judicial Conference's Committee on Rules of Practice and Procedure and its Advisory Rules Committees, § 440.20.30(b) (Judicial Conference Procedures). Professor Sara Sun Beale (Duke Law School) serves as the Reporter for the Criminal Rules Committee, and Professor Nancy King (Vanderbilt University Law School) serves as the Associate Reporter. The Standing Committee and Advisory Committees also have judiciary staff and counsel to support them. Carolyn Dubay serves as the Secretary to the Standing Committee and Chief Counsel of the Rules Committee Staff (RCS). Within the RCS, Sarah Sraders serves as Counsel to the Criminal Rules Advisory Committee. Shelly Cox and Rakita Johnson provide program and logistical support. Bridget Healy serves as Counsel to the Bankruptcy Rules and Appellate Rules Advisory Committees. Finally, a Rules Law Clerk serves as an adjunct to the chambers of Judge James C. Dever III, who chairs the Standing Committee. The 2026-2027 Rules Law Clerk is Bill Wang, and he can provide research assistance to any of the committees and also follows legislative changes and Supreme Court cases that may impact the rules. The Federal Judicial Center (FJC) also assigns staff to support the work of the rules committees by offering research and empirical studies. Dr. Brittany Ripper, Ph.D., J.D., supports the Criminal Rules Advisory Committee.

Each Advisory Committee meets in the spring (usually in April) and fall each year (usually in October or early November), which enables it to make recommendations for consideration by the Standing Committee at its June and January meetings, respectively. Committee meetings are live-streamed to anyone who requests a link, and members of the public and the media are able to attend in person or remotely. Attendees in person and virtually include members of the media, the public, interest groups, and congressional offices who follow our work. Notice of the location, date, and registration for advisory committee meetings is published in the Federal Register and is also indicated on the [uscourts.gov website](https://uscourts.gov).

The Rules Office maintains the [public records](#) of the many documents produced by the committees. *See* Judicial Conference Procedures, § 440.20.60(c), § 440.30.30(c). It also maintains the records of suggestions and comments submitted by the public. The public is advised not to communicate directly with committee members but to instead submit any comments or communications through the RCS. This procedure is designed to ensure the orderly and transparent consideration of committee business and proper retention of records. All communications concerning rules committee business will be docketed as a suggestion, posted on the [website](#), and circulated to the relevant committee chairs and reporters.

If an advisory committee member is contacted directly by a member of the public about committee business, the communication should be sent to the RCS so that it can be dealt with and recorded appropriately. Relatedly, if a committee member is contacted by the media regarding committee business, the committee member should direct the media to the RCS, who coordinates with the Office of Public Affairs on media questions.

## II. Steps in the Rulemaking Process

From start to finish, the rulemaking process can take time because of the required study, deliberation, and layers of review and approval that must occur before a rule amendment is transmitted to Congress and becomes effective. It is a process that at best takes three years, but often can take longer. Below is a step-by-step guide to the process:

### STEP ONE: Proposal Docketed

Suggestion filed with the Rules Committee Secretary and assigned to appropriate Advisory Committee(s)

Email for filing:  
[RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)

Website link to proposals:  
[Rules Suggestions](#)

**Proposals for Rules Changes:** Anyone can file a suggestion for a change to one of the sets of rules enacted under the REA. Proponents can be lawyers, bar associations, judges, members of the public, academics, legislators, and even reporters or members of the committees. When a proposal is received by U.S. mail or by email to the Rules Committee Secretary (see box to the left), the RCS docket it, ensures that any private information (such as home address) is redacted, publishes it on the Judiciary's website, and sends the proposal to the chairs and reporters of the appropriate committees.

If a proponent sends a proposal directly to a chair, reporter, or member of the committee, they should forward it immediately to the Rules Committee Secretary email for processing.

### STEP TWO: Committee Consideration

Advisory Chair and Reporters will add the proposal to the agenda and determine the appropriate action, including whether to form a subcommittee to study the issue and if appropriate, draft a proposed rule amendment.

Currently under consideration:  
Rule 15 (Depositions)  
Rule 40 (Out-of-District Arrest)  
Rule 53 (Broadcasting)

**Committee Consideration:** After a proposal is assigned to an Advisory Committee, the Chair and Reporters will determine the appropriate timing to add it to the agenda. This depends on several factors, such as when the proposal is filed, the length of the upcoming agenda, and available resources to consider it and prepare associated meeting materials.

Once a proposal is added to an agenda, the Advisory Committee may take one of several courses of action, including rejecting a suggestion and removing it from the Advisory Committee's agenda, tabling a suggestion until circumstances are more suitable for Advisory Committee's consideration, or devoting further study and analysis to the suggestion.

If the Advisory Committee decides that a suggestion should be pursued and it presents issues that require further study, the Chair of the Criminal Rules Advisory Committee will

often create a subcommittee, with a chair and members appointed from among the Advisory Committee members, to study the issue in-depth and make recommendations on whether to move forward with the proposed amendment.

If a subcommittee is created to address a proposed rule change, it will meet virtually to spend additional time studying and discussing the proposed rule change. Unlike Advisory Committee meetings, subcommittee meetings are not open to the public, but the subcommittee will prepare written reports and recommendations to be included in the public agenda books of the Advisory Committee. The subcommittee chair is also generally responsible for providing oral updates on the work of the subcommittee at each Advisory Committee meeting.

After its study and consideration, if a subcommittee intends to propose a rule change, it will draft language for the Advisory Committee's consideration. In so doing, once the subcommittee has agreed upon proposed language for the rule amendment and committee note, the Reporters will reach out to the Style Consultants for their input. The Style Consultants are experts on legal writing and legal language, and strive to maintain clarity, consistency, and readability within each rule set and across all five sets of rules. The Style Consultants have final authority over any change that is considered stylistic, but cannot change the substance of any rule amendment and can only make recommendations on changes to committee notes. Once the subcommittee has reached a consensus on proposed rule and committee note language, it will put its report and related items on the agenda for the Advisory Committee's consideration. On the other hand, the subcommittee may also recommend no further action on the proposal.

After the subcommittee has completed its work and prepared its report for the Advisory Committee (and if proposing a rule change, a draft amendment), the Advisory Committee will consider it at a public meeting and may accept or reject the subcommittee's proposed course of action. If the Advisory Committee supports the rule change, it may accept or modify the recommended language and vote to recommend to the Standing Committee that the proposed rule amendment be published for public comment (see Step Three) or it may give feedback to the subcommittee for it to consider and address.

**STEP THREE:  
Public Comment Period -  
August to February**

Upon approval by the Standing Committee, the preliminary draft of the proposed rule amendment will be published for public comment. If testimony is requested, public hearings take place in January or February during the comment period.

Current public comment period:  
August 14, 2026, to February 15, 2027. A virtual hearing is scheduled for January 20, 2027 (with an additional hearing date of January 27, 2027, if needed).

Preliminary Drafts Published:  
Rules 11 & 32 (Sentencing)  
Rules 45 & 49 (Electronic Filing)  
Rule 49.1 (Privacy)

**Publication and Public Comment:** Once the Advisory Committee votes to recommend that a proposed rule amendment be published for public comment, the Standing Committee will consider that recommendation (as set forth in the reports of the Advisory Committee to the Standing Committee, which are found on the [website](#)). Standing Committee consideration allows coordination and consistency among related rules and gives the Standing Committee the opportunity to review the language of the proposed amendment and committee note and make any changes it feels appropriate prior to publication.

After a rule has been approved for public comment by the Standing Committee, the RCS will assemble the necessary materials, including the proposed rule and the relevant portions of the Advisory Committee Report recommending the change, and make these materials (referred to as a “Preliminary Draft”) available on the Rules Committee [website](#). The Preliminary Draft publication is announced in the Federal Register and on the website along with the dates of virtual hearings, the length of the comment period, and instructions for submitting comments and requests to testify. The public comment period runs at the same time each year—from August through the following February. As comments are filed, they are provided to the Chair and Reporters to evaluate.

If members of the public request to testify regarding a rule change, the Advisory Committee will conduct public hearings on the proposed changes. The hearing dates are set in advance and are available on the [website](#). If no one requests to testify, a scheduled hearing will be cancelled. Multiple hearing dates may also be consolidated if appropriate. The Chair, Reporters, and members participate in the hearing and have the opportunity to ask questions.

**STEP FOUR:  
Committee Consideration of  
Public Feedback**

At close of the comment period, the Advisory Committee determines whether to proceed to recommend a final rule amendment to the Standing Committee.

**Committee Consideration of Public Feedback.** After the public comment period closes in February, the Reporters and subcommittee members will meet to review the comments received and decide on the appropriate recommendation to make for the Advisory Committee’s consideration at its spring meeting. This may include either removing certain portions of the proposed rule amendment, modifying language, or other action. The Reporters will then prepare a report and, if the recommendation is to give final approval to the proposed rule, will prepare the draft rule amendment with any changes to reflect the public comment or the subcommittee’s input.

If the subcommittee recommends adoption of a final rule amendment, the Advisory Committee will consider and vote on that recommendation. The Advisory Committee can reject or adopt the recommendation (along with any changes to the proposed language it deems appropriate). Importantly, if the Advisory Committee decides to make changes to the proposed rule amendment, it must consider whether republication of the modified rule is required. If the changes are not substantial, the Advisory Committee can proceed with a recommendation to the Standing Committee for final approval of the proposed rule amendment as modified. If the changes are substantial, however, the proposed rule amendment must be republished for an additional period of public comment, “unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.” Judicial Conference Procedures, § 440.20.50(b). Alternatively, the Advisory Committee could decide not to proceed with a rule amendment at this time, either removing the rule amendment from its agenda or devoting further study and consideration to the proposed amendment before moving forward.

If the Advisory Committee decides to move forward with the proposed amendment, the amendment will be presented to the Standing Committee at its June meeting. The Standing Committee may choose to accept, reject, or modify the proposal, or it may send the proposal back to the Advisory Committee with instructions or recommendations.

## **STEP FIVE:**

### **Approval by the Judicial Conference and Transmission to the Supreme Court and Congress**

In this final step in the process, once the Judicial Conference approves the final amendment, it is transmitted to the Supreme Court and then Congress, and absent objections, becomes effective December 1 of the year it is transmitted.

No final Criminal Rules are slated to become effective December 1, 2026.

Rule 17 (Subpoena) will be transmitted to the Supreme Court in October 2026. If approved by the Supreme Court, it will become effective December 1, 2027, absent Congressional action.

## **Judicial Conference and Supreme Court Approval**

If the Standing Committee recommends final approval of a proposed rule amendment, it prepares a report for the Judicial Conference and includes the language of the rule amendment for approval. The Standing Committee Reports to the Judicial Conference are available on the [website](#).

After the Judicial Conference approves the proposed rule amendments, they are promptly transmitted to the Supreme Court in October for its consideration. The Supreme Court must complete its review and approval process by the spring of the following year, because the REA *requires* the Supreme Court to transmit a copy of any proposed rule to Congress no later than May 1 of the year in which the rule is to become effective. 28 U.S.C. § 2074(a). The RCS coordinates with the Supreme Court each spring to ensure that all of the proposed rule amendments that were adopted by the Supreme Court are delivered to Congress before May 1 as required by law.

After delivery to Congress, the RCS coordinates with Congressional offices on the publication of the final rules to become effective December 1, unless Congress takes action to the contrary.

# TAB 11

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Professors Sara Sun Beale and Nancy King, Reporters

**RE:** Procedures for Revoking or Modifying Pretrial Release (Rule 40) ([23-CR-H](#) & [24-CR-D](#))

**DATE:** September 18, 2026

This report summarizes the work of the Rule 40 Subcommittee, chaired by Judge Harvey, since the Committee's April 2026 meeting.

As explained in April, the Subcommittee focused initially on the text governing procedures after an arrest on a warrant issued for a violation of conditions of release set in another district, reserving for later consideration arrests for failure to appear as required by a subpoena. The Subcommittee's discussion draft of potential text for regulating procedures after arrests for violations was included in the agenda book for the April 2026 meeting.

Over the summer, Judge Harvey conducted extensive outreach to magistrate judges to solicit comments on the discussion draft. He presented the draft at a national meeting of magistrate judges, and he wrote seeking comments from individuals and groups, including Judge Bolitho and the Magistrate Judge Advisory Group (MJAG)—who had submitted the original suggestions for amendments.

The Subcommittee held a Teams meeting to discuss the comments received by Judge Harvey, and it agreed upon several revisions to the draft. The reporters then shared the Subcommittee's revised draft with the style consultants and prepared a new draft incorporating the style comments for review by the Subcommittee. Based on this revised draft incorporating the style revisions, the reporters are preparing a draft committee note.

The Subcommittee will meet again on Teams in early October to discuss the new draft of the provisions regulating procedures after arrests for violations, the draft committee note for those provisions, and the steps needed to address the regulation of procedures after the arrest of a witness for failure to appear. Although this meeting will take place after the October agenda book has been submitted, Judge Harvey will report on it at the Committee's October meeting.

The Subcommittee's goal is to present a proposed amendment and committee note at the Committee's April 2027 meeting. If approved, this would permit publication for public comment in August of 2027.

# TAB 12

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Professors Sara Sun Beale and Nancy King, Reporters

**RE:** Depositions for Discovery ([25-CR-B](#) and supporting suggestions)

**DATE:** September 18, 2026

This memo summarizes the work of the new Rule 15 Subcommittee, chaired by Judge Burgess, since the Committee's meeting in April 2026. This is a very large project because of the number of suggestions received and the many states whose procedures the Committee has been encouraged to study.

### I. The Suggestions Supporting 25-CR-B

The Committee has now received more than 60 letters in support of amending Rule 15 to expand the availability of discovery depositions. All of these letters have been posted on the [Rules website](#) and circulated to the Subcommittee. The letters present a variety of reasons in support of expanding Rule 15. We are indebted to Sarah Sraders in the Rules Office for providing a detailed spreadsheet of all the letters, and the following summary of the arguments advanced in support of permitting discovery depositions:

- *Level the playing field between the government and the defense.*
  - The government has many tools at its disposal to learn what witnesses will say (grand jury subpoenas, law enforcement interviews, grants of immunity, etc.).
  - Defendants have much less information. Even interview memos are often incomplete or inaccurate, and judges forbid or limit the use of interview memos to impeach a witness.
  - Defendants cannot compel witnesses to speak with them, and witnesses are often unwilling to do so, for a variety of reasons.
  - In cases with voluminous document productions (e.g., white collar criminal cases), the government has witnesses to walk them through the documents, but the defense must decipher the documents on its own.
- *Increase efficiency.*
  - Depositions allow both parties to have a better understanding of the case and can lead to earlier resolution through pleas or dismissal or reduction of charges.
  - There will be less post-conviction litigation over what a witness might have said when called, whether all exculpatory information was turned over, etc.

- *Address Brady concerns.*
  - Prosecutors are not interviewing witnesses with defense strategy in mind. They may not realize that certain information is exculpatory or understand how it fits into the defense’s case, and therefore do not turn that information over.
  - Defendants can depose law enforcement officers to uncover any *Brady* violations in the pretrial stage.
- *Increase the effectiveness of counsel.*
  - Defense counsel cannot effectively advise their clients whether to accept a guilty plea without critical information.
  - Defense counsel are limited to a “reasonable doubt” strategy at trial, because they cannot risk asking witnesses questions that they do not already know the answer to. They also may not call witnesses that could have exculpatory information because they do not know what the witnesses will say.
- *Increase the overall fairness of the justice system.*
  - Absence of depositions harms the truth-seeking process.
  - By allowing depositions, defendants understand exactly what witnesses will say and the strength of government’s case against them, so they are more likely to feel that they have been treated fairly by the system when entering an informed guilty plea.
  - Depositions would allow the public to have greater confidence in a verdict and diminish the criticism that the current system allows for “trial by ambush.”
- The criminal rules were originally drafted to mirror the civil discovery rules, but the first Criminal Rules Advisory Committee, which did not have any defense members, drastically rewrote them.
- A civil defendant facing injunctive relief or loss of money should not have broader discovery rights than a criminal defendant facing loss of liberty.

Anticipating the possible concerns about permitting discovery depositions in criminal cases, the supporting letters also suggest a variety of reasons that the writers believe that providing for discovery amendments would not be problematic.

- Concerns about witness or victim safety can be dealt with on a case-by-case basis by the court, through protective orders or imposition of other limitations on depositions.

- Courts can control the schedule to avoid any unnecessary delays and ensure that parties are not taking unnecessary depositions.
- Concerns about “trial by deposition” are overblown, as federal criminal cases allow for nationwide service of process and witnesses will rarely become unavailable between deposition and trial.
- Although there may be increased costs at the beginning of the case, allowing depositions leads to earlier resolutions, more focused motion practice, and streamlined trials, reducing the overall costs to the parties and to the court. Remote technology can also reduce costs.
- Allowing depositions does not only benefit the defense, as the government can gain insight into the defense case, preview the effectiveness and credibility of witnesses, and benefit from the efficiencies described above.
- 13 states have allowed discovery depositions in criminal cases—some for decades—to great success.

## **II. State Models**

As noted above, the suggestions supporting the proposed amendment cite the positive experience in the 13 states that allow discovery depositions in criminal cases. Ms. Sraders, with the assistance of Ms. Ripper at the Federal Judicial Center, prepared a research memo for the Subcommittee summarizing the various features and history of law regulating discovery depositions in criminal cases in these states, as well as a spreadsheet to allow for comparison.

## **III. Next Steps**

The Subcommittee will meet in person in Boston on the afternoon of October 14, after the conclusion of the Committee’s meeting to decide what additional research in the form of surveys or interviews is needed. In order to focus the discussion at the meeting, Subcommittee members have been asked to review the new materials prepared by Ms. Sraders to identify a small number of states they would have the most interest in studying in depth (and why), and specify up to ten questions they would like to be included in surveys or interviews. The reporters will summarize and circulate the responses received from Subcommittee members before the October 14 meeting.

# TAB 13

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Professors Sara Sun Beale and Nancy King, Reporters

**RE:** Narrowcasting Authority for Broadcasting During Criminal Proceedings (Rule 53) ([25-CR-I](#))

**DATE:** September 18, 2026

Judge Edmond Chang wrote to request consideration of amendments to Rule 53’s blanket prohibition of broadcasting from the courtroom. He suggested two possible amendments:

- (1) a clarification of Rule 53 to make explicit that the “broadcasting” bar covers transmission to single individuals, not just to the general public; and
- (2) good-cause exceptions that (a) would permit broadcasting to “victims,” as defined in 18 U.S.C. § 3771(e)(2), and possibly permit remote participation by victims; and (b) would permit broadcasting to, and remote participation by, third-party custodians at bail hearings.

Judge Chang’s proposal was discussed briefly at the Committee’s November 2025 meeting. It was tabled in light of the Committee’s very recent consideration of suggestions for changes to the rule to allow some broader availability of broadcasting, and its decision to make no change to Rule 53. Though there is no hard-and-fast rule that if the Committee takes a hard look at a rule, it will generally not take another hard look one year later. However, noting that Judge Chang’s suggestion was much narrower in scope than what the Committee had previously considered, Judge Mosman said he would consider undertaking a much narrower look at Rule 53 in the future when the Committee had sufficient resources.

Because the Rule 17 amendments are nearing the end of the rules process and other ongoing projects (Rule 40, Rule 49.1, and filing by self-represented litigants) are well under way, Judge Mosman has concluded that the Committee now has the necessary resources to undertake consideration of one or more narrowly focused exceptions—“narrowcasting”—to Rule 53’s current blanket ban on “broadcasting” criminal proceedings.

A new subcommittee, chaired by Ms. White, has been appointed to study these issues.

# Hon. Edmond Chang (25-CR-I)

August 28, 2025

Hon. Edmond Chang asked the Advisory Committee in a future amendment cycle to consider (1) a clarification to Rule 53 making explicit that the “broadcasting” bar covers transmission to single individuals, not just to the general public; and (2) at the same time, however, consider good-cause exceptions that (a) would permit broadcasting to “victims,” as defined in 18 U.S.C. 3771(e)(2), and possibly permit remote participation by victims; and (b) would permit broadcasting to, and remote participation by, third-party custodians at bail hearings.

# TAB 14

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Professors Sara Sun Beale and Nancy King, Reporters

**RE:** New Suggestion: Particularized Findings on Disputed Sentencing Predicates  
Rule 32(i)(3) ([26-CR-40](#))

**DATE:** September 18, 2026

John Anthony Castro has written the Committee suggesting that Rule 32(i)(3) be clarified to specify what it means to “rule on” a disputed factual predicate and when a general adoption of a presentence report is sufficient.

Rule 32(i)(3) now requires the court to resolve any disputed portion of the presentence report or other controverted matter that will affect sentencing. It provides:

(3) *Court Determinations*. At sentencing, the court:

- (A) may accept any undisputed portion of the presentence report as a finding of fact;
- (B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and
- (C) must append a copy of the court’s determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

Mr. Castro asserts:

In practice ... a summary overruling of an objection or global adoption of a report may leave the parties, the court of appeals, and the Bureau of Prisons unable to determine which person, act, amount, intent, communication, or causal proposition the court actually found. The proposed amendment requires enough specificity to disclose the basis of the ruling, while preserving concise oral findings and incorporation of a sufficiently detailed report.

Suggestion 26-CR-30 at 1.

Mr. Castro provides the decision ([included in this agenda book](#)) upholding his own federal sentencing as an illustration. He also provides proposed text and an accompanying committee note.

The question for discussion is whether to appoint a subcommittee for in-depth consideration of this proposal.

August 27, 2026  
Carolyn A. Dubay, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, DC 20544

**Re: Rules Suggestion - Proposed Amendments to Federal Rule of Criminal Procedure 32(i)(3), Particularized Findings on Disputed Sentencing Predicates**

Dear Ms. Dubay:

I respectfully submit the enclosed suggestion for targeted amendments to Federal Rule of Criminal Procedure 32(i)(3). The proposal does not change any substantive sentencing standard or burden of proof. It clarifies what it means for a sentencing court to "rule on" a disputed factual predicate and when a general adoption of a presentence report is sufficient.

Current Rule 32 requires the court to resolve any disputed portion of the presentence report or other controverted matter that will affect sentencing. In practice, however, a summary overruling of an objection or global adoption of a report may leave the parties, the court of appeals, and the Bureau of Prisons unable to determine which person, act, amount, intent, communication, or causal proposition the court actually found. The proposed amendment requires enough specificity to disclose the basis of the ruling, while preserving concise oral findings and incorporation of a sufficiently detailed report.

My own federal sentencing is included as a disclosed illustration. This submission does not ask the Rules Committee to decide any issue in my case or to review any judgment. It identifies a prospective procedural problem: deferential appellate review cannot reliably operate when the finding to be reviewed is uncertain, and the Bureau of Prisons should not receive a report that leaves rejected, unresolved, and adopted allegations indistinguishable.

Please assign this suggestion an agenda number and forward it to the Advisory Committee on Criminal Rules for consideration.

Respectfully submitted,  
John Anthony Castro  
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Pollock, Louisiana 71467  
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## **RULES SUGGESTION**

### **PROPOSED AMENDMENTS TO FEDERAL RULE OF CRIMINAL PROCEDURE 32(i)(3)**

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#### *Particularized Findings on Disputed Sentencing Predicates*

**Submitted to the Advisory Committee on Criminal Rules  
Committee on Rules of Practice and Procedure  
Judicial Conference of the United States**

Submitted August 27, 2026

**John Anthony Castro**  
BOP Register No. 93890-510  
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#### **EXECUTIVE SUMMARY**

Federal Rule of Criminal Procedure 32(i)(3)(B) requires a sentencing court to rule on every disputed portion of the presentence report or other controverted matter that may affect sentencing. Rule 32(i)(3)(C) requires the court to append its determinations to the report sent to the Bureau of Prisons. Those commands protect accurate sentencing, meaningful appellate review, and fair downstream administration. Yet the rule does not state how definite a ruling must be or when a general adoption of a presentence report actually resolves a specific factual objection.<sup>1</sup>

The omission matters because modern sentencing adjustments and statutory factors often turn on discrete predicates: whether a particular person acted knowingly, whether a communication reached or influenced a witness, which loss items were foreseeable, what statement was false, or what conduct demonstrated a prohibited intent. A conclusory statement that an enhancement applies may announce the result without identifying the fact found. A global adoption of a report may do the same when the report offers only a legal conclusion, alternative possibilities, or group-level allegations.

This suggestion proposes a modest clarification. When a dispute may affect sentencing, the court should state findings and conclusions with enough specificity to disclose the factual and legal basis, permit meaningful review, and guide implementation. Adoption of a presentence report, addendum, or party submission should remain permissible, but only if the adopted material itself resolves the specific dispute and the court identifies what it is adopting. No formal catechism, written opinion, or evidentiary hearing would be required. Oral findings, concise incorporation, and sealed or anonymized findings would remain available.

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<sup>1</sup> Fed. R. Crim. P. 32(i)(3)(B)–(C); Fed. R. Crim. P. 32 advisory committee’s notes to the 1974 and 1983 amendments.

1. Clarify that a ruling must disclose the material factual and legal basis with sufficient specificity for review and implementation.
2. Preserve incorporation, but require the adopted material itself to resolve the disputed predicate rather than merely state a conclusion.
3. Clarify that when a ruling depends on a particular person, act, amount, communication, knowledge, intent, causation, credibility, or effect, the court must identify that predicate by name or a sufficiently definite description.
4. Require the appended determination sent with the presentence report to distinguish adopted findings from allegations the court rejected or declined to consider.
5. Preserve current burdens of proof, evidentiary standards, confidentiality protections, harmless-error doctrine, and judicial discretion over the form of the findings.

#### **I. CURRENT RULE 32 REQUIRES RESOLUTION BUT DOES NOT DEFINE AN ADEQUATE RULING**

Rule 32 creates an orderly adversarial process. The report must be disclosed in advance; the parties must state written objections; the probation officer may investigate further and prepare an addendum; the parties may comment and introduce information; and the court must resolve disputes that matter to the sentence. The current rule provides:

- (A) The court may accept any undisputed portion of the presentence report as a finding of fact.
- (B) For any disputed portion of the presentence report or other controverted matter, the court must rule on the dispute or determine that a ruling is unnecessary because the matter will not affect sentencing or will not be considered.
- (C) The court must append its determinations to any copy of the presentence report made available to the Bureau of Prisons.

The structure is sound. The uncertainty is concentrated in the phrase "rule on the dispute." A court may clearly resolve a dispute through express oral findings, a written order, or adoption of detailed findings in a presentence report. But the same phrase is sometimes treated as satisfied by a one-line denial of the objection or by adopting a document that never answers the objection at the level of the controlling predicate.

The difference is not semantic. If the objection is that no identified employee knowingly participated in an offense, a finding that the defendant supervised many employees does not necessarily resolve the disputed knowledge predicate. If the objection is that no identified witness received a threat, a conclusion that the defendant had a reputation for litigiousness does not necessarily resolve who was influenced, by what act, with what intent, and with what connection to the proceeding. If the objection concerns loss, the statement that the total is reasonable does not identify the transactions or methodology accepted.

The Sentencing Commission recognizes that reliable resolution is central to sentencing. Section 6A1.3 provides that when an important factor is reasonably in dispute, the parties must have an adequate opportunity to present information, and the court may rely only on information bearing sufficient indicia of reliability to support probable accuracy. It then directs resolution under Rule

32(i). The rule should make clear that resolution means adjudication of the material predicate, not merely announcement of the bottom-line adjustment.<sup>2</sup>

## II. PARTICULARIZED FINDINGS SERVE THREE DISTINCT INSTITUTIONAL FUNCTIONS

### *A. They protect sentencing accuracy and the adversarial process*

A defendant has no right to trial rules of evidence at sentencing, but sentencing cannot rest on materially false assumptions or unreliable information. The Supreme Court has long treated reliance on materially untrue information as a due process concern. It has also identified selection of a sentence based on clearly erroneous facts and failure to explain the chosen sentence as procedural errors.<sup>3</sup>

Particularized findings discipline the decision before the sentence is imposed. They force the court and parties to focus on the actual disputed proposition. They reveal whether the government proved the fact on which the adjustment depends, whether the court relied on a different fact, or whether the matter was unnecessary. That discipline is especially important when a presentence report combines facts, conclusions, and alternative theories in a single paragraph.

The Supreme Court has already required this kind of clarity in a recurring sentencing context. In *United States v. Dunnigan*, the Court held that when a defendant specifically objects to a perjury-based obstruction adjustment, the sentencing court must review the evidence and make independent findings necessary to establish perjury. The Court preferred separate findings on each element but did not demand a ritualistic recitation; a concise finding is sufficient if it encompasses the essential predicates. That calibrated approach supplies the correct model for Rule 32 generally.<sup>4</sup>

### *B. They permit genuine appellate review rather than appellate reconstruction*

Clear-error review assumes a finding exists. The court of appeals asks whether the district court selected among permissible views of the evidence. It cannot perform that function reliably when the sentencing basis is unclear. The appellate court may then be tempted to search the record for a factual theory that could sustain the sentence, infer that the district court must have accepted it, and defer to a finding supplied for the first time on appeal.

The circuits agree in general that a district court may adopt sufficiently detailed presentence findings, but their cases reveal recurring disagreement over when adoption is enough. Some decisions permit adoption in toto when the context makes clear that the court intended to resolve each identified dispute. Others hold that a summary adoption cannot satisfy Rule 32 after a specific objection unless the report itself contains facts resolving the contested predicate. Repeated remands arise when the court announces a conclusion but leaves the appellate panel to guess at the underlying finding.<sup>5</sup>

<sup>2</sup> U.S. Sent’g Guidelines Manual § 6A1.3(a) & cmt. (U.S. Sent’g Comm’n 2025).

<sup>3</sup> *Townsend v. Burke*, 334 U.S. 736, 740–41 (1948); *United States v. Tucker*, 404 U.S. 443, 447–49 (1972); *Gall v. United States*, 552 U.S. 38, 51 (2007); *Rita v. United States*, 551 U.S. 338, 356–57 (2007).

<sup>4</sup> *United States v. Dunnigan*, 507 U.S. 87, 95–96 (1993).

<sup>5</sup> See *United States v. Carreon*, 11 F.3d 1225, 1231 (5th Cir. 1994); *United States v. Walker*, 29 F.3d 908, 911 (4th Cir. 1994); *United States v. Sykes*, 357 F.3d 672, 674 (7th Cir. 2004); *United States v. White*, 492 F.3d 380, 414–16 (6th Cir. 2007); *United States v. Saetern*, 504 F.3d 1175, 1178–80 (9th Cir. 2007); *United States v. West*, 550 F.3d 952, 974–75 (10th Cir. 2008);

A national clarification would not dictate the result of those cases. It would supply a common question: Does the sentencing record disclose, with reasonable specificity, the factual and legal basis that resolved the objection?

### ***C. They protect accurate downstream use of the presentence report***

The presentence report does not disappear after judgment. Rule 32(i)(3)(C) requires the court's determinations to accompany the copy made available to the Bureau of Prisons. That requirement reflects the reality that the report may affect classification, designation, programming, security decisions, release planning, and other administrative judgments.

An appended order helps only if it distinguishes what the court found from what it rejected or declined to consider. When the court merely says "objection overruled" or adopts an ambiguous report, downstream officials may treat every allegation as adjudicated. Conversely, when the court states that a matter did not affect sentencing and was not considered, the attachment should identify that matter clearly enough that it is not mistaken for an adopted fact.

## **III. PROPOSED RULE TEXT**

I recommend revising Rule 32(i)(3) as follows. Existing subdivision (A) would remain unchanged; additions are stated in full for clarity.

**(3) Court Determinations.** At sentencing, the court:

- (A)** may accept any undisputed portion of the presentence report as a finding of fact;
- (B)** must - for any disputed portion of the presentence report or other controverted matter - either:
  - (i)** rule on the dispute by stating findings and conclusions with sufficient specificity to disclose the material factual and legal basis for the ruling and to permit meaningful review and implementation of the sentence; or
  - (ii)** determine that a ruling is unnecessary because the matter will not affect sentencing or because the court will not consider the matter in sentencing;
- (C)** may satisfy (B)(i) by adopting identified findings or reasoning in the presentence report, an addendum, or a party's submission only if the adopted material itself resolves the dispute with the specificity required by (B)(i); and
- (D)** must append a copy of the court's determinations under this paragraph, including any identified adopted material or relevant transcript excerpt, to any copy of the presentence report made available to the Bureau of Prisons. A determination under (B)(ii) must identify the matter not considered and state that it was not adopted as a finding.

## **IV. PROPOSED COMMITTEE NOTE**

Subdivision (i)(3) is amended to clarify the degree of specificity required when the court resolves a disputed sentencing matter and the circumstances in which incorporation of another document satisfies the rule.

The amendment does not require formal findings on every sentencing fact, a written opinion, or a mechanical recitation of each item of evidence. The required specificity depends on the nature of the objection and the predicate governing the sentencing issue. A brief oral ruling may suffice. Consistent with *United States v. Dunnigan*, the finding need not follow a ritualistic formula if the record clearly encompasses the facts necessary to resolve the dispute.

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*United States v. Graham*, 83 F.3d 1466, 1477–78 (D.C. Cir. 1996).

The rule is triggered by a genuine dispute. An objection should identify the alleged factual inaccuracy, omitted predicate, or contested inference with reasonable specificity. A bare denial or general disagreement does not require the court to catalog evidence or make unnecessary subsidiary findings.

When the ruling depends on a particular person, act, transaction, amount, communication, event, knowledge, intent, causation, credibility determination, or effect, the ruling should identify that predicate with enough specificity to show how the dispute was resolved. The rule does not invariably require use of a person's name. A sufficiently definite description may be used when identity is unknown, protected, or immaterial. Rule 32(d)(3), in camera procedures, sealing, redaction, and other protections remain available.

Subdivision (C) preserves the efficient practice of adopting a presentence report, addendum, or party submission. Adoption is sufficient only when the identified material itself contains findings or reasoning that resolve the specific objection. A general adoption does not convert a legal conclusion, alternative possibility, or unsupported allegation into a finding of fact. The court may supplement an adopted document with a concise oral explanation.

Subdivision (D) preserves and clarifies the existing attachment requirement. The court may append a written order, a transcript excerpt, an annotated statement of reasons, or another reliable memorialization. When the court declines to consider a matter, the attachment should make clear that the allegation was not adopted as a sentencing finding. The amendment does not require alteration or deletion of the historical presentence report.

The amendment does not change the governing burden of proof, the admissibility of sentencing information, the standard of appellate review, preservation requirements, or harmless-error doctrine. It addresses only the clarity of the district court's determination.

## **V. A DISCLOSED CASE ILLUSTRATION**

My own sentencing illustrates the problem without requiring the Committee to resolve any disputed merits question. After a federal tax trial, the presentence report recommended a four-level organizer-or-leader adjustment. I objected that section 3B1.1 required at least one other criminally responsible participant whom I led, while the report identified employees and ordinary business functions but did not identify an employee who knowingly joined a tax offense.

The addendum stated generally that unidentified employees were criminally responsible. The government argued in writing that I either supplied all false information myself or others assisted me. At the hearing, the prosecutor stated that unnamed relatives "probably could have been charged." The district court adopted the report and addendum, overruled the objection, and remarked that if I was not an organizer or leader, the court had never seen one. The Fifth Circuit later upheld the adjustment after concluding that it was "plausible" at least one employee was criminally culpable.<sup>6</sup>

The reviewing court and I disagreed about whether the district court's adoption amounted to an implicit participant finding. This suggestion does not ask the Rules Committee to decide that

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<sup>6</sup> United States v. Castro, No. 24-11000, consolidated with No. 26-10428, slip op. at 15–17 (5th Cir. Aug. 11, 2026) (per curiam) (unpublished); Record on Appeal at 2669–77, 2827, 2881–82, 2896, United States v. Castro, No. 24-11000 (5th Cir.).

disagreement. It asks what the sentencing record should disclose in future cases. A finding that a defendant led a business may coexist with a disputed question whether another person knowingly participated in the crime. If the court resolves that question in the government's favor, a concise statement identifying the person or definite category, the knowing conduct, and the defendant's authority would make the basis reviewable. If the report already contains those facts, identifying and adopting the paragraph would suffice.

The obstruction adjustment in the same case presents a second illustration. The presentence report characterized lawsuits and communications as threatening investigators, while the appellate opinion also relied on generalized testimony that multiple witnesses were hesitant to testify. No allegedly hesitant witness testified. Again, the prospective question is not whether the adjustment was correct. It is whether a ruling based on witness influence should identify the witness or sufficiently defined category, the act or communication, the required intent or unlawfulness, and the connection to the proceeding rather than rely only on a global characterization.<sup>7</sup>

These examples show why the proposed amendment is not a naming formality. The issue is whether the record discloses the adjudicated predicate rather than leaving later readers to infer it from the overall atmosphere of the case.

## VI. APPLICATIONS BEYOND THE ILLUSTRATION

### *A. Aggravating and mitigating roles*

When criminal responsibility of another participant is disputed, the ruling should identify the person or sufficiently definite description, the conduct and mens rea supporting participant status, and the relationship establishing organization, leadership, management, or supervision. The court need not make findings about every worker or outsider.

### *B. Obstruction and perjury*

For perjury, Dunnigan already supplies the model: the finding must encompass falsity, materiality, and willfulness. For witness influence, the court should identify the act, the affected witness or sufficiently defined category, the obstructive intent, and the nexus required by the applicable provision. A finding may be concise, but it should disclose why lawful persuasion, ordinary litigation, or reputation became punishable obstruction.

### *C. Loss, restitution, and forfeiture*

When an amount is disputed, the court should identify the accepted methodology and material categories or transactions. It need not recite every spreadsheet entry. The finding should be specific enough to show whether the court accepted the probation officer's calculation, a party's alternative, or an independent estimate and why the amount is supported.

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<sup>7</sup> United States v. Castro, No. 24-11000, consolidated with No. 26-10428, slip op. at 18–20 (5th Cir. Aug. 11, 2026) (per curiam) (unpublished); Record on Appeal at 2009–10, 2823–28, 2857–59, 2880–82, United States v. Castro, No. 24-11000 (5th Cir.).

#### ***D. Enhancements based on knowledge, intent, causation, or effect***

Many adjustments turn on a mental state or causal proposition not apparent from the act alone. A conclusion that an enhancement applies may hide whether the court found actual knowledge, deliberate avoidance, foreseeability, purpose, or some other standard. The proposal requires the ruling to identify the standard applied and the material facts satisfying it, without demanding exhaustive findings on every inference.

### **VII. RESPONSES TO LIKELY OBJECTIONS**

#### ***A. The amendment would not require a sentencing catechism***

The proposed standard is functional: enough specificity for meaningful review and implementation. Most disputes can be resolved in a few sentences. If the report contains detailed and reliable findings, the court can identify and adopt them. Dunnigan demonstrates that required predicates and concise sentencing practice can coexist.

#### ***B. It would not reward vague objections***

The Committee Note should require a genuine, reasonably specific objection. A defendant who says only "I disagree" has not identified a disputed predicate. A defendant who identifies a person, transaction, statement, amount, source, or missing mens rea has. The specificity obligations should be reciprocal: the objection frames the issue, and the ruling resolves it.

#### ***C. It would not invade sentencing discretion or change substantive law***

The amendment does not tell judges which inference to draw, what sentence to impose, or which burden applies. It does not convert sentencing into a trial or restrict consideration of reliable information. It requires only that the court reveal the material basis after deciding the dispute.

#### ***D. Confidentiality can be preserved***

Rule 32 already permits exclusion of sensitive information and in camera summaries. The same tools can protect cooperating witnesses, minors, medical information, sealed evidence, and institutional security. A definite description can replace a public name, and a sealed supplement can preserve the full basis for review.

#### ***E. The amendment should reduce, not increase, appellate burden***

A short finding at sentencing can prevent years of dispute over whether a finding was implicit, which paragraph was adopted, whether an appellate court supplied a new predicate, or whether an unresolved allegation reached the Bureau of Prisons. Remands caused by ambiguity consume far more judicial resources than a focused ruling made while the record and parties are before the court.

#### ***F. Ordinary preservation and harmless-error rules remain available***

The proposal does not create automatic reversal. A party must preserve the relevant objection, and a court of appeals may apply ordinary harmless-error or plain-error principles. The amendment improves the record on which those doctrines operate.

## VIII. RULES ENABLING ACT AUTHORITY AND REQUESTED STUDY

The proposal regulates sentencing procedure, judicial findings, the record for review, and transmission of determinations with the presentence report. It does not alter the elements of an offense, the substance of a Guidelines adjustment, the permissible sentencing range, or any burden imposed by statute or constitutional law. It therefore fits comfortably within the Rules Enabling Act.<sup>8</sup>

If the Committee concludes that immediate publication is premature, I respectfully request focused study of:

- how often appellate courts remand because a district court failed to resolve a Rule 32 dispute with sufficient clarity;
- how often courts treat general adoption of a presentence report as sufficient after a specific objection, and what the adopted report actually contains;
- whether sentencing judges, probation officers, prosecutors, defenders, appellate judges, and Bureau of Prisons personnel would benefit from model finding language;
- whether the Statement of Reasons or a standardized Rule 32 findings form could provide an efficient alternative to rule text; and
- how appended determinations are transmitted to and used by the Bureau of Prisons.

The Federal Judicial Center could review a sample of published remands and conduct interviews or surveys. The Committee could also develop model oral findings for common disputed predicates without awaiting a formal amendment.

## CONCLUSION

Rule 32 already requires the court to resolve sentencing disputes. The proposed amendment would make that protection operational by clarifying what a ruling must disclose and when incorporation is adequate. It would preserve concise sentencing practice, judicial discretion, confidentiality, and current standards while reducing appellate reconstruction and downstream ambiguity.

I respectfully request that the Advisory Committee place this suggestion on its agenda, consider publication of the proposed amendment and Committee Note, or commission focused study and model practices concerning particularized sentencing findings.

Respectfully submitted,

John Anthony Castro  
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<sup>8</sup> 28 U.S.C. §§ 2072–2074.

2026 WL 2323790

Only the Westlaw citation is currently available.  
United States Court of Appeals, Fifth Circuit.

UNITED STATES OF AMERICA,  
Plaintiff—Appellee,  
v.  
JOHN ANTHONY CASTRO, Defendant—  
Appellant.

No. 24-11000, No. 26-10428

|  
08/11/2026

Appeal from the United States District Court for  
the Northern District of Texas USDC Nos. 4:24-  
CR-1-1, 4:24-CR-1-1

Before DUNCAN, OLDSHAM, and WILSON,  
Circuit Judges.

## Opinion

PER CURIAM:\*

\*1 Because no member of the panel or judge in  
regular active service requested that the court be  
polled on rehearing en banc, *see* FED. R. APP. P.  
35; 5TH CIR. R. 35, the petition for rehearing en  
banc is DENIED.

The petition for panel rehearing is GRANTED.  
Our prior panel opinion, 2026 WL 1999345 (5th  
Cir. July 10, 2026), is WITHDRAWN, and the  
following opinion is SUBSTITUTED therefor:

Following a bench trial, John Anthony Castro  
was convicted of 33 counts of aiding and  
assisting in the preparation and presentation of a  
false and fraudulent tax return, in violation of 26  
U.S.C. § 7206(2). After applying sentence  
enhancements, the district court sentenced Castro  
to 188 months' imprisonment, followed by one

year of supervised release. He now appeals both  
his conviction and the application of two  
sentencing enhancements. In a separate appeal  
also before us, he challenges the denial of his  
motion for bail pending appeal.

We dismiss the first appeal in part for lack of  
jurisdiction and affirm in all other respects. As  
for the second, we dismiss it as moot.

## I.

In 2014, Castro founded Castro and Company  
LLC (Castro & Co.), offering consulting, tax  
planning, and tax-preparation services. Castro &  
Co. marketed itself as an international-tax law  
firm, and Castro often referred to himself as a  
“federal practitioner” and an “international tax  
attorney” based on his registration with the  
Internal Revenue Service (IRS) as an enrolled  
agent. Though Castro was never licensed to  
practice law by any state bar, he was a law-school  
graduate and had earned an L.L.M. with a focus  
in taxation.

Castro employed several individuals, including  
family members, attorneys, and a certified public  
accountant (CPA) as part of his business. Though  
each employee had access to the firm's tax  
software, Castro was the only individual  
permitted to file tax returns. Between 2014 and  
2016, Castro developed a scheme to defraud the  
United States by creating and submitting false tax  
returns on behalf of unsuspecting taxpayers. As  
part of his marketing strategy, he advertised that  
he could obtain significantly higher tax refunds  
than other companies and offered to split the  
refund as his fee for services.

Castro primarily utilized two strategies to  
increase taxpayers' returns. One involved  
falsifying Schedule C business expenses and

deductions sufficient to generate net losses. The other required falsifying Schedule A expenses and deductions to decrease a client's taxable income.

When a prospective client contacted Castro & Co., an employee would instruct them to complete a short client questionnaire, which would then be submitted electronically to Castro. A Castro & Co. employee would arrange and conduct a phone interview with the client, following a script prepared by Castro, to elicit information that could lead to deductions. Clients were instructed to upload relevant supporting documents to a virtual portal managed by Castro and Co., and an employee would thereafter perform data input into Castro & Co.'s tax software. Once those steps were completed, Castro performed a final review.

\*2 Before filing a return, Castro would email a tax proposal to the client, identifying: the anticipated refund if the client were to file with Castro; the anticipated refund if the client were to file with a different tax professional; and the amount Castro would be paid out of the anticipated refund (usually about half). He discussed the refund amount and calculation generally but omitted details of the fraudulent returns. Finally, he would ask whether the client wanted him to file the return. If the client accepted his proposal, Castro would file without giving the client the opportunity to review the return. Once Castro received the refund check and deposited it into Castro & Co.'s operating account, he would send the client the promised portion.

Castro generally refused to meet with clients in person and often rebuffed clients' attempts to understand their filings. Due to his lack of responsiveness, many reported Castro to the IRS, resulting in over 200 audits of returns he filed.

In 2018, an undercover IRS agent began

investigating Castro & Co. After learning of the investigation in 2020, Castro sent various emails to investigators attempting to explain his methods, eventually threatening to file suit. Over the next year and a half, Castro filed multiple civil actions against an individual IRS agent, the United States, and then-former President Donald Trump, contending the investigation was politically motivated and retaliatory. All these suits were eventually dismissed.

On January 3, 2024, Castro was indicted on 33 counts of aiding and assisting in the preparation and presentation of a false and fraudulent return, in violation of 26 U.S.C. § 7206(2). Following a five-day bench trial, he was convicted on all counts. In preparation for sentencing, a probation officer compiled a presentence investigation report (PSR). The PSR grouped his 33 counts pursuant to U.S.S.G. § 3D1.2(b), which requires grouping counts that have a common victim and objective, and § 3D1.2(d), which requires grouping "[w]hen the offense level is determined largely on the basis of ... aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior."

Castro's base offense level of 26 under §§ 2T1.4(a)(1) and 2T4.1(K) was enhanced by 10, as follows: two levels because he was in the business of preparing or assisting in the preparation of tax returns; two levels because the offense involved sophisticated means; four levels because he was an organizer or leader in criminal activity that involved five or more participants or was otherwise extensive; and two levels because he willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice.

Castro objected that (1) the two-level enhancement for obstruction of justice was factually unsupported and inadequately alleged; (2) the four-level leadership enhancement did not

apply because his employees were not “participants” within the meaning of the guidelines; (3) the two-level enhancement for sophisticated means was improper because his operation was not sufficiently sophisticated; (4) he should have received an acceptance-of-responsibility reduction; and (5) his counts were improperly grouped. The district court overruled his objections, adopted the PSR’s statements of fact as its findings of fact, and sentenced him at the bottom of the guidelines range to 188 months’ imprisonment.

On November 12, 2024, Castro filed a notice of intent to proceed *pro se*, a motion for a new trial, and a timely notice of appeal, generating appeal No. 24-11000. A month later, he moved in district court for an evidentiary hearing on his new-trial motion. Both motions were denied. He then filed various other motions in district court, all of which were either denied or dismissed for lack of jurisdiction.

**\*3** On December 19, 2025, Castro filed an Emergency Application for Prompt Disposition and Release Pending Appeal in district court, one of a series of similar motions he filed in both district court and this court. On January 22, 2026, the district court denied his motion. Castro timely filed a notice of appeal of that order, which we construed as a motion for bail pending appeal, generating appeal No. 26-10428. On June 5, 2026, we consolidated the appeals, and on June 15, 2026, we denied his pending motion for bail.<sup>1</sup>

## II.

Castro lodges several arguments on appeal. He contends the district court erred by denying his motions for a new trial and to correct the trial transcripts; failing to ensure he effected a valid waiver of his Confrontation Clause rights; and applying sentencing enhancements under

U.S.S.G. §§ 3B1.1(a) and 3C1.1.

### A.

Before considering Castro’s arguments, we begin with a threshold question raised by the Government: Do we have jurisdiction to consider the denial of Castro’s motions to correct the trial transcripts and for new trial when both were filed and decided after he noticed this appeal?

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). If a district court acts in contravention of this “one-court-at-a-time” rule, its actions are “null and void.” *United States v. Willis*, 76 F.4th 467, 473 (5th Cir. 2023) (citation omitted).

### 1.

The Government contends that the one-court-at-a-time rule prevents us from considering Castro’s trial-transcript challenge because, upon Castro’s noticing his appeal, the district court lacked jurisdiction to rule on any subsequent motions put before it. The Government is correct that we cannot consider Castro’s challenge—but not because of the one-court-at-a-time rule. That rule divests the district court of control only “over those aspects of the case *involved in the appeal*.” *Griggs*, 459 U.S. at 58 (emphasis added). Castro’s motion to correct the trial transcripts was not an issue noticed in his first appeal (No. 24-11000), so the district court retained jurisdiction to consider it. Nonetheless, we lack jurisdiction to review that ruling “[b]ecause the order ... was a post-judgment order and not a

prior order, [such that] it cannot be challenged without a separate notice of appeal.” *See, e.g., Armour v. Knowles*, 512 F.3d 147, 156 (5th Cir. 2007). Succinctly, the ruling postdates Castro’s first notice of appeal, and “[o]ne cannot usually evince an intent to appeal an order that does not yet exist.” *Id.* at 156 n.20. And his subsequent notice of appeal in No. 26-10428 makes no mention of this issue, so that appeal does not save him.

## 2.

The Government also invokes the one-court-at-a-time rule to argue that the district court lacked jurisdiction to rule on Castro’s post-notice motion for a new trial. As a result, it reasons, the district court’s ruling is void and unreviewable. “[T]here are exceptions to the general one-court-at-a-time rule.” *Willis*, 76 F.4th at 471 (citation omitted). One such exception is embodied in Federal Rule of Appellate Procedure 4(b)(3), which “list[s] several motions that, if timely made, toll the time to appeal till after entry of an order denying the motion.” *United States v. Hoffman*, 70 F.4th 805, 810 (5th Cir. 2023) (alteration in original and citation omitted). Specifically, the Rule provides:

**\*4** If a defendant timely makes [an enumerated motion] under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later.

FED. R. APP. P. 4(b)(3)(A). Thus, if a party files a notice of appeal, but then files a timely motion listed in Rule 4(b)(3), the notice is not effective—and therefore does not strip the district court of jurisdiction—until the resolution of the motion. *See id.*

Among those qualifying motions is one for a new trial under Federal Rule of Criminal Procedure 33—“but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment[.]” *See* FED. R. APP. P. 4(b)(3)(A)(ii). And under Rule 33, a motion for new trial must be “filed within 3 years after the verdict or finding of guilty” if based on newly discovered evidence, or, for any other reason, “within 14 days after the verdict or finding of guilty.” FED. R. CRIM. P. 33(b)(1)–(2).

The Government contends Castro’s motion does not fall within Rule 4(b)(3) because the rule applies only to a *timely* motion under Rule 33, and Castro’s motion was untimely. It reasons that because the district court concluded his motion was not based on newly discovered evidence, it is subject to the fourteen-day limit rather than the three-year limit. And because Castro filed his motion for new trial 172 days after the district court’s verdict, it was not timely.

The Government’s argument fails. Rule 33’s time limits are non-jurisdictional claim-processing rules that may be forfeited if not timely raised. *Eberhart v. United States*, 546 U.S. 12, 19 (2005). The Government did not raise the timeliness of Castro’s motion in district court; it instead argued the merits, and the district court denied the motion on the merits. Were Rule 4(b)(3) jurisdictional, we would have an independent obligation to determine whether Castro’s motion was timely. After all, “[j]urisdictional arguments” are an “obvious exception” to forfeiture rules. *Rollins v. Home Depot USA*, 8 F.4th 393, 398 (5th Cir. 2021). But it, too, is a non-jurisdictional claim-processing rule.<sup>2</sup> *See Bowles v. Russell*, 551 U.S. 205, 212 (2007) (holding rule-based time limits in criminal cases “may be waived because the procedural rules adopted by the Court for the orderly transaction of its business are not

jurisdictional and can be relaxed by the Court in the exercise of its discretion” (cleaned up)); *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 25 (2017) (“If a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional ...; otherwise, the time specification fits within the claim-processing category[.]”).

Accordingly, the Government has forfeited any contention that Castro’s motion for a new trial was untimely, and under Rule 4(b)(3), his notice of appeal in No. 24-11000 did not become effective until December 19, 2024—the date of the denial of his motion for a new trial.<sup>3</sup> For the same reason, the district court retained jurisdiction to rule on the new-trial motion.

## B.

**\*5** As we likewise have jurisdiction over Castro’s new-trial challenge, we turn to the merits. He contends the district court erred in concluding the Government did not suppress *Brady*<sup>4</sup> material warranting a new trial and by denying his motion for a new trial without holding an evidentiary hearing.

Motions for a new trial based on alleged *Brady* violations are reviewed *de novo*, “while acknowledging that we must proceed with deference to the factual findings underlying the district court’s decision.” *United States v. Perry*, 35 F.4th 293, 345 (5th Cir. 2022) (citation omitted). The district court’s decision not to hold an evidentiary hearing on a motion for new trial is reviewed for abuse of discretion. *United States v. Mahmood*, 820 F.3d 177, 190 (5th Cir. 2016).

## 1.

Castro maintains the Government suppressed three pieces of information, each constituting a *Brady* violation: former client (and trial witness) Linda Rivera’s marital status; the existence of a lien on Rivera’s husband’s IRS tax account for unpaid child support; and a verbal immunity agreement between Rivera and the Government.

“In this context, the Court applies the three-prong *Brady* test to determine whether a new trial is appropriate.” *Perry*, 35 F.4th at 345. “To establish a *Brady* violation, a defendant must make three showings: ‘The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.’ ” *United States v. Sipe*, 388 F.3d 471, 477 (5th Cir. 2004) (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)). The final prong concerns whether the concealed evidence is material, requiring us to ask whether “the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.* (citation omitted).

Castro maintains he could have used the allegedly suppressed evidence to impeach Rivera. Specifically, he contends that the misrepresentation on Rivera’s taxes that she was single shows she is dishonest. And the undisclosed tax lien on her husband’s IRS account shows her motivation for lying—namely, that the IRS could have taken half her tax refund to pay her husband’s unpaid child support. He also contends Rivera’s verbal immunity agreement would have provided even stronger grounds for undermining her credibility.

“Impeachment evidence ‘falls within the *Brady* [disclosure] rule’ because ‘[s]uch evidence ... may make the difference between conviction and acquittal.’ ” *Banks v. Thaler*, 583 F.3d 295, 311 (5th Cir. 2009) (alterations in original and

citation omitted). When the evidence “would have provided [defendant’s] *only* avenue of impeachment, ... we have been more likely to find that the withheld evidence constitutes *Brady* material.” *Sipe*, 388 F.3d at 489 (emphasis in original). But “evidence which impeaches an already impeached witness is by definition cumulative” and therefore immaterial. *Id.*

Under this framework, Castro’s arguments falter. First, even if suppressed and favorable to Castro, Rivera’s husband’s tax lien is cumulative and therefore immaterial impeachment evidence. At trial, defense counsel impeached Rivera with evidence that she had reported being single on her tax return despite being married. Thus, evidence of her husband’s tax lien would have “merely furnishe[d] an additional basis on which to impeach a witness whose credibility ha[d] already been shown to be questionable[.]” *United States v. Brumfield*, 89 F.4th 506, 515 (5th Cir. 2023) (citation omitted). Counsel’s line of questioning also shows that Rivera’s marital status was not suppressed. Castro knew she was married at trial; indeed, Rivera’s intake form—which she completed when she sought Castro’s services—stated she was married. Finally, Castro’s assertion that Rivera was offered immunity to testify is wholly conclusory. Accordingly, he fails to show the district court abused its discretion in denying his motion for a new trial.

## 2.

\*6 Castro’s contention that his motion warranted an evidentiary hearing likewise fails. “The law of this circuit is well established that a motion for new trial may ordinarily be decided upon affidavits without an evidentiary hearing.” *United States v. Hamilton*, 559 F.2d 1370, 1373 (5th Cir. 1977). “Where evidentiary hearings are ordered, it is because of certain unique situations

typically involving allegations of jury tampering, prosecutorial misconduct, or third party confession.” *Id.* Even so, those circumstances do not “compel such a hearing” because “the acumen gained by the trial judge in presiding over the course of the trial makes Rule 33 motions directed to the same judge ‘particularly suitable for ruling without a hearing.’ ” *United States v. MMR Corp.*, 954 F.2d 1040, 1046 (5th Cir. 1992) (citation omitted).

As stated, the *Brady* evidence Castro furnishes was either known to him at the time of trial, wholly conclusory, or duplicative impeachment evidence. The district court therefore did not abuse its discretion in denying his motion without holding an evidentiary hearing.

## C.

Castro argues the district court violated the Sixth Amendment when it admitted stipulations “tantamount to a guilty plea” into evidence without ensuring he knowingly waived his Confrontation Clause rights. “Alleged Confrontation Clause violations are reviewed *de novo* and [are] subject to harmless error analysis.” *United States v. Garcia*, 887 F.3d 205, 209 (5th Cir. 2018).

The Confrontation Clause of the Sixth Amendment ensures the right of a criminal defendant to confront witnesses against him. *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986). Nonetheless, counsel may waive his client’s confrontation rights by stipulating to the admission of evidence “so long as the defendant does not dissent from his attorney’s decision, and so long as it can be said that the attorney’s decision was a legitimate trial tactic or part of a prudent trial strategy.” *United States v. Stephens*, 609 F.2d 230, 232–33 (5th Cir. 1980). Waiver of the right “is not contingent on evidence that the

defendant affirmatively agreed to counsel's stipulation; [he] just must not dissent from that decision." *United States v. Ceballos*, 789 F.3d 607, 616 (5th Cir. 2015). The burden lies with the Government to prove a valid waiver, and we "should indulge every reasonable presumption against waiver of fundamental constitutional rights." *Id.* at 614 (citation omitted).

Castro maintains the Government cannot carry its burden, but that position is belied by the record. Before trial, the Government proposed stipulations covering specific testimony from witnesses the Government did not intend to call at trial, as well as exhibits corresponding with each witness. Castro's counsel emailed the stipulations to him; Castro replied, "I agree to them"; his counsel signed them; and the Government signed and filed them.

At trial, before Linda Rivera testified, the Government made the court aware of the stipulations, some of which covered Rivera's testimony. The Government noted that, given the stipulations, it would put on a truncated version of her testimony. The court asked defense counsel if he agreed, and he responded: "Yes, Your Honor." After Rivera's testimony, the Government expressed that it could present compressed versions of the three remaining victims' testimony because of the stipulations, but defense counsel disagreed. Accordingly, the Government called the remaining witnesses and elicited testimony as if there were no stipulations for them. At no point did Castro's counsel move to strike or object to the stipulations as to the other, non-testifying witnesses.

Then, before closing arguments, the district court stated it had reviewed the stipulations, and its "impression [was] that the [G]overnment believe[d] that it ha[d] proven, on the counts that are stipulated to, ... all of the elements of the crime through those stipulations ... [i]ncluding willfulness." After the Government agreed, the

court asked, "[b]ut the defense, I'm inferring, admits to the elements, except for willfulness?" Defense counsel responded, "I think that is accurate," and "the stipulations themselves do not satisfy willfulness or that it was ... intentional." But counsel once again did not object to the facts included in the stipulations. Rather, he argued only that certain legal conclusions could not be drawn from those stipulated facts.

\*7 Moreover, the record reflects that the stipulations were part of the legitimate trial strategy of narrowing the issues to whether Castro's conduct was willful. As the Government notes, Castro's proposed findings of fact begin with: "[T]his case necessitates no fact finding apart from the ultimate issue of guilt or innocence." And during closing, defense counsel reinforced that the only issue was Castro's intent:

[W]illfulness is really what this case is all about, and I want to be clear, and clarify one thing I said earlier, is one of the elements here is that the returns be fraudulent. I view that as really subsumed or interlinked with willfulness. And so, I want to be clear, we don't concede necessarily that any of the stipulations satisfy that there was a fraudulent item on the return, but I just want that to be clear. That really is the same, same issue, ultimately, here. Because Castro agreed to the stipulations in writing, did not dissent from his attorney's affirming the stipulations at trial, and the stipulations were part of a legitimate trial tactic or strategy, Castro waived his confrontation rights. *See Stephens*, 609 F.2d at 232–33.

#### D.

Next, Castro challenges the application of two sentencing enhancements: a four-level enhancement under U.S.S.G. § 3B1.1(a) for

being an organizer or leader in criminal activity; and a two-level enhancement under U.S.S.G. § 3C1.1 for obstructing or impeding the administration of justice.

“We review the district court’s interpretation and application of the Guidelines *de novo*, and its factual findings for clear error.” *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013). A factual finding is not clearly erroneous if it is plausible in light of the record as a whole. *United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011). “[W]e will conclude that a finding of fact is clearly erroneous only if a review of all the evidence leaves us ‘with the definite and firm conviction that a mistake has been committed.’ ” *Id.* (citations omitted).

## 1.

Castro first contends the district court erred by applying a leadership enhancement. Under § 3B1.1(a), a defendant is subject to a four-level enhancement “[i]f [he] was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” “A ‘participant’ is a person who is criminally responsible for the commission of the offense, but need not have been convicted.” U.S.S.G. § 3B1.1(a), cmt. n.1. Under either theory of the enhancement, the defendant must have been “an organizer or leader of at least one other” participant. *United States v. Gross*, 26 F.3d 552, 555 (5th Cir. 1994) (citing U.S.S.G. § 3B1.1(a), cmt. n.2).

Castro maintains the enhancement was improper because the record is devoid of facts showing that five or more participants were involved in his scheme. He also asserts the Government cannot now argue his scheme was “otherwise extensive” because (1) it did not raise that argument until the sentencing hearing, and (2) the district court did

not impose the enhancement on that ground. The Government responds that the enhancement is proper under either theory and that the district court considered its otherwise-extensive argument at sentencing.

Irrespective of the parties’ arguments, we need not decide whether Castro’s scheme involved five or more criminally responsible individuals. As we have explained, “we may affirm an enhancement on any ground supported by the record,” *United States v. Salinas*, 918 F.3d 463, 465 (5th Cir. 2019), and the record shows Castro’s scheme was otherwise extensive.

\*8 “In assessing whether an organization is ‘otherwise extensive,’ all persons involved during the course of the entire offense are to be considered.” U.S.S.G. § 3B1.1(a), cmt. n.3. “This includes taking into account unknowing participants who contributed to the success of the criminal enterprise.” *United States v. Tuma*, 738 F.3d 681, 694 (5th Cir. 2013); *see also* U.S.S.G. § 3B1.1(a), cmt. n.3 (“[A] fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.”).

The record shows Castro’s scheme involved several people—family members, multiple attorneys, and a CPA—who contributed to the success of his enterprise, resulting in \$15,168,913 in estimated tax loss to the Government. His employees handled client intake calls, conducted phone interviews, entered data using Castro & Co.’s tax software, and assisted in the preparation of returns. “[W]ithout [these individuals’] participation[, Castro’s] activities could not have happened or continued.” *Tuma*, 738 F.3d at 694.

Moreover, regarding whether Castro organized or led another criminally responsible individual, “[t]he bar to be a ‘participant’ is not high.” *United States v. Fullerton*, — F.4th —, 2026 WL

2097531, at \*6 (5th Cir. July 21, 2026). “They only must ‘participate[ ] knowingly in some part of the criminal enterprise’ ... ‘by play[ing] some role in bringing about the specific offense charged.’ ” *Id.* (alterations in original and citations omitted).

At trial, the Government presented a portion of the tax-interview script Castro prepared for his family-member employees—Ismael, Alfonso, David, and Dominic—to use during prospective-client calls: “I’m gonna be pissed if this section [regarding side businesses] is blank. Cross-examine the client. Don’t give up. Keep digging. Find a freaking business. Something, anything. We’ll decide later if it fully qualifies.” And the PSR provides that over 200 returns filed by Castro and his staff, including multiple attorneys and a CPA, resulted in audits, all of which Castro & Co. lost. When confronted with Castro’s contention at sentencing that his employees were not “participants,” the district court stated: “I wonder sometimes if you and I are seeing the same case.... [I] couldn’t disagree with you more.... [I]f this defendant is not an organizer or leader, then I’ve never seen one.” Given the record, it is plausible that at least one of Castro’s employees was criminally culpable in his scheme. *See United States v. Lopez*, 70 F.4th 325, 331 (5th Cir. 2023) (affirming enhancement when it is “plausible in light of the record as a whole” (citation omitted)). We therefore cannot say the district court clearly erred in applying the enhancement.

## 2.

Next, Castro contends the district court erred in applying an obstruction-of-justice enhancement because it failed to make specific factual findings necessary to support the enhancement’s application. The parties dispute the correct standard of review. The Government contends

that plain-error review applies because, although Castro objected to the enhancement in district court, he did so on different grounds than he raises here. *See, e.g., United States v. Williams*, 343 F.3d 423, 434 (5th Cir. 2003). Specifically, the Government maintains Castro’s objection in district court was that (1) he did not commit perjury, and (2) his lawsuits were an improper basis for the enhancement—not, as he argues on appeal, that the district court’s factual findings were inadequate. We disagree with the Government’s depiction of the record.

**\*9** To preserve an argument for appellate review, a defendant must raise his objection “in a manner that could have placed the district court on notice of the error he now asserts.” *United States v. Dominguez-Alvarado*, 695 F.3d 324, 328 (5th Cir. 2012). Despite the Government’s contention to the contrary, Castro raised his objection to the sufficiency of the enhancement’s factual basis in district court. In addition to disputing the factual narrative in the PSR—*i.e.*, contending that he did not commit perjury or engage in vexatious litigation—Castro also asserted: “The PSR does not *allege* perjury”; “the PSR *points to no* misconduct during trial”; “the conduct described in those provisions *does not support* the application of this enhancement”; “[t]here is no *allegation* that the defendant improperly testified or provided materially false information”; and “[n]o false statements are *identified* whatsoever.” (emphasis added).

Thus, we review this enhancement challenge as we did the other: the district court’s interpretation and application of the Guidelines *de novo*; its factual findings for clear error. *Zuniga*, 720 F.3d at 590.

Section 3C1.1 of the Guidelines provides:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the

investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels. The probation officer applied the enhancement in the PSR because Castro "attempted to threaten or intimidate the investigators in this offense" through filing "frivolous lawsuits" against IRS agents and "provided materially false information to a judge." The probation officer likened his conduct to the examples provided in Application Notes 4(A) and (F).

Application Note 4(A) states the enhancement applies to "threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so." *Id.* § 3C1.1, cmt. n.4(A). Application Note 4(F) likewise applies the enhancement when a defendant "provid[es] materially false information to a judge or magistrate judge." *Id.* § 3C1.1, cmt. n.4(F).

Castro takes exception with the enhancement under either theory. He contends the PSR, adopted by the district court as its factual findings, lacks the factual predicates for a finding of perjury. He also maintains his lawsuits were not "frivolous" and do not warrant the enhancement's application. As we explain below, because the court did not clearly err in finding that Castro's past litigation amounted to threatening, intimidating, or otherwise unlawfully influencing a witness in his investigation, we need not resolve whether perjury was a sufficient basis to support the enhancement.

The PSR stated that Castro "filed multiple frivolous lawsuits against the United States, IRS personnel, including the IRS agent in his personal capacity, and [then-]former President Trump in an attempt to end the investigation." It

noted one such lawsuit where Castro sued an IRS agent personally and stated: "My offer to settle is this: tell me who ordered you to initiate the unlawful and retaliatory investigation against me and I'll drop the lawsuit. One and only chance to settle." Moreover, an IRS agent testified that, once Castro discovered he was being investigated, he sent the agent "a barrage of emails," one of which stated: "[A]lthough I understand this is not valid service of process, I wanted to make you immediately aware that a federal civil action has been filed in the United States District Court .... I truly wish this could have been avoided. Have a nice weekend." And further testimony provided that Castro "often use[d] the threat of lawsuits against anyone who challenged him," which made "multiple witnesses hesitant to ... testify[.]" Given this record evidence, the district court did not clearly err in applying the two-level enhancement under § 3C1.1. *See Rodriguez*, 630 F.3d at 380; *see also* U.S.S.G. § 3C1.1, cmt. n.4(A).

\* \* \*

**\*10** In sum, Castro's arguments are without merit. We lack jurisdiction to consider his trial-transcript challenge, and his *Brady*-based motion for a new trial fails on the merits. Similarly, he cannot show that his Confrontation Clause rights were violated or that the district court erred in applying sentencing enhancements under §§ 3B1.1(a) or 3C1.1.

Based on the foregoing, in appeal No. 24-11000, we DISMISS, for lack of jurisdiction, Castro's challenge to the denial of his motion to correct the trial transcripts and AFFIRM in all other respects. We DISMISS appeal No. 26-10428 as moot.

## All Citations

Not Reported in Fed. Rptr., 2026 WL 2323790

## Footnotes

- \* This opinion is not designated for publication. See 5TH CIR. R. 47.5.
- <sup>1</sup> Because we denied Castro’s requested relief in appeal No. 26-10428—bail pending appeal—we dismiss that appeal as moot. Accordingly, our analysis below is limited to the arguments raised in appeal No. 24-11000. Castro’s other actions pending before our court, appeal Nos. 26-10488 and 26-10510, are not part of this appeal.
- <sup>2</sup> In contrast, the timely filing of a notice of appeal in a *civil* case is jurisdictional. See *Bowles v. Russell*, 551 U.S. 205, 213 (2007) (“Because Congress specifically limited the amount of time by which district courts can extend the notice-of-appeal period in [28 U.S.C.] § 2107(c), that limitation is more than a simple ‘claim-processing rule.’”).
- <sup>3</sup> The cases the Government cites do not control. See *United States v. Ugalde*, 861 F.2d 802 (5th Cir. 1988); *United States v. Demopoulos*, 506 F.2d 1171, 1180–81 (7th Cir. 1974). In *Ugalde*, the district court concluded the motion for a new trial was not based on newly discovered evidence, was therefore untimely, and declined to reach the merits of the motion on that basis. 861 F.2d at 804. Here, in contrast, the district court reached the merits without considering the timeliness question. As for *Demopoulos*, that opinion does not contain the quotation the Government attributes to it.
- <sup>4</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

# TAB 15

## MEMORANDUM

**TO:** Advisory Committee on Criminal Rules

**FROM:** Professors Sara Sun Beale and Nancy King, Reporters

**RE:** New Suggestion: Stipulations that Establish Material Guilty (Rule 23(d))  
([26-CR-39](#))

**DATE:** September 18, 2026

John Anthony Castro has written the Committee suggesting that Rule 23 be amended to add a new subdivision (d), which would “require a short, personal, on-the-record confirmation tied to the exact final document only when a stipulation materially carries the government’s burden.” Suggestion 226-CR-39 at 1. His proposed subdivision would provide:

### **(d) Stipulations That Materially Establish Guilt.**

**(1) Personal Confirmation Required.** Before admitting or giving binding evidentiary effect to a stipulation that, alone or together with related stipulations:

**(A)** admits a disputed fact that establishes or materially supports an element of a charged offense;

**(B)** substitutes for testimony material to proving an element; or

**(C)** establishes substantially all facts necessary for conviction,

the court must address the defendant personally in open court and determine that the defendant:

**(i)** has reviewed the exact final stipulation;

**(ii)** has had an opportunity to consult with counsel;

**(iii)** understands the material facts or testimony admitted, the counts and elements affected, and

that the government need not otherwise prove those matters; and

**(iv)** voluntarily authorizes the stipulation.

**(2) Additional Advice When the Stipulations Establish Substantially the Case.** If paragraph (1)(C) applies, the court must also inform the defendant that:

**(A)** the defendant may persist in a plea of not guilty;

(B) the government must prove beyond a reasonable doubt every element not admitted;

(C) the factfinder may rely on the stipulated matters as substantive evidence and may convict if the remaining issues are resolved against the defendant; and

(D) as to the stipulated matters, the agreement may relieve the government of calling identified witnesses and may waive the defendant's opportunity to confront and question them.

**(3) Identification, Timing, and Revision.**

(A) The court must identify the exact stipulation by docket number, exhibit number, date, page count, or another unambiguous descriptor and ensure that it is part of the record.

(B) The court must comply with this subdivision before the government materially relies on the stipulation, including by releasing a witness whose testimony it replaces.

(C) A material revision requires renewed compliance with this subdivision.

**(4) Routine Agreements.** This subdivision does not require personal confirmation for an agreement limited to authenticity, chain of custody, scheduling, an undisputed foundational matter, or another matter that does not materially establish an element or replace disputed proof of one.

Suggestion 26-CR-39 at 5.

Mr. Castro explains that his “proposal addresses a recurring gap between routine evidentiary stipulations and agreements that replace material witnesses, admit disputed conduct, establish offense elements, or collectively perform much of the work of a guilty plea. ... It would leave ordinary agreements concerning authenticity, chain of custody, scheduling, and undisputed foundations within counsel's traditional trial authority.”

Mr. Castro has provided the opinion upholding his conviction ([included in this agenda book](#)) as an illustration of the problem the amendment is intended to address.

This item is on the agenda for discussion of whether it warrants the appointment of a subcommittee for in-depth study.

August 27, 2026

Carolyn A. Dubay, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, DC 20544

Re: Rules Suggestion - Proposed Federal Rule of Criminal Procedure 23(d), Stipulations That Materially Establish Guilt

Dear Ms. Dubay:

I respectfully submit the enclosed suggestion for a new subdivision of Federal Rule of Criminal Procedure 23. The proposal addresses a recurring gap between routine evidentiary stipulations and agreements that replace material witnesses, admit disputed conduct, establish offense elements, or collectively perform much of the work of a guilty plea.

The proposed Rule 23(d) would require a short, personal, on-the-record confirmation tied to the exact final document only when a stipulation materially carries the government's burden. It would leave ordinary agreements concerning authenticity, chain of custody, scheduling, and undisputed foundations within counsel's traditional trial authority. The attached memorandum includes proposed rule text, a proposed Committee Note, model colloquies, and a request for focused empirical study.

My federal case is included as a disclosed illustration of the avoidable record problem. This submission does not ask the Rules Committees to review my conviction or resolve any disputed fact. It proposes a prospective procedural safeguard that would protect defendants, defense counsel, prosecutors, witnesses, trial judges, and the finality of judgments.

Please assign this suggestion an agenda number and forward it to the Advisory Committee on Criminal Rules for consideration.

Respectfully submitted,

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## RULES SUGGESTION

### PROPOSED FEDERAL RULE OF CRIMINAL PROCEDURE 23(d)

#### Personal, Version-Specific Authorization of Stipulations That Materially Establish Guilt

Submitted by John Anthony Castro<sup>1</sup>

#### I. EXECUTIVE SUMMARY

The Federal Rules carefully regulate a guilty plea and a waiver of jury trial, but they do not identify the point at which a trial stipulation becomes sufficiently plea-like to require the defendant's personal authorization. Rule 11 requires the judge to address the defendant personally before accepting a guilty plea. Rule 23(a) requires a written jury waiver, government consent, and judicial approval. Rule 23(c) requires findings in a nonjury trial. Yet no national rule governs an agreement that replaces material prosecution witnesses, admits disputed conduct, establishes a charged element, or leaves the factfinder with only a narrow issue such as intent.<sup>2</sup>

Most stipulations are routine and beneficial. They authenticate records, establish dates, simplify chain of custody, reduce prejudice, and conserve witness time. Counsel must retain broad authority over those matters. A smaller category, however, materially supplies the factual foundation for conviction. This suggestion calls those agreements **guilt-bearing stipulations**. The constitutional and practical concern arises from what the agreement does, not from the caption placed on it.

Federal appellate decisions reveal no uniform trigger or procedure. Some treat stipulated trials as outside Rule 11 and rely primarily on counsel's tactical authority and the defendant's nondissent. Others require substantial Rule 11 protections when the stipulated procedure is tantamount to a plea, or approve careful personal colloquies without identifying a national rule. The result is a label-dependent patchwork in which the same admission may receive materially different safeguards depending on circuit, trial format, and terminology.<sup>3</sup>

A new Rule 23(d) should require a focused personal confirmation when a stipulation materially establishes guilt. The judge would identify the exact final document, explain the material facts or testimony admitted and the counts or elements affected, confirm consultation with counsel, and ask whether the defendant voluntarily authorizes that exact agreement. A more

<sup>1</sup> J.D., University of New Mexico School of Law; LL.M. in Taxation, Georgetown University Law Center; alumnus, Harvard Business School. The author is not licensed to practice law. He was the defendant-appellant in *United States v. Castro*, discussed in Part VI. The proposal does not depend on resolving the disputed provenance and authorization issues in his favor.

<sup>2</sup> See Fed. R. Crim. P. 11(b)(1)-(3), 23(a)-(c); Federal Rules of Criminal Procedure 35-36 (Dec. 1, 2025).

<sup>3</sup> Compare *United States v. Robertson*, 698 F.2d 703, 708-09 (5th Cir. 1983), and *United States v. Stephens*, 609 F.2d 230, 232-33 (5th Cir. 1980), with *Witherspoon v. United States*, 633 F.2d 1247, 1251-52 (6th Cir. 1980), and *United States v. Stalder*, 696 F.2d 59, 61-62 (8th Cir. 1982); see also *United States v. Lyons*, 898 F.2d 210, 215-16 (1st Cir. 1990); *United States v. Wellington*, 417 F.3d 284, 290-91 (2d Cir. 2005); *United States v. Muse*, 83 F.3d 672, 678-81 (4th Cir. 1996); *United States v. Lawson*, 682 F.2d 1012, 1015 (D.C. Cir. 1982); *United States v. Schmidt*, 760 F.2d 828, 834-35 (7th Cir. 1985); *United States v. Schuster*, 734 F.2d 424, 425 (9th Cir. 1984).

complete but still calibrated inquiry would apply when stipulations establish substantially all facts necessary for conviction. Routine stipulations would remain unaffected.

The rule would serve Rule 2’s goals of fairness, simplicity, and avoidance of unjustifiable expense and delay. A five-minute inquiry before the government releases a witness is less costly than years of litigation over what document was sent, what “I agree to them” referred to, whether a typed signature was authorized, or whether counsel’s silence supplied a valid waiver. The rule would regulate procedure and recordmaking without altering the government’s substantive burden, the elements of any offense, or the defendant’s underlying constitutional rights.<sup>4</sup>

## II. THE CURRENT RULES LEAVE A PLEA-LIKE GAP

### A. Stipulations Occupy a Spectrum

The word “stipulation” describes agreements that do very different work. At one end are housekeeping agreements: a record is authentic, a date is correct, a laboratory used a specified procedure, or a custodian would supply an uncontested foundation. Those agreements streamline trial without changing its objective.

A second category is testimonial. The parties agree that an absent witness would testify in a described manner, or that identified testimony may be treated as admissible. Such an agreement may waive confrontation and can be a prudent strategy when live testimony would be more damaging or cross-examination would add little.

A third category is guilt-bearing. The agreement admits disputed conduct, establishes or materially supports an element, replaces testimony central to proving an element, or collectively establishes substantially all facts necessary for conviction. A stipulation may be guilt-bearing even when it leaves intent, identity, or a legal inference unresolved. It may also be guilt-bearing even when counsel reasonably views it as advantageous.

The distinction is especially easy to miss in a bench trial. A jury sees which witnesses testify and hears the admitted facts announced. A judge may review a written agreement outside the ordinary rhythm of testimony. The defendant may believe the government still must prove a proposition that the writing has already removed from dispute.

### B. Existing Rules Protect Adjacent Decisions but Not This One

Rule 11 requires the court to address a defendant personally, explain specified rights and consequences, determine voluntariness, and establish a factual basis before accepting a guilty plea. The rule creates a contemporaneous record and an opportunity to correct misunderstanding while the parties can still act.<sup>5</sup>

Rule 23(a) protects another fundamental trial choice by requiring the defendant’s written waiver before a jury trial may be dispensed with. Rule 23(b)(2) likewise requires a written stipulation and court approval before the parties reduce jury size. Rule 23(c) recognizes the need

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<sup>4</sup> See Fed. R. Crim. P. 2; 28 U.S.C. § 2072(b).

<sup>5</sup> Fed. R. Crim. P. 11(b)(1)-(3); *McCarthy v. United States*, 394 U.S. 459, 465-72 (1969).

for specific findings in a nonjury trial. Current Rule 23 therefore already governs the identity of the factfinder, the composition of the jury, and the record of a bench adjudication. A new subdivision concerning plea-like evidentiary agreements is a natural fit.

The Supreme Court has also drawn a boundary between counsel-controlled tactics and choices belonging personally to the accused. In *Brookhart v. Janis*, counsel could not accept a procedure that was the practical equivalent of a guilty plea while the defendant insisted he was not pleading guilty. In *McCoy v. Louisiana*, the Court reaffirmed that counsel controls many trial means but the accused controls the objective of maintaining innocence or admitting guilt.<sup>6</sup>

Other decisions properly caution against converting every strategy into a personal-waiver question. *Florida v. Nixon* and *Gonzalez v. United States* recognize counsel's authority over many tactical matters. A rule that required a defendant's personal assent to every evidentiary agreement would impair effective representation and could expose defendants to unnecessary prejudicial proof.<sup>7</sup>

The missing procedure is therefore not a full Rule 11 colloquy for every stipulation. It is a calibrated rule for the boundary case: when a written admission becomes evidence and materially carries the government's burden.

### C. Federal Decisions Use Different Labels and Safeguards

The federal cases do not supply a uniform answer. Fifth Circuit precedent permits counsel to waive confrontation through a legitimate trial tactic when the defendant does not dissent, while also recognizing that counsel may not, without the defendant's consent, stipulate to facts establishing guilt. Other Fifth Circuit authority rejects automatic application of Rule 11 to a stipulated trial.<sup>8</sup>

The Sixth and Eighth Circuits have required or discussed Rule 11-like protections when a stipulated procedure is tantamount to a guilty plea. The First, Second, Fourth, Seventh, Ninth, and District of Columbia Circuits have used varying formulations, often approving careful inquiries while declining to adopt a single trigger. A recent Sixth Circuit case demonstrates that a detailed colloquy for an all-element stipulation is workable, but the procedure remains discretionary rather than nationally required.<sup>9</sup>

This variation has three consequences. First, lawyers cannot reliably predict when personal authorization is required. Second, trial judges may not learn the parties' differing views of a stipulation's legal effect until closing argument or appeal. Third, appellate courts must reconstruct authorization from emails, counsel statements, silence, and later characterizations rather than review a direct answer tied to the operative document.

<sup>6</sup> *Brookhart v. Janis*, 384 U.S. 1, 5-8 (1966); *McCoy v. Louisiana*, 584 U.S. 414, 421-28 (2018).

<sup>7</sup> *Florida v. Nixon*, 543 U.S. 175, 181, 186-92 (2004); *Gonzalez v. United States*, 553 U.S. 242, 248-50 (2008); see also *Old Chief v. United States*, 519 U.S. 172, 174, 190-92 (1997).

<sup>8</sup> *Stephens*, 609 F.2d at 232-33; *United States v. Ceballos*, 789 F.3d 607, 614, 616 (5th Cir. 2015); *Robertson*, 698 F.2d at 708-09.

<sup>9</sup> *Witherspoon*, 633 F.2d at 1251-52; *Stalder*, 696 F.2d at 61-62; *Lyons*, 898 F.2d at 215-16; *Wellington*, 417 F.3d at 290-91; *Muse*, 83 F.3d at 678-81; *Lawson*, 682 F.2d at 1015; *Schmidt*, 760 F.2d at 834-35; *Schuster*, 734 F.2d at 425; *United States v. Watson*, No. 24-3679, slip op. at 11-14 (6th Cir. July 9, 2025).

### III. PROPOSED RULE 23(d)

The cleanest amendment is a new subdivision of Rule 23. The Committee could adopt the following text or use it as a starting point:

**(d) Stipulations That Materially Establish Guilt.**

**(1) Personal Confirmation Required.** Before admitting or giving binding evidentiary effect to a stipulation that, alone or together with related stipulations:

**(A)** admits a disputed fact that establishes or materially supports an element of a charged offense;

**(B)** substitutes for testimony material to proving an element; or

**(C)** establishes substantially all facts necessary for conviction,

the court must address the defendant personally in open court and determine that the defendant:

**(i)** has reviewed the exact final stipulation;

**(ii)** has had an opportunity to consult with counsel;

**(iii)** understands the material facts or testimony admitted, the counts and elements affected, and that the government need not otherwise prove those matters; and

**(iv)** voluntarily authorizes the stipulation.

**(2) Additional Advice When the Stipulations Establish Substantially the Case.** If paragraph (1)(C) applies, the court must also inform the defendant that:

**(A)** the defendant may persist in a plea of not guilty;

**(B)** the government must prove beyond a reasonable doubt every element not admitted;

**(C)** the factfinder may rely on the stipulated matters as substantive evidence and may convict if the remaining issues are resolved against the defendant; and

**(D)** as to the stipulated matters, the agreement may relieve the government of calling identified witnesses and may waive the defendant's opportunity to confront and question them.

**(3) Identification, Timing, and Revision.**

**(A)** The court must identify the exact stipulation by docket number, exhibit number, date, page count, or another unambiguous descriptor and ensure that it is part of the record.

**(B)** The court must comply with this subdivision before the government materially relies on the stipulation, including by releasing a witness whose testimony it replaces.

**(C)** A material revision requires renewed compliance with this subdivision.

**(4) Routine Agreements.** This subdivision does not require personal confirmation for an agreement limited to authenticity, chain of custody, scheduling, an undisputed foundational matter, or another matter that does not materially establish an element or replace disputed proof of one.

### IV. PROPOSED COMMITTEE NOTE

New subdivision (d) addresses stipulations whose evidentiary effect materially establishes guilt. It does not require the defendant's personal confirmation of routine trial-management agreements concerning authenticity, chain of custody, scheduling, uncontested foundation, or comparable matters.

The court should consider the substance and cumulative effect of the agreement rather than its title. A stipulation may fall within paragraph (1) when it admits disputed conduct material to an element, replaces material testimony, or, together with related agreements, establishes substantially all facts necessary for conviction.

The inquiry is intentionally shorter than the colloquy required by Rule 11. A stipulated trial remains a trial. The defendant may present evidence, contest remaining facts, challenge legal sufficiency, and preserve issues for appeal. The court need address only the material admissions and rights actually affected.

The phrase “exact final stipulation” ensures that personal authorization attaches to the operative writing. The court may identify the document by docket number, exhibit number, title and date, page count, secure electronic identifier, or another reliable descriptor. The court need not preserve every draft or keystroke. A material revision includes adding or expanding a factual admission, changing an agreement that a witness “would testify” into an agreement that the stated facts are true, adding affected counts or witnesses, or otherwise enlarging the agreement’s evidentiary effect.

The inquiry should ordinarily occur outside the jury’s presence and may occur under seal when necessary. The judge need not read the entire agreement aloud. It is sufficient to identify the operative document, summarize the provisions that materially carry the government’s burden, confirm consultation with counsel, and obtain the defendant’s voluntary authorization.

A stipulation offered principally to avoid prejudicial proof of an undisputed status element may warrant only an abbreviated confirmation. The rule is directed to agreements that materially alter the contested factual foundation of guilt, not to defense-protective measures whose effect and authorization are otherwise clear.

The rule does not prescribe a remedy for noncompliance. Existing constitutional doctrine and Rules 11(h) and 52 govern preservation, harmless error, and plain error. Nor does the rule determine whether counsel acted effectively or whether a particular stipulation was admissible on another ground.

## V. REASONS FOR THE AMENDMENT

### A. The Rule Should Turn on Effect, Not Labels

A national rule should not depend on whether lawyers call a proceeding a “stipulated trial,” “slow plea,” “prima facie trial,” “confessional stipulation,” or ordinary evidentiary agreement. Labels often reflect local custom rather than constitutional consequence. The relevant questions are what facts are conclusively admitted, what testimony is displaced, what elements are materially supplied, and what remains for the factfinder.

The proposed trigger is deliberately functional. Paragraph (1)(A) reaches a disputed factual admission that establishes or materially supports an element. Paragraph (1)(B) reaches an agreement that substitutes for material testimony. Paragraph (1)(C) reaches cumulative agreements that establish substantially all facts necessary for conviction. The rule does not activate merely because the evidence is strong or conviction is likely. It activates because the defendant’s own agreement has removed ordinary proof from the adversarial process.

That distinction also prevents overbreadth. A stipulation that a bank record is authentic or that a firearm crossed state lines may technically assist the government, but if the matter is undisputed and does not alter the defense objective, it remains routine. By contrast, a statement summarizing what several absent witnesses would say about the defendant’s conduct may materially establish guilt even if no single sentence recites an entire statutory element.

### B. Exact-Document Identification Is an Essential Safeguard

Personal authorization is meaningful only if it attaches to the operative writing. Modern litigation relies on email, forwarded messages, collaborative Word files, electronic signatures, and PDFs generated from changing drafts. A statement such as “I agree to them” may appear

unequivocal years later while leaving unanswered which attachment was present, which version was final, and what consequences had been explained.

The proposed rule does not require digital forensics in every case. It requires a stable referent. Placing the final document on the docket or marking it as an exhibit, identifying it in open court, and asking whether the defendant reviewed and authorizes that version ordinarily will suffice. If the parties later make a material change, the court can summarize it and renew confirmation.

This record protects every participant. Defense counsel gains contemporaneous proof of authority. Prosecutors can excuse witnesses and organize proof with greater confidence. Judges avoid post hoc reconstruction. Appellate courts review a direct answer rather than infer consent from silence or pronouns. Witnesses are less likely to be recalled after a dispute arises.

### C. The Rule Would Prevent, Not Create, Litigation

The principal objection is administrative burden. But the relevant comparison is not between a brief inquiry and no judicial time. It is between a brief inquiry and the possible cost of a post-trial motion, ineffective-assistance claim, evidentiary hearing, appellate remand, retrial, or professional-responsibility dispute.

The overwhelming majority of stipulations would remain in paragraph (4). A Tier Two inquiry for an element-bearing or materially testimonial agreement can take only a few questions. A more complete Tier Three inquiry would be reserved for the uncommon case in which the defendant's agreements establish substantially the prosecution's case.

The procedure may increase useful stipulations. Lawyers and courts are more likely to rely on a consequential agreement when its scope and authorization are fixed. Reliability and efficiency are complementary, not competing, objectives.

### D. Existing State Practice Demonstrates Administrability

Minnesota permits guilt to be tried entirely on stipulated facts, stipulated evidence, or both, but requires the defendant personally to waive the rights to testify, to have prosecution witnesses testify in the defendant's presence, to question those witnesses, and to compel favorable witnesses. The agreement and waiver must be written or placed on the record. Minnesota also provides standardized forms for the procedure.<sup>10</sup>

The Minnesota rule is broader than the proposed paragraph (1) because it governs a case submitted entirely on stipulated material. It nevertheless proves the central administrative point: a jurisdiction can preserve the efficiency of stipulated adjudication while obtaining personal, right-specific waivers and a reliable record.

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<sup>10</sup> Minn. R. Crim. P. 26.01, subd. 3(b)-(c); Minnesota Rules of Criminal Procedure Appendix of Forms, Form 32(b).

## E. The Proposal Fits the Rules Enabling Act

The Rules Enabling Act authorizes general rules of practice and procedure but prohibits abridging, enlarging, or modifying substantive rights. Proposed Rule 23(d) regulates the method by which a federal court receives and gives binding effect to a consequential evidentiary agreement. It does not change the elements of an offense, the government’s burden, the scope of the Confrontation Clause, or the admissibility of evidence outside the stipulation. It is procedural in the same sense as Rules 11 and 23(a): it creates a reliable record before a court acts on an asserted waiver.<sup>11</sup>

The proposal also leaves harmless-error doctrine to existing law. It therefore avoids converting every defect into automatic reversal and permits courts to apply settled preservation and prejudice principles.

## VI. UNITED STATES v. CASTRO AS A DISCLOSED ILLUSTRATION

The author’s case illustrates the record problem without supplying the proposal’s legal premise. After a five-day bench trial, John Anthony Castro was convicted of thirty-three counts under 26 U.S.C. § 7206(2). Before trial, the government proposed stipulations concerning testimony from witnesses it did not intend to call and exhibits associated with them.

The Fifth Circuit’s August 11, 2026 substituted opinion described the authorization process as follows: counsel emailed the stipulations to Castro; Castro replied, “I agree to them”; counsel signed; and the government signed and filed them. The panel held that counsel validly waived confrontation because Castro agreed in writing, did not dissent at trial, and the stipulations formed part of a legitimate strategy to narrow the dispute to intent.<sup>12</sup>

The opinion also recounted a pre-closing exchange. The district judge stated an impression that the government believed the stipulations proved all elements, including willfulness, on the affected counts. Defense counsel initially agreed that the defense admitted the elements other than willfulness, then clarified that the defense did not necessarily concede a fraudulent item. The panel treated the exchange as consistent with a strategy focused on intent.

Castro has separately disputed whether the exact final documents were attached to the short message he received and whether the typed name of lead counsel on the filed version was authorized. The government and the Fifth Circuit accepted a different account. This suggestion does not ask the Rules Committee to resolve those disputes or revisit the judgment.

Accepting the panel’s account in full still demonstrates the prospective value of a national rule. No trial-court question identified the exact final document and connected Castro’s personal authorization to it. No trial-court explanation stated which absent witnesses, facts, counts, and elements the stipulations displaced. The legal effect became clearest near closing, after the government had structured its proof in reliance on the agreements.

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<sup>11</sup> 28 U.S.C. § 2072(a)-(b); see Fed. R. Crim. P. 11, 23(a).

<sup>12</sup> United States v. Castro, No. 24-11000, consolidated with No. 26-10428, slip op. at 12-15 (5th Cir. Aug. 11, 2026) (per curiam) (unpublished).

Under proposed Rule 23(d), the judge could have identified the filed document, summarized its material effect, and asked a direct question before witnesses were released. Castro might have agreed, objected, requested clarification, or sought revision. Any answer would have produced a reliable record and protected all sides. The rule would not dictate a different verdict; it would ensure that authorization was established prospectively rather than reconstructed after conviction.

## VII. RESPONSES TO ANTICIPATED OBJECTIONS

### A. Counsel Must Retain Authority to Manage Trial

Agreed. The proposed rule preserves that authority for routine stipulations and for the many evidentiary choices that do not materially establish guilt. The court asks about the agreement's scope and authorization, not counsel's privileged reasoning or defense strategy. A defendant cannot force disclosure of counsel's tactical analysis merely because the rule applies.

### B. Defendants May Repudiate Sound Strategies After Conviction

That risk already exists. A contemporaneous record reduces it. A defendant who personally authorizes the exact final agreement after a focused explanation will face a clear record. A defendant who raises only a vague later accusation need not receive an evidentiary hearing. The proposal makes strategic choices more durable by documenting them.

### C. Borderline Classification Will Be Difficult

Every legal system distinguishes routine stipulations from plea-like adjudication already; the present problem is that courts do so after the fact and without a common framework. The proposed categories supply objective indicators. When uncertainty remains, a short confirmation is inexpensive. Courts can err on the side of asking four questions without conducting a full plea hearing.

### D. A Personal Inquiry May Signal Judicial Concern to the Jury

The rule should ordinarily be implemented outside the jury's presence. The Committee Note can make that explicit. Courts routinely conduct waiver inquiries and admissibility conferences without the jury. No strategic inference need reach the factfinder.

### E. Rule 11 Already Provides the Necessary Analogy

Rule 11 supplies principles but not a fit. A stipulated trial may preserve issues, permit defense evidence, and leave genuine facts for adjudication. Applying all plea warnings would be excessive. The proposed rule borrows only the safeguards needed to identify the document, explain its material evidentiary effect, and verify personal authorization.

### F. The Rule Could Interfere with Prejudice-Reducing Stipulations

Paragraph (4) and the Committee Note address that concern. A defendant often stipulates to an undisputed status element to keep prejudicial details from the jury. If authorization is clear and the stipulation does not alter the contested defense objective, the court need not conduct the

fuller inquiry. Where uncertainty exists, an abbreviated confirmation can protect the defendant without inviting the excluded evidence.

### VIII. REQUEST FOR EMPIRICAL AND ADVISORY-COMMITTEE STUDY

If the Committee is not prepared to publish rule text immediately, it should retain the suggestion and request focused study by the Federal Judicial Center or the Rules Committee staff. Useful questions include:

- How frequently do federal criminal cases use stipulations that replace material witnesses, establish an element, or submit substantially the entire case on agreed facts or evidence?
- What colloquies, written forms, standing orders, or local practices do district courts currently use?
- How often do appellate or collateral proceedings dispute the scope, version, signature, or authorization of a stipulation?
- What distinctions do courts draw among an agreement that a witness would testify as stated, an agreement that the testimony is admissible, and an agreement that the stated facts are true?
- What state procedures, including Minnesota Rule 26.01, provide workable models?
- Would a model form or bench card resolve much of the problem even before a national rule takes effect?

The Committee could also circulate the proposal to the Federal Public and Community Defenders, the Department of Justice, district judges, magistrate judges, and court reporters for operational feedback. The issue affects prosecution logistics and defense autonomy in equal measure.

### IX. CONCLUSION

Federal courts should continue to trust lawyers to streamline criminal trials. But when a stipulation replaces material witnesses or materially carries the government's burden, that trust should be supported by a record that identifies the exact agreement and confirms the defendant's informed authorization.

Proposed Rule 23(d) is narrow, administrable, and outcome neutral. It leaves routine evidentiary agreements untouched, avoids a full plea colloquy, preserves harmless-error doctrine, and gives trial judges a short procedure for preventing avoidable disputes. It would protect counsel, prosecutors, witnesses, courts, defendants, and the legitimacy of convictions resting on paper admissions rather than live proof.

The Advisory Committee should place this suggestion on its agenda, solicit empirical and practitioner input, and develop a national rule or model procedure governing stipulations that materially establish guilt.

## APPENDIX A - MODEL FOCUSED COLLOQUIES

### A. Element-Bearing or Materially Testimonial Stipulation

**Court:** I am referring to the document filed as ECF No. \_\_\_, titled “\_\_\_,” dated \_\_\_, and consisting of \_\_\_ pages. Have you reviewed that exact document with your lawyer?

**Defendant:** Yes.

**Court:** The agreement states that [identify the material fact or expected testimony]. It will allow the government to rely on that matter without calling [identify witness, if applicable] or presenting other proof of [identify element or disputed proposition]. Do you understand that effect?

**Defendant:** Yes.

**Court:** Have you had enough time to discuss the advantages and disadvantages of the agreement with counsel?

**Defendant:** Yes.

**Court:** Do you personally authorize counsel to enter this exact agreement, voluntarily and without threats or undisclosed promises?

**Defendant:** Yes.

### B. Stipulations Establishing Substantially the Case

**Court:** Taken together, the identified agreements establish [identify elements or essential facts]. The remaining disputed issue is [identify issue]. If that remaining issue is resolved against you, the court or jury may find you guilty without additional evidence on the admitted matters. Do you understand?

**Defendant:** Yes.

**Court:** You have the right to persist in your plea of not guilty and require the government to prove every element beyond a reasonable doubt. By authorizing these agreements, you are giving up the right to require ordinary proof of the admitted matters and, as to the identified witnesses, the opportunity to have them testify in your presence and be questioned. Do you understand?

**Defendant:** Yes.

**Court:** Knowing those consequences, do you still personally authorize the court to accept the exact agreements I have identified?

**Defendant:** Yes.

## APPENDIX B - AUTHOR DISCLOSURE

John Anthony Castro holds a J.D. from the University of New Mexico School of Law and an LL.M. in Taxation from Georgetown University Law Center and is an alumnus of Harvard Business School. He is not licensed to practice law. He is currently incarcerated at FPC Pollock and was the defendant-appellant in *United States v. Castro*, No. 24-11000. This proposal distinguishes adjudicated facts from disputed allegations and does not ask the Rules Committees to review his conviction or pending litigation.