

SUPREME COURT OF THE UNITED STATES

April 26, 1999

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 6, 11, 24, and 54.

[See *infra.*, pp. ___ ___.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 1999, 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 6. The Grand Jury

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(d) WHO MAY BE PRESENT.

(1) *While Grand Jury is in Session.*

Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session.

(2) *During Deliberations and Voting.* No person other than the jurors, and any interpreter necessary to assist a juror who is hearing or speech impaired, may be present while the grand jury is deliberating or voting.

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(f) FINDING AND RETURN OF

INDICTMENT. A grand jury may indict only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury, or through the foreperson or deputy foreperson on its behalf, to a federal magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not vote to indict, the foreperson shall so report to a federal magistrate judge in writing as soon as possible.

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Rule 11. Pleas

(a) ALTERNATIVES.

(1) *In General.* A defendant may plead guilty, not guilty, or nolo contendere. If a defendant refuses to plead, or if a defendant organization, as defined in 18 U.S.C. § 18, fails

to appear, the court shall enter a plea of not guilty.

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

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(5) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement; and

(6) the terms of any provision in a plea agreement waiving the right to appeal or to collaterally attack the sentence.

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(e) PLEA AGREEMENT PROCEDURE.

(1) *In General.* The attorney for the government and the attorney for the defendant – or the defendant when acting pro se – may agree that, upon the defendant’s entering a plea of guilty or nolo contendere to a charged offense, or to a lesser or related offense, the attorney for the government will:

(A) move to dismiss other charges; or

(B) recommend, or agree not to oppose the defendant’s request for a particular sentence or sentencing range,

or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Any such recommendation or request is not binding on the court; or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Such a plea agreement is binding on the court once it is accepted by the court.

The court shall not participate in any discussions between the parties concerning any such plea agreement.

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Rule 24. Trial Jurors

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(c) ALTERNATE JURORS.

(1) *In General.* The court may empanel no more than 6 jurors, in addition to the regular jury, to sit as alternate jurors. An alternate juror, in the order called, shall replace a juror who becomes or is found to be unable or disqualified to perform juror duties. Alternate jurors shall (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, and (iv) take the same oath as

regular jurors. An alternate juror has the same functions, powers, facilities and privileges as a regular juror.

(2) *Peremptory Challenges*. In addition to challenges otherwise provided by law, each side is entitled to 1 additional peremptory challenge if 1 or 2 alternate jurors are empaneled, 2 additional peremptory challenges if 3 or 4 alternate jurors are empaneled, and 3 additional peremptory challenges if 5 or 6 alternate jurors are empaneled. The additional peremptory challenges may be used to remove an alternate juror only, and the other peremptory challenges allowed by these rules may not be used to remove an alternate juror.

(3) *Retention of Alternate Jurors.* When the jury retires to consider the verdict, the court in its discretion may retain the alternate jurors during deliberations. If the court decides to retain the alternate jurors, it shall ensure that they do not discuss the case with any other person unless and until they replace a regular juror during deliberations. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

Rule 54. Application and Exception

(a) COURTS. These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court for the Northern Mariana Islands, except as otherwise provided in articles IV and V of the covenant

provided by the Act of March 24, 1976 (90 Stat. 263);
and in the District Court of the Virgin Islands; in the
United States Courts of Appeals; and in the Supreme
Court of the United States; except that the
prosecution of offenses in the District Court of the
Virgin Islands shall be by indictment or information
as otherwise provided by law.

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