

April 24, 2023

Honorable Kevin McCarthy
Speaker, United States House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress amendments and an addition 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 the amended and additional rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 19, 2022; a blackline version of the rules with committee notes; an excerpt from the September 2022 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and excerpts from the May 2022 reports of the Advisory Committee on Criminal Rules.

Sincerely,

/s/ John G. Roberts, Jr.

April 24, 2023

Honorable Kamala D. Harris
President, United States Senate
Washington, DC 20510

Dear Madam President:

I have the honor to submit to the Congress amendments and an addition 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 the amended and additional rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 19, 2022; a blackline version of the rules with committee notes; an excerpt from the September 2022 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and excerpts from the May 2022 reports of the Advisory Committee on Criminal Rules.

Sincerely,

/s/ John G. Roberts, Jr.

April 24, 2023

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Criminal Procedure are amended to include amendments to Rules 16, 45, and 56, and to add new Rule 62.

[*See infra* pp. __ __ __.]

2. The foregoing amendments and addition to the Federal Rules of Criminal Procedure shall take effect on December 1, 2023, and shall govern in all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendments and addition to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

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

Rule 16. Discovery and Inspection

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(b) Defendant's Disclosure.

(1) *Information Subject to Disclosure.*

* * * * *

(C) *Expert Witnesses.*

* * * * *

(v) Signing the Disclosure. The witness must approve and sign the disclosure, unless the defendant:

- states in the disclosure why the defendant could not obtain the witness's signature through reasonable efforts; or
- has previously provided under (B) a report, signed by the witness, that contains all the opinions and

2 FEDERAL RULES OF CRIMINAL PROCEDURE

the bases and reasons for them
required by (iii).

* * * * *

Rule 45. Computing and Extending Time

- (a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

* * * * *

- (6) ***“Legal Holiday” Defined.*** “Legal holiday”

means:

- (A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

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Rule 56. When Court Is Open

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- (c) **Special Hours.** A court may provide by local rule or order that its clerk's office will be open for specified hours on Saturdays or legal holidays other than those set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

Rule 62. Criminal Rules Emergency

(a) **Conditions for an Emergency.** The Judicial Conference of the United States may declare a Criminal Rules emergency if it determines that:

- (1) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules; and
- (2) no feasible alternative measures would sufficiently address the impairment within a reasonable time.

(b) **Declaring an Emergency.**

- (1) **Content.** The declaration must:
 - (A) designate the court or courts affected;
 - (B) state any restrictions on the authority granted in (d) and (e); and

(C) be limited to a stated period of no more than 90 days.

(2) ***Early Termination.*** The Judicial Conference may terminate a declaration for one or more courts before the termination date.

(3) ***Additional Declarations.*** The Judicial Conference may issue additional declarations under this rule.

(c) **Continuing a Proceeding After a Termination.**

Termination of a declaration for a court ends its authority under (d) and (e). But if a particular proceeding is already underway and resuming compliance with these rules for the rest of the proceeding would not be feasible or would work an injustice, it may be completed with the defendant's consent as if the declaration had not terminated.

(d) Authorized Departures from These Rules After a Declaration.

(1) *Public Access to a Proceeding.* If emergency conditions substantially impair the public's in-person attendance at a public proceeding, the court must provide reasonable alternative access, contemporaneous if feasible.

(2) *Signing or Consenting for a Defendant.* If any rule, including this rule, requires a defendant's signature, written consent, or written waiver—and emergency conditions limit a defendant's ability to sign—defense counsel may sign for the defendant if the defendant consents on the record. Otherwise, defense counsel must file an affidavit attesting to the defendant's consent. If the defendant is pro se, the court may sign for the

defendant if the defendant consents on the record.

(3) *Alternate Jurors.* A court may impanel more than 6 alternate jurors.

(4) *Correcting or Reducing a Sentence.* Despite Rule 45(b)(2), if emergency conditions provide good cause, a court may extend the time to take action under Rule 35 as reasonably necessary.

(e) **Authorized Use of Videoconferencing and Teleconferencing After a Declaration.**

(1) *Videoconferencing for Proceedings Under Rules 5, 10, 40, and 43(b)(2).* This rule does not modify a court's authority to use videoconferencing for a proceeding under Rules 5, 10, 40, or 43(b)(2), except that if emergency conditions substantially impair the defendant's opportunity to consult with

counsel, the court must ensure that the defendant will have an adequate opportunity to do so confidentially before and during those proceedings.

(2) ***Videoconferencing for Certain Proceedings at Which the Defendant Has a Right to Be Present.***

Except for felony trials and as otherwise provided under (e)(1) and (3), for a proceeding at which a defendant has a right to be present, a court may use videoconferencing if:

- (A) the district's chief judge finds that emergency conditions substantially impair a court's ability to hold in-person proceedings in the district within a reasonable time;
- (B) the court finds that the defendant will have an adequate opportunity to

consult confidentially with counsel
before and during the proceeding; and

(C) the defendant consents after
consulting with counsel.

(3) ***Videoconferencing for Felony Pleas and Sentencings.*** For a felony proceeding under Rule 11 or 32, a court may use videoconferencing only if, in addition to the requirement in (2)(B):

(A) the district's chief judge finds that emergency conditions substantially impair a court's ability to hold in-person felony pleas and sentencings in the district within a reasonable time;

(B) the defendant, before the proceeding and after consulting with counsel, consents in a writing signed by the

defendant that the proceeding be conducted by videoconferencing; and

- (C) the court finds that further delay in that particular case would cause serious harm to the interests of justice.

(4) *Teleconferencing by One or More Participants.* A court may conduct a proceeding, in whole or in part, by teleconferencing if:

- (A) the requirements under any applicable rule, including this rule, for conducting the proceeding by videoconferencing have been met;
- (B) the court finds that:
 - (i) videoconferencing is not reasonably available for any

person who would participate
by teleconference; and

- (ii) the defendant will have an
adequate opportunity to
consult confidentially with
counsel before and during the
proceeding if held by
teleconference; and

- (C) the defendant consents.