

April 30, 2007

Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

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 Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 30, 2007

Honorable Dick Cheney
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

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 Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 30, 2007

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 11, 32, 35, 45, and new Rule 49.1.
2. That the Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue under Section 2254 of Title 28, United States Code, be, and hereby is, abrogated.
3. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2007, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.
4. 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.

[See infra., pp. _____.]

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 11. Pleas

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(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.*

Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

* * * * *

(M) 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); and

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Rule 32. Sentence and Judgment

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(d) Presentence Report.

(1) *Applying the Advisory Sentencing*

Guidelines. The presentence report must:

- (A) identify all applicable guidelines and policy statements of the Sentencing Commission;
- (B) calculate the defendant's offense level and criminal history category;
- (C) state the resulting sentencing range and kinds of sentences available;
- (D) identify any factor relevant to:

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- (i) the appropriate kind of sentence, or
 - (ii) the appropriate sentence within the applicable sentencing range; and
- (E) identify any basis for departing from the applicable sentencing range.

(2) Additional Information. The presentence report must also contain the following information:

- (A) the defendant's history and characteristics, including:
- (i) any prior criminal record;
 - (ii) the defendant's financial condition; and
 - (iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

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- (B) verified information, stated in a nonargumentative style, that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;
- (C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;
- (D) when the law provides for restitution, information sufficient for a restitution order;
- (E) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation; and
- (F) any other information that the court requires, including information relevant to the factors under 18 U.S.C. § 3553(a).

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Rule 35. Correcting or Reducing a Sentence

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(b) Reducing a Sentence for Substantial Assistance.

(1) *In General.* Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

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Rule 45. Computing and Extending Time

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(c) Additional Time After Certain Kinds of Service.

Whenever a party must or may act within a specified period after service and service is made in the manner provided under Federal Rule of Civil

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Procedure 5(b)(2)(B), (C), or (D), 3 days are added after the period would otherwise expire under subdivision (a).

Rule 49.1. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials;

- (4) the last four digits of the financial-account number; and
- (5) the city and state of the home address.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

- (1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 49.1(d);

- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255;
- (7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
- (8) an arrest or search warrant; and
- (9) a charging document and an affidavit filed in support of any charging document.

(c) **Immigration Cases.** A filing in an action brought under 28 U.S.C. § 2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) **Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the

person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

- (1)** require redaction of additional information; or
- (2)** limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be

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amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

[Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue under Section 2254 of Title 28, United States Code]

(Abrogated.)