

AMENDMENTS TO THE FEDERAL RULES  
OF CRIMINAL PROCEDURE

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COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT  
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCE-  
DURE THAT HAVE BEEN ADOPTED BY THE COURT, PURSUANT  
TO 28 U.S.C. 2074



APRIL 15, 1997.—Referred to the Committee on the Judiciary and ordered  
to be printed

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U.S. GOVERNMENT PRINTING OFFICE



**Supreme Court of the United States  
Washington, D. C. 20543**

CHAMBERS OF  
THE CHIEF JUSTICE

April 11, 1997

Honorable Newt Gingrich  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,



SUPREME COURT OF THE UNITED STATES

April 11, 1997

ORDERED:

1. That the Federal Rules of Criminal Procedure for the United States District Courts be, and they hereby are, amended by including therein amendments to Criminal Rules 16 and 58.

[See *infra*, pp. \_\_\_ \_\_\_.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 1997, and shall govern all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings in criminal cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

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

**Rule 16. Discovery and Inspection**

(a) GOVERNMENTAL DISCLOSURE OF EVIDENCE.

*(1) Information Subject to Disclosure.*

\* \* \* \* \*

(E) EXPERT WITNESSES. At the defendant's request, the government shall disclose to the defendant a written summary of testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the government requests discovery under subdivision (b)(1)(C)(ii) of this rule and the defendant complies, the government shall, at the defendant's request, disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705 as evidence at trial on the issue of the defendant's

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mental condition. The summary provided under this subdivision shall describe the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications.

(2) *Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), (D), and (E) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or any other government agent investigating or prosecuting the case. Nor does the rule authorize the discovery or inspection of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. § 3500.

\* \* \* \* \*

**(b) THE DEFENDANT'S DISCLOSURE OF EVIDENCE.****(1) *Information Subject to Disclosure.***

\* \* \* \* \*

(C) EXPERT WITNESSES. Under the following circumstances, the defendant shall, at the government's request, disclose to the government a written summary of testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial: (i) if the defendant requests disclosure under subdivision (a)(1)(E) of this rule and the government complies, or (ii) if the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition. This summary shall describe the witnesses' opinions, the bases and

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reasons for those opinions, and the witnesses' qualifications.

\* \* \* \* \*

**Rule 58. Procedure for Misdemeanors and Other Petty Offenses**

(a) SCOPE.

(1) *In General.* This rule governs the procedure and practice for the conduct of proceedings involving misdemeanors and other petty offenses, and for appeals to district judges in such cases tried by United States magistrate judges.

\* \* \* \* \*

(b) PRETRIAL PROCEDURES.

\* \* \* \* \*

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

\* \* \* \* \*

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(C) the right to request the appointment of counsel if the defendant is unable to obtain counsel, unless the charge is a petty offense for which an appointment of counsel is not required;

\* \* \* \* \*

(E) the right to trial, judgment, and sentencing before a district judge, unless:

(i) the charge is a Class B misdemeanor motor-vehicle offense, a Class C misdemeanor, or an infraction; or

(ii) the defendant consents to trial, judgment, and sentencing before a magistrate judge;

(F) the right to trial by jury before either a United States magistrate judge or a district judge, unless the charge is a petty offense; and

(G) the right to a preliminary examination in accordance with 18 U.S.C. § 3060, and the general circumstances

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under which the defendant may secure pretrial release, if  
the defendant is held in custody and charged with a  
misdemeanor other than a petty offense.

**(3) *Consent and Arraignment.***

**(A) PLEA BEFORE A UNITED STATES MAGISTRATE JUDGE.**

A magistrate judge shall take the defendant's plea in a  
Class B misdemeanor charging a motor-vehicle offense,  
a Class C misdemeanor, or an infraction. In every other  
misdemeanor case, a magistrate judge may take the plea  
only if the defendant consents either in writing or orally  
on the record to be tried before the magistrate judge and  
specifically waives trial before a district judge. The  
defendant may plead not guilty, guilty, or with the  
consent of the magistrate judge, *nolo contendere*.

**(B) FAILURE TO CONSENT.** In a misdemeanor case —  
other than a Class B misdemeanor charging a motor-

vehicle offense, a Class C misdemeanor, or an infraction — magistrate judge shall order the defendant to appear before a district judge for further proceedings on notice, unless the defendant consents to trial before the magistrate judge.

\* \* \* \* \*

(g) APPEAL.

(1) *Decision, Order, Judgment or Sentence by a District Judge.* An appeal from a decision, order, judgment or conviction or sentence by a district judge shall be taken in accordance with the Federal Rules of Appellate Procedure.

(2) *Decision, Order, Judgment or Sentence by a United States Magistrate Judge.*

(A) INTERLOCUTORY APPEAL. A decision or order by a magistrate judge which, if made by a district judge, could be appealed by the government or defendant under any provision of law, shall be subject to an appeal to a

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district judge provided such appeal is taken within 10 days of the entry of the decision or order. An appeal shall be taken by filing with the clerk of court a statement specifying the decision or order from which an appeal is taken and by serving a copy of the statement upon the adverse party, personally or by mail, and by filing a copy with the magistrate judge.

(B) APPEAL FROM CONVICTION OR SENTENCE. An appeal from a judgment of conviction or sentence by a magistrate judge to a district judge shall be taken within 10 days after entry of the judgment. An appeal shall be taken by filing with the clerk of court a statement specifying the judgment from which an appeal is taken, and by serving a copy of the statement upon the United States Attorney, personally or by mail, and by filing a copy with the magistrate judge.

\* \* \* \* \*

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(D) SCOPE OF APPEAL. The defendant shall not be entitled to a trial de novo by a district judge. The scope of appeal shall be the same as an appeal from a judgment of a district court to a court of appeals.

\* \* \* \* \*



LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

March 11, 1997

**MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE  
ASSOCIATE JUSTICES OF THE SUPREME COURT**

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for the consideration of the Court proposed amendments to Rules 16 and 58 of the Federal Rules of Criminal Procedure. The Judicial Conference approved amendments to Rule 16 at its meeting in September 1996, and amendments to Rule 58 at its meeting in March 1997. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am also transmitting excerpts from Reports of the Committee on Rules of Practice and Procedure to the Judicial Conference and Reports of the Advisory Committee on the Federal Rules of Criminal Procedure.

  
Leonidas Ralph Mecham

Attachments

**EXCERPT FROM THE  
REPORT OF THE JUDICIAL CONFERENCE  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
SEPTEMBER 1996**

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

\* \* \* \* \*

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

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted to your committee proposed amendments to Criminal **Rule 16** together with Committee Notes explaining their purpose and intent.

**Rule 16** (*Discovery and Inspection*) would be amended to require pretrial reciprocal disclosure by the parties of expert testimony offered on the issue of the defendant's mental condition. The reciprocal disclosure provisions, parallel to similar provisions adopted in 1993, would be triggered when the government requests disclosure concerning expert witness' information regarding the defendant's mental condition after the defendant has given notice under Rule 12.2(b).

The proposed amendments to **Rule 16** were circulated to the bench and bar for comment in September 1994, together with controversial changes that would have required the government to disclose the names of witnesses to be called at trial seven days before the trial. Although there was no controversy or discussion of the specific amendments providing reciprocal rights for the disclosure of expert witness' information,

the specific proposal was subsumed by the action of the Judicial Conference at its September 1995 session rejecting the amendments to Rule 16 — which was aimed at the provision requiring government pretrial disclosure of the names of witnesses. JCUS-SEP 95, p. 96.

The advisory committee concluded that separate republication of the same proposal on disclosure of expert witness' information on the defendant's mental condition was unnecessary. It submitted the proposed amendments for approval.

The proposed amendments to the Federal Rules of Criminal Procedure, as recommended by your committee, are in Appendix F with an excerpt from the advisory committee report.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rule 16 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

**Agenda F-18 (Appendix E)**  
**Rules**  
**September 1996**

**TO:** Hon. Alicemarie H. Stotler, Chair  
 Standing Committee on Rules of Practice  
 and Procedure

**FROM:** Hon. D. Lowell Jensen, Chair  
 Advisory Committee on Federal Rules of Criminal  
 Procedure

**SUBJECT:** Report on Proposed and Pending Rules of Criminal  
 Procedure

**DATE:** May 7, 1996

**I. INTRODUCTION.**

At its meeting April 29, 1996, the Advisory Committee on the Rules of Criminal Procedure acted upon proposed or pending amendments to Rules of Criminal Procedure 5.1, 16, 26.2, 31, 33, 35, and 43. The Committee decided not to take any further action on a proposed amendment to Rule 24(a), which would have provided for attorney-conducted voir dire.

\* \* \* \* \*

**II. ACTION ITEMS**

\* \* \* \* \*

**B. Rule 16. Discovery and Inspection; Disclosure of Expert's Testimony.**

At its July 1995 meeting, the Standing Committee approved for transmittal to the Judicial Conference two key amendments to Rule 16. The first amendment would have required the government to provide the names of its witnesses to be called at trial seven days before the trial. The second, would have required the parties to disclose summaries of expert testimony offered on the issue of the defendant's mental condition. The amendment requiring pretrial disclosure of names and government witnesses was the subject of pro and con discussion and was ultimately rejected by the Judicial Conference. Although there was no controversy and no discussion concerning the expert testimony amendment, it was rejected at the same time by the Judicial Conference.

At its January 1996 meeting, in light of this history, the Standing Committee asked whether the Advisory Committee wished to reconsider the amendment governing expert testimony and during its April 1996 meeting, the Advisory Committee did reconsider this proposal and voted to resubmit it to the Standing Committee.

\* \* \* \* \*

**Recommendation: The Advisory Committee recommends that the amendments to Rule 16 regarding expert testimony be resubmitted to the Judicial Conference without further public comment.**

\* \* \* \* \*

**TO:** Hon. Alicemarie H. Stotler, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Hon. D. Lowell Jensen, Chair  
Advisory Committee on Federal Rules of Criminal Procedure

**SUBJECT:** GAP REPORT: Explanation of Changes Made Subsequent to the  
Circulation for Public Comment of Rules 16 and 32.

**DATE:** May 23, 1995

At its June 1994 meeting the Standing Committee approved the circulation for public comment of proposed amendments to Rules 16 and 32.

Both rules were published in September 1994, with a deadline of February 28, 1995 for any comments. At a hearing on January 27, 1995 representatives of the Committee heard the testimony of several witnesses regarding the amendments to Rule 16. At its meeting in Washington, D.C. on April 10, 1995, the Advisory Committee considered the written submissions of members of the public as well as the testimony of the witnesses.

Summaries of the comments on each Rule, the Rules, and the accompanying Committee Notes are attached.

The Advisory Committee's actions on the amendments subsequent to the circulation for public comment are as follows:

1. Rule 16(a)(1)(E) & (b)(1)(C). Disclosure of Expert Witnesses.

The Committee made only minor stylistic changes to the proposed amendments to Rule 16(a)(1)(E) and 16(b)(1)(C). Very few comments were received on these particular provisions in Rule 16.

\* \* \* \* \*

**EXCERPT FROM THE  
REPORT OF THE JUDICIAL CONFERENCE  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
MARCH 1997**

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

\* \* \* \* \*

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

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted to your committee proposed amendments to Criminal Rule 58 together with Committee Notes explaining their purpose and intent.

The proposed amendments to Rule 58 conform with the provisions in the Federal Courts Improvement Act, which modify the procedures governing the consent of a defendant to be tried by a magistrate judge. The changes would eliminate the requirement for a defendant to consent to a trial before a magistrate judge in a case when the charge is a Class B misdemeanor motor-vehicle offense, a Class C misdemeanor, or an infraction. The proposed amendments would also permit a defendant to consent to a trial by a magistrate judge in all other misdemeanor cases either orally on the record or in writing.

As in the case of the proposed amendments to the Civil Rules, the Chair of the Committee on Administration of the Magistrate Judges System requested the rules committees to expedite the rulemaking process and eliminate the inconsistency between the rule and the amended statutory provisions. On recommendation of the advisory committee and in accordance with established Judicial Conference procedures, your committee agreed that the proposed

amendments to Criminal Rule 58 were technical or conforming and need not be published for public comment.

The proposed amendments to the Federal Rules of Criminal Procedure, as recommended by your committee, are in Appendix B with an excerpt from the advisory committee report.

**Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rule 58 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

**Agenda F-18 (Appendix B)**  
**Rules**  
**March 1997**

**TO:** Hon. Alicemarie H. Stotler, Chair  
Standing Committee on Rules of Practice  
and Procedure

**FROM:** Hon. D. Lowell Jensen, Chair  
Advisory Committee on Federal Rules of Criminal  
Procedure

**SUBJECT** Report of Advisory Committee on Rules of Criminal Procedure

**DATE:** December 4, 1996

**I. INTRODUCTION.**

At its meeting on October 7th and 8th, 1996, the Advisory Committee on the Rules of Criminal Procedure considered proposed or pending amendments to several Rules of Criminal Procedure. This report addresses those proposals. The minutes of that meeting and proposed amendments to Rule 58 are attached.

**II. ACTION ITEMS**

**A. Action on Proposed Changes to Rule 58**

After the Committee met in October, the President signed the Federal Courts Improvement Act of 1996 (S. 1887). Section 202 amended 18 U.S.C. § 3401(b) and (g) and 28 U.S.C. § 636(a); those amendments eliminated the requirement that a defendant consent to a trial before a magistrate judge in those cases where the defendant is charged with a petty offense which is either a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction. That same section also amended §3401(b) by allowing the defendant to consent to a trial by a magistrate judge in all other misdemeanor cases either orally on the record or in writing. Those statutory changes will require conforming amendments to Rule 58, Procedure for Misdemeanors and Other Petty Offenses.

On the recommendation of Hon. Phillip M. Pro (Chair of the Committee on the Administration of the Magistrate Judges System) and with the assistance of Mr. Rabiej

**Criminal Rules Committee  
Report to Standing Committee  
December 1996**

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(who drafted suggested conforming language) the Criminal Rules Committee was polled and agreed that the changes should be forwarded to the Standing Committee for action at its January 1997 meeting. The Style Committee has reviewed the draft and has made its suggested changes.

Under the rule-making procedures, "The Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that notice and comment are not appropriate or necessary." The Committee views the proposed amendments as "conforming" changes resulting from the changes in the underlying statutory provisions and believes that public comment is not necessary. If the changes are forwarded without public comment, and assuming they are approved by the Supreme Court, they would go into effect on December 1, 1997. If the normal procedure of publication and comment is followed, they would not go into effect until December 1, 1998.

A draft of the proposed changes to Rule 58, the Committee Note, and a copy of Section 202 of the Federal Courts Improvement Act of 1996, are attached.

*The Advisory Committee recommends that the Standing Committee approve the amendments to Rule 58, without publication, and forward them to the Judicial Conference for approval.*

\* \* \* \* \*

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

**Rule 16. Discovery and Inspection<sup>1</sup>**

1 (a) GOVERNMENTAL DISCLOSURE OF EVIDENCE.

2 (1) *Information Subject to Disclosure.*

3 \* \* \* \* \*

4 (E) EXPERT WITNESSES. At the defendant's  
5 request, the government shall disclose to the  
6 defendant a written summary of testimony that the  
7 government intends to use under Rules 702, 703, or  
8 705 of the Federal Rules of Evidence during its case-  
9 in-chief at trial. If the government requests  
10 discovery under subdivision (b)(1)(C)(ii) of this rule  
11 and the defendant complies, the government shall, at  
12 the defendant's request, disclose to the defendant a  
13 written summary of testimony the government  
14 intends to use under Rules 702, 703, or 705 as

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<sup>1</sup> New matter is underlined and matter to be omitted is lined through.

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15 evidence at trial on the issue of the defendant's  
16 mental condition. ~~This~~ The summary provided  
17 under this subdivision shall ~~must~~ describe the  
18 witnesses' opinions, the bases and the reasons for  
19 those opinions ~~therefor~~, and the witnesses'  
20 qualifications.

21 (2) *Information Not Subject to Disclosure.* Except  
22 as provided in paragraphs (A), (B), (D), and (E) of  
23 subdivision (a)(1), this rule does not authorize the  
24 discovery or inspection of reports, memoranda, or other  
25 internal government documents made by the attorney for  
26 the government or any other government agent ~~agents in~~  
27 ~~connection with the investigation or prosecution of~~  
28 investigating or prosecuting the case. Nor does the rule  
29 authorize the discovery or inspection of statements made

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30 by government witnesses or prospective government  
31 witnesses except as provided in 18 U.S.C. § 3500.

32 \* \* \* \* \*

33 (b) THE DEFENDANT'S DISCLOSURE OF EVIDENCE.

34 (1) *Information Subject to Disclosure.*

35 \* \* \* \* \*

36 (C) EXPERT WITNESSES. Under the following  
37 circumstances, the defendant shall, at the  
38 government's request, disclose to the government a  
39 written summary of testimony that the defendant  
40 intends to use under Rules 702, 703, or 705 of the  
41 Federal Rules of Evidence as evidence at trial: (i) if  
42 if the defendant requests disclosure under  
43 subdivision (a)(1)(E) of this rule and the  
44 government complies, or (ii) if the defendant has  
45 given notice under Rule 12.2(b) of an intent to  
46 present expert testimony on the defendant's mental

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47 condition. ~~the defendant, at the government's~~  
48 ~~request, must disclose to the government a written~~  
49 ~~summary of testimony the defendant intends to use~~  
50 ~~under Rules 702, 703 and 705 of the Federal Rules~~  
51 ~~of Evidence as evidence at trial.~~ This summary  
52 ~~must~~ shall describe the witnesses' opinions ~~of the~~  
53 ~~witnesses,~~ the bases and reasons for those opinions  
54 ~~therefor,~~ and the witnesses' qualifications.

55 \* \* \* \* \*

#### COMMITTEE NOTE

**Subdivision (a)(1)(E).** Under Rule 16(a)(1)(E), as amended in 1993, the defense is entitled to disclosure of certain information about expert witnesses which the government intends to call during the trial. And if the government provides that information, it is entitled to reciprocal discovery under (b)(1)(C). This amendment is a parallel reciprocal disclosure provision which is triggered by a government request for information concerning defense expert witnesses as to the

defendant's mental condition, which is provided for in an amendment to (b)(1)(C), *infra*.

**Subdivision (b)(1)(C).** Amendments in 1993 to Rule 16 included provisions for pretrial disclosure of information, including names and expected testimony of both defense and government expert witnesses. Those disclosures are triggered by defense requests for the information. If the defense makes such requests and the government complies, the government is entitled to similar, reciprocal discovery. The amendment to Rule 16(b)(1)(C) provides that if the defendant has notified the government under Rule 12.2 of an intent to rely on expert testimony to show the defendant's mental condition, the government may request the defense to disclose information about its expert witnesses. Although Rule 12.2 insures that the government will not be surprised by the nature of the defense or that the defense intends to call an expert witness, that rule makes no provision for discovery of the identity, the expected testimony, or the qualifications of the expert witness. The amendment provides the government with the limited right to respond to the notice provided under Rule 12.2 by requesting more specific information about the expert. If the government requests the specified information, and the defense complies, the defense is entitled to reciprocal discovery under an amendment to subdivision (a)(1)(E), *supra*.

### **Rule 58. Procedure for Misdemeanors and Other Petty Offenses**

- 1 (a) SCOPE.
- 2 (1) *In General.* This rule governs the procedure and practice
- 3 for the conduct of proceedings involving misdemeanors and

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4 other petty offenses, and for appeals to district judges of the  
5 ~~district courts~~ in such cases tried by United States magistrate  
6 judges.

7 \* \* \* \* \*

8 (b) PRETRIAL PROCEDURES.

9 \* \* \* \* \*

10 (2) *Initial Appearance*. At the defendant's initial appearance  
11 on a misdemeanor or other petty offense charge, the court  
12 shall inform the defendant of:

13 \* \* \* \* \*

14 (C) ~~unless the charge is a petty offense for which~~  
15 ~~appointment of counsel is not required;~~ the right to  
16 request the ~~assignment~~ appointment of counsel if the  
17 defendant is unable to obtain counsel, unless the charge  
18 is a petty offense for which an appointment of counsel is  
19 not required;

20 \* \* \* \* \*

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21 (E) the right to trial, judgment, and sentencing before a  
22 district judge of the district court , unless;

23 (i) the charge is a Class B misdemeanor motor-  
24 vehicle offense, a Class C misdemeanor, or an  
25 infraction; or

26 (ii) the defendant consents to trial, judgment, and  
27 sentencing before a magistrate judge;

28 (F) ~~unless the charge is a petty offense~~, the right to trial  
29 by jury before either a United States magistrate judge or  
30 a district judge of the district court, unless the charge is  
31 a petty offense; and

32 (G) ~~if the defendant is held in custody and charged with~~  
33 ~~a misdemeanor other than a petty offense~~, the right to a  
34 preliminary examination in accordance with 18 U.S.C. §  
35 3060, and the general circumstances under which the  
36 defendant may secure pretrial release, if the defendant is  
37 held in custody and charged with a misdemeanor other

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38 than a petty offense.

39 (3) *Consent and Arraignment.*

40 (A) ~~PLEA TRIAL~~ BEFORE A UNITED STATES MAGISTRATE  
41 JUDGE. ~~If the defendant signs a written consent to be~~  
42 ~~tried before the magistrate judge which specifically~~  
43 ~~waives trial before a judge of the district court, the~~  
44 ~~magistrate judge shall take the defendant's plea. A~~  
45 magistrate judge shall take the defendant's plea in a  
46 Class B misdemeanor charging a motor vehicle-offense,  
47 a Class C misdemeanor, or an infraction. In every other  
48 misdemeanor case, a magistrate judge may take the plea  
49 only if the defendant consents either in writing or orally  
50 on the record to be tried before the magistrate judge and  
51 specifically waives trial before a district judge. The  
52 defendant may plead not guilty, guilty, or with the  
53 consent of the magistrate judge, nolo contendere.

54 (B) FAILURE TO CONSENT. ~~If the defendant does not~~

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55 ~~consent to trial before the magistrate judge, In a~~  
56 ~~misdemeanor case — other than a Class B misdemeanor~~  
57 ~~charging a motor-vehicle offense, a Class C~~  
58 ~~misdemeanor, or an infraction — the defendant shall be~~  
59 ~~ordered magistrate judge shall order the defendant to~~  
60 ~~appear before a district judge of the district court for~~  
61 ~~further proceedings on notice, unless the defendant~~  
62 ~~consents to trial before the magistrate judge.~~

\* \* \* \* \*

63  
64 (g) APPEAL.

65 (1) *Decision, Order, Judgment or Sentence by a District*  
66 *Judge.* An appeal from a decision, order, judgment or  
67 conviction or sentence by a district judge of the district court  
68 shall be taken in accordance with the Federal Rules of  
69 Appellate Procedure.

70 (2) *Decision, Order, Judgment or Sentence by a United*  
71 *States Magistrate Judge.*

10                   **Federal Rules of Criminal Procedure**

72                   (A) INTERLOCUTORY APPEAL. A decision or order by  
73                   a magistrate judge which, if made by a district judge ~~of~~  
74                   ~~the district court~~, could be appealed by the government or  
75                   defendant under any provision of law, shall be subject to  
76                   an appeal to a district judge ~~of the district court~~ provided  
77                   such appeal is taken within 10 days of the entry of the  
78                   decision or order. An appeal shall be taken by filing with  
79                   the clerk of court a statement specifying the decision or  
80                   order from which an appeal is taken and by serving a  
81                   copy of the statement upon the adverse party, personally  
82                   or by mail, and by filing a copy with the magistrate  
83                   judge.

84                   (B) APPEAL FROM CONVICTION OR SENTENCE. An  
85                   appeal from a judgment of conviction or sentence by a  
86                   magistrate judge to a district judge ~~of the district court~~  
87                   shall be taken within 10 days after entry of the judgment.  
88                   An appeal shall be taken by filing with the clerk of court

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89 a statement specifying the judgment from which an  
90 appeal is taken, and by serving a copy of the statement  
91 upon the United States Attorney, personally or by mail,  
92 and by filing a copy with the magistrate judge.

93 \* \* \* \* \*

94 (D) SCOPE OF APPEAL. The defendant shall not be  
95 entitled to a trial de novo by a district judge ~~of the district~~  
96 ~~court~~. The scope of appeal shall be the same as an appeal  
97 from a judgment of a district court to a court of appeals.

98 \* \* \* \* \*

## COMMITTEE NOTE

The Federal Courts Improvement Act of 1996, Sec. 202, amended 18 U.S.C. § 3401(b) and 28 U.S.C. § 636(a) to remove the requirement that a defendant must consent to a trial before a magistrate judge in a petty offense that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction. Section 202 also changed 18 U.S.C. § 3401(b) to provide that in all other misdemeanor cases, the defendant may consent to trial either orally on the record or in writing. The amendments to Rule 58(b)(2) and (3) conform the rule to the new statutory language and include minor stylistic changes.

