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Nora Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
RULES OF CRIMINAL PROCEDURE

ADMINISTRATIVE ORDER 2017-ADM-0010-RUL

ORDER

¶ 1 On March 2, 2017, we submitted to the Twentieth Northern Marianas Commonwealth Legislature for approval the attached proposed amendment to the *Northern Mariana Islands Rules of Criminal Procedure*. The proposed amendment creates a new rule, 11-1, as an addition to the *Northern Mariana Islands Rules of Criminal Procedure* adopted on January 22, 1995.

¶ 2 Sixty (60) days has elapsed since its submission and neither house of the Legislature has disapproved of the proposed rules.

¶ 3 IT IS HEREBY ORDERED that the *Northern Mariana Islands Rules of Criminal Procedure Rule 11-1*, attached as Exhibit A, is permanent pursuant to article 4, section 9 of the NMI Constitution.

SO ORDERED this 3rd day of May, 2017.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH SUPERIOR COURT**



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Nora Borja

RULES OF CRIMINAL PROCEDURE

IV ARRAIGNMENT AND PREPARATION FOR TRIAL

**RULE 11-1
PLEA IN ABEYANCE**

(a) Definitions.

- (1) A plea in abeyance is an order entered by a problem-solving court accepting a plea of guilty or nolo contendere from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.
- (2) A plea in abeyance agreement is an agreement entered into between the government and defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a guilty or nolo contendere plea may be held in abeyance.

(b) Permitted Use.

- (1) A plea in abeyance may only be used in conjunction with defendant's entry into a problem-solving court.

(c) Plea in Abeyance Agreement.

- (1) After entry of a plea of guilty or nolo contendere but prior to entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the government and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant.
- (2) The defendant shall be represented by counsel during plea negotiations and at the time of acknowledgment and affirmation of any plea in abeyance agreement, unless the defendant shall have knowingly, voluntarily, and intelligently waived the right to counsel.
- (3) The defendant has the right to be represented by counsel at any court hearing relating to the defendant's plea in abeyance agreement.
 - (A) A plea in abeyance agreement shall be in writing,
 - (B) specify the requirements and conditions agreed to by the defendant, and
 - (C) be executed by the government, the defendant, and the defendant's counsel in the presence of the court.
- (5) A plea shall not be held in abeyance for a period longer than 24 months absent an extension made by the judge upon a showing of good cause.

- (6) A plea in abeyance agreement shall not be accepted unless the defendant, before the court and in the plea in abeyance agreement, knowingly, voluntarily, and intelligently waives time for sentencing. This does not limit other waivers that may be included in the plea in abeyance agreement.

(d) Manner of Entry of Plea and Powers of the Court.

- (1) Consideration of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of this rule.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

- (A) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or
- (B) dismiss the charges.

- (3) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court may reduce the degree of the offense or dismiss the charges only as provided in the plea in abeyance agreement or as agreed to by all parties.

(4) The terms of a plea in abeyance agreement may include:

- (A) an order that the defendant pay a nonrefundable plea in abeyance fee, which shall not exceed in amount the maximum fine which could have been imposed upon conviction and sentencing for the same offense as set forth in 6 CMC § 4101;
- (B) an order that the defendant pay restitution to the victims of the defendant's actions as provided in 6 CMC § 4109;
- (C) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and
- (D) an order that the defendant comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(5) A court may not enter a plea in abeyance without the consent of both the government and the defendant.

(e) Violation of Plea in Abeyance Agreement.

- (1) The court, through a written motion and supported by an affidavit, made by the government, or upon the court's own motion, shall issue an order to show cause against the defendant for violating any condition of the plea in abeyance agreement. The order to show cause shall state the time and place for the hearing and served on the defendant and the attorney of record at least 7 calendar days before the hearing date.
- (2) If a problem-solving court finds that the defendant has violated the plea in abeyance agreement such that defendant is terminated from that problem-solving court's program, then

the problem-solving court judge shall accept the plea and enter judgment of conviction against the defendant for the offense to which the original plea was entered.

- (3) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.



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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE
RULES 4 AND 9 OF THE COMMONWEALTH RULES OF CRIMINAL PROCEDURE

ADMINISTRATIVE ORDER 2015-ADM-0002-RUL

ORDER

¶ 1 On July 24, 2014, the attached proposed *Rules 4 and 9 of the Commonwealth Rules of Criminal Procedure* was submitted to the Eighteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rule.

¶ 2 IT IS HEREBY ORDERED that *Rules 4 and 9 of the Commonwealth Rules of Criminal Procedure* are adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. These Rules became effective on September 23, 2014, and the former Rules 4 and 9 are hereby repealed and replaced by these Rules.

SO ORDERED this 3rd day of March, 2015.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

Amendments to the Commonwealth Rules of Criminal Procedure



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Rule 4

ARREST WARRANT OR SUMMONS UPON COMPLAINT

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons for the defendant shall issue to a policeman or some officer authorized by law to execute it. Upon the request of the attorney for the government, a warrant for the arrest of the defendant instead of a summons shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by a judge and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the defendant be arrested and brought before a judge. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a judge at a stated time and place, and may be signed by either a judge or the Superior Court Clerk of Court.

(d) Execution of Service; and Return.

(1) By Whom. The warrant shall be executed by a policeman or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or summons may be served at any place within the jurisdiction of the Commonwealth of the Northern Mariana Islands.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy thereof to the defendant personally, or by leaving it at the defendant's dwelling or usual place of abode or business with some persons of suitable age and discretion then residing or employed therein. Reasonable attempts shall also be made to assure that the person served understands the meaning of the summons and what the served is required to do.

(4) Return. The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the judge by whom it issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judge before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the judge to the policeman or other authorized person for execution or service.

Rule 9

WARRANT OR SUMMONS UPON INFORMATION

(a) Issuance. Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a). Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the policeman or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1), signed by a judge, it shall describe the offense charged in the information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place, and may be signed either by a judge or the Superior Court Clerk of Court.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the Commonwealth of the Northern Mariana Islands or at its principal place of business. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government, any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was for service shall make return thereof. At the request of the attorney for the government made at any time while the information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the policeman or other authorized person for execution or service.

(d) Vacant.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH SUPERIOR COURT

RULES OF CRIMINAL PROCEDURE
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**RULES OF CRIMINAL PROCEDURE
FOR THE
COMMONWEALTH SUPERIOR COURT**

I. SCOPE, PURPOSE, AND CONSTRUCTION

**Rule 1
SCOPE**

These rules govern the proceed in all criminal proceedings in the Commonwealth Superior Court.

**Rule 2
PURPOSE AND CONSTRUCTION**

These rules are intended to provide for the just determination of every criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

II. PRELIMINARY PROCEEDINGS

**Rule 3
THE COMPLAINT**

The complaint is a written statement of the essential facts constituting the offense charged. All misdemeanors may be prosecuted by a complaint.

**Rule 4
ARREST WARRANT OR SUMMONS UPON COMPLAINT**

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons for the defendant shall issue to a policeman or some officer authorized by law to execute it. Upon the request of the attorney for the government, a warrant for the arrest of the defendant instead of a summons shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by a judge and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the defendant be arrested and brought before a judge. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a judge at a stated time and place.

(d) Execution of Service; and Return.

(1) By Whom. The warrant shall be executed by a policeman or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or summons may be served at any place within the jurisdiction of the Commonwealth of the Northern Mariana Islands.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy thereof to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode or business with some persons of suitable age and discretion then residing or employed therein. Reasonable attempts shall also be made to assure that the person served understands the meaning of the summons and what the person served is required to do.

(4) Return. The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the judge by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judge before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the judge to the policeman or other authorized person for execution or service.

Rule 5 INITIAL APPEARANCE

(a) In General. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available judge of the Commonwealth Superior Court. If a person arrested without a warrant is brought before a judge, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the judge, that judge shall proceed in accordance with the applicable subdivision of this rule.

(b) Vacant.

(c) Notification of Rights. The defendant shall not be called upon to plead. The judge shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if

he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he/she is not required to make a statement and that any statement made by him/her may be used against him/her. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by statute or in these rules. The defendant shall also be advised of his/her right to a preliminary examination.

Rule 5.1 PRELIMINARY EXAMINATION

A defendant is entitled to a preliminary examination, unless waived, if he/she is substantially deprived of his/her liberty. If the defendant waives preliminary examination, the judge shall forthwith hold him/her to answer. If the defendant does not waive the preliminary examination, the judge shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than ten (10) days following the initial appearance. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits, specified in this subdivision may be extended one or more times by a judge. In the absence of such consent by the defendant, time limits may be extended by a judge only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

On timely application the defendant may be given the opportunity to have the recording of the hearing made available to him/her on such conditions as the judge may order.

III. THE INFORMATION

Rule 6 VACANT

Rule 7 THE INFORMATION

(a) Use. All offenses except misdemeanors shall be prosecuted by information. An information may be filed without leave of court.

(b) Vacant.

(c) Nature and Contents.

(1) In General. The information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another court. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The information shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated.

(2) **Criminal Forfeiture.** No judgment of forfeiture may be entered in a criminal proceeding unless the information shall allege the extent of the interest or property subject to forfeiture.

(3) **Harmless Error.** Error in the citation or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) **Surplusage.** The court on motion of the defendant may strike surplusage from the information.

(e) **Amendment.** The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) **Bill of Particulars.** The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten (10) days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8 **JOINDER OF OFFENSES AND OF DEFENDANTS**

(a) **Joinder of Offenses.** Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) **Joinder of Defendants.** Two or more defendants may be charged in the information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9 **WARRANT OR SUMMONS UPON INFORMATION**

(a) **Issuance.** Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a). Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the policeman or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) **Form.**

(1) **Warrant.** The form of the warrant shall be as provided in Rule 4(c)(1), signed by a judge, it shall describe the offense charged in the information and it shall

command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the Commonwealth of the Northern Mariana Islands or at its principal place of business. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government, any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the policeman or other authorized person for execution or service.

(d) Vacant.

IV ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10 ARRAIGNMENT

Arraignment shall be conducted in open court and shall consist of reading the complaint or information to the defendant or stating to him/her the substance of the charge and calling on him/her to plead thereto. He/she shall be given a copy of the complaint or information before he/she is called upon to plead.

Rule 11 PLEAS

(a) Alternatives.

(1) In General. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) Conditional Pleas. With the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse

determination of any specified pretrial motion. If the defendant prevails on appeal, he/she shall be allowed to withdraw his/her plea.

(b) Nolo Contendere. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(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 him of, and determine that he understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole term or term of supervised release and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and

(2) if the defendant is not represented by counsel, that he/she has the right to be represented by counsel at every stage of the proceeding against him/her and, if necessary, one will be appointed to represent him/her; and

(3) that he/she has the right to plead not guilty or to persist in that plea if it has already been made, and he/she has the right to be tried by a jury (if applicable) and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him/her, the right to have the proceeding translated if he/she does not understand English, and the right not to be compelled to incriminate himself/herself; and

(4) that if he/she pleads guilty or nolo contendere and the plea is accepted by the court, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he/she waives the right to a trial; and

(5) that if the court intends to question the defendant under oath on the record, and in the presence of counsel about the offense to which he/she has pleaded, that his/her answers may later be used against him/her in a prosecution for perjury or false statement.

(d) Insuring that the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his/her attorney.

(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 engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his/her plea.

(3) Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court, or on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he/she persists in his/her guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at such time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere;

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) any statement made in the course of plea discussions with an attorney for the government which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of the plea.

(h) Harmless Error. Any variance from the procedure required by this rule which does not affect substantial rights shall be disregarded.

Rule 12
PLEADINGS AND MOTIONS BEFORE TRIAL:
DEFENSES AND OBJECTIONS

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the complaint, information, and the pleas of not guilty, guilty, and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the complaint or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Request for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date. Unless otherwise provided by rule, the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by the Government of the Intention to Use Evidence.

(1) At the Discretion of the Government. At the arraignment or as soon thereafter as it is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) **At the Request of the Defendant.** At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) **Ruling on Motion.** A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) **Effect of Failure to Raise Defenses or Objections.** Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) **Records.** A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) **Effect of Determination.** If the court grants a motion based on a defect in the institution of the prosecution or in the information, it may also order that the defendant be continued in custody or that his/her bail be continued for a specified time pending the filing of a new complaint or information. Nothing in this rule shall be deemed to affect the provisions of any Act of the Commonwealth Legislature relating to periods of limitations.

(i) **Production of Statements at Suppression Hearing.** Except as herein provided, Rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b) (3) of this rule. For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the government, and upon a claim of privilege the court shall excise the portions of the statement containing privileged matter.

Rule 12.1 NOTICE OF ALIBI

(a) **Notice by Defendant.** Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten (10) days, or at such different time as the court may direct, upon the attorney for the government a written notice of his/her intention to offer a defense of alibi. Such notice by the defendant shall state the specified place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he/she intends to rely to establish such alibi.

(b) **Disclosure of Information and Witnesses.** Within ten (10) days thereafter, but in no event less than ten (10) days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his/her attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any of the witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing Duty to Disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) Failure to Comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his/her own behalf.

(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of subdivision (a) through (d) of this rule.

(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 12.2

NOTICE OF DEFENSE BASED UPON MENTAL CONDITION

(a) Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he/she shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Expert Testimony of Defendant's Mental Condition. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of defendant bearing upon the issue of his/her guilt, he/she shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Mental Examination of Defendant. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a mental examination by a psychiatrist or other expert designated for this purpose in the order of the court. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) Failure to Comply. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant.

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 13 TRIAL TOGETHER OF INFORMATIONS

The court may order two or more informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution were under such single information.

Rule 14 RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trial of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 15 DEPOSITIONS

(a) When Taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties, order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his/her deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him/her at the examination and keep him/her in the presence of witnesses during the examination, unless, after being warned by the court that disruptive conduct will cause him/her to be removed from the place of taking of the deposition, he/she persists in conduct which is such as to justify his/her being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request, subject to such terms as may be fixed by the court, but his/her failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of Expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and his/her attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How Taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that

(1) in no event shall a deposition be taken of a party defendant without his/her consent; and

(2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The government shall make available to the defendant or his/her counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the defendant would be entitled at the trial.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Commonwealth Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with his/her deposition.

Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him/her to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Deposition Testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16 DISCOVERY AND INSPECTION

(a) Disclosure of Evidence by the Government.

(1) **Information Subject to Disclosure:**

(A) **Statement of Defendant.** Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent.

(B) **Defendant's Prior Record.** Upon request of the defendant, the government shall furnish to the defendant such copy of his/her prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(C) **Documents and Tangible Objects.** Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of his/her defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) **Report of Examinations and Tests.** Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(2) **Information Not Subject to Disclosure.** Except as provided in paragraphs (A), (B), and (D) 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 other government agents in connection with the investigation or prosecution of the case.

(3) **Vacant.**

(b) **Disclosure of Evidence by the Defendant.**

(1) **Information Subject to Disclosure:**

(A) **Documents and Tangible Objects.** If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) **Report of Examinations and Tests.** If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request of the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examination and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which are prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(2) **Information Not Subject to Disclosure.** Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports,

memoranda, or other internal defense documents made by the defendant, or his/her attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his/her agents or attorneys.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, the party shall promptly notify the other party or his/her attorney or the court of the existence of the additional evidence or material.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply With a Request. If, at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance or prohibit the party from introducing evidence not disclosed, or it may enter such other as it deems just under the circumstances. The court may specify the time, place, and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi Witnesses. Discovery of alibi witnesses is governed by Rule 12.1.

Rule 17 SUBPOENA

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the court or its clerks under the seal of the court. It shall state the name of the court and the title of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The court or its clerks shall issue a subpoena, signed, and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Vacant.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by a policeman or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be

made by delivering a copy thereof to the person named and by tendering to him/her the fee for one (1) day's attendance allowed by law or court rule. Fees need not be tendered to the witness upon service of a subpoena issued in behalf of the Commonwealth or an officer or agency thereof. At or before the time stated for appearance in a subpoena, the person to whom such a subpoena is delivered for service shall write a report of his/her action on it, sign it, and have it delivered to the court named therein. If he/she has served the subpoena, his/her report shall show the date, place, and method of service.

(e) Place of Service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Commonwealth of the Northern Mariana Islands.

(f) For Taking Deposition; Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the court or its clerks of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him/her may be deemed a contempt of the court.

(h) Information Not Subject to Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed for the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 26.2.

Rule 17.1 PRETRIAL CONFERENCE

At any time after the filing of the complaint or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his/her attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his/her attorney. This rule shall not be invoked in the cases of a defendant who is not represented by counsel.

V. PLACE OF TRIAL

Rule 18 PLACE OF PROSECUTION AND TRIAL

Except as otherwise permitted by statute or by these rules, the court shall fix the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

**Rule 19 - 22
VACANT**

VI. TRIAL

**Rule 23
TRIAL BY JURY OR BY THE COURT**

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

(b) Jury of Less Than Six. Juries shall be of six but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than six or that a valid verdict may be returned by a jury of less than six should the court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining five jurors.

(c) Trial Without a Jury. In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

**Rule 24
TRIAL JURORS**

(a) Examination. The court may permit the defendant or his/her attorney or the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his/her attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) Peremptory Challenges. The Government and the defendant are each entitled to five (5) peremptory challenges. If there is more than one defendant, the court shall allow one additional peremptory challenge for each additional defendant. The Government shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges allotted to defendants.

(c) Alternate Jurors. The court may direct that not more than three jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in

addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

Rule 25 JUDGE: DISABILITY

(a) During Trial. If by reason of death, sickness or other disability the judge before whom a trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he/she has familiarized himself/herself with the record of the trial, may proceed with and finish the trial.

(b) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty, any other judge regularly sitting or assigned may perform those duties; but if such other judge is satisfied that he/she cannot perform those duties because he/she did not preside at the trial or for any other reason, he/she may in his/her discretion grant a new trial.

Rule 26 TAKING OF TESTIMONY

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of the Commonwealth Legislature or by any rule adopted by this court.

Rule 26.1 DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence of this court. The court's determination shall be treated as a ruling on a question of law.

Rule 26.2 PRODUCTION OF STATEMENTS OF WITNESSES

(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the government or the defendant and his/her attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over his/her objection shall be preserved by the attorney for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of the party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him/her;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof.

Rule 27 PROOF OF OFFICIAL RECORD

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28 INTERPRETERS

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

Rule 29 MOTION FOR JUDGMENT OF ACQUITTAL

(a) Motion Before Submission to Jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence on either side is closed if the

evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of Decision on Motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven (7) days after the jury is discharged or within such further time as the court may fix during the seven (7) day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that such a similar motion has been made prior to the submission of the case to the jury.

Rule 29.1 CLOSING ARGUMENT

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30 INSTRUCTIONS

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon requests prior to their arguments to the jury. The court may instruct the jury before or after the arguments are completed or at both times. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

Rule 31 VERDICT

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of Less Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of Jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) Criminal Forfeiture. If the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

VII. JUDGMENT

Rule 32 SENTENCE AND JUDGMENT

(a) Sentence.

(1) Imposition of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall:

(A) determine that the defendant and his/her counsel have had the opportunity to read and discuss any presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and ask him/her if he/she wishes to make a statement in his/her own behalf and to present any information in mitigation of punishment.

The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his/her right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) In General. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty

or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) Criminal Forfeiture. When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation.

(1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his/her characteristics, his/her financial condition and the circumstances affecting his/her behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) At a reasonable time before imposing sentence the court shall permit the defendant and his/her counsel to read the report of the presentence investigation but not to the extent that in the opinion of the court the report contains diagnostic opinions which, if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and his/her counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence and shall give the defendant and his/her counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant and his/her counsel shall be disclosed to the attorney for the government.

(D) If the comments of the defendant and his/her counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a

determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Board of Parole.

(E) Any copies of the presentence investigation report made available to the defendant and his/her counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion, otherwise directs.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his/her plea.

(e) Probation. After conviction of an offense, the defendant may be placed on probation if permitted by law.

(f) Revocation of Probation. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

Rule 32.1 REVOCATION OR MODIFICATION OF PROBATION

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he/she has violated a condition of his/her probation, he/she shall be afforded a prompt hearing before a judge in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his/her own behalf;

(C) upon request, the opportunity to question witnesses against him/her unless, for good cause, the judge decides that justice does not require the appearance of the witness; and

(D) notice of his/her right to be represented by counsel. The proceedings shall be recorded. If probable cause is found to exist, the probationer shall be held for a revocation hearing. The probationer may be released pursuant to Rule 46(c) pending the revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time. The probationer shall be given:

(A) written notice of the alleged violation of probation;

- (B) disclosure of the evidence against him/her;
- (C) an opportunity to appear and to present evidence in his/her own behalf;
- (D) the opportunity to question witnesses against him/her; and
- (E) notice of his/her right to be represented by counsel.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his/her request or the court's own motion is favorable to him/her.

Rule 33 NEW TRIAL

The court on motion of a defendant may grant a new trial to him him/her if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the court may fix during the seven (7) day period.

Rule 34 ARREST OF JUDGMENT

The court on motion of a defendant shall arrest judgment if the complaint or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days after verdict of finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the seven (7) day period.

Rule 35 CORRECTION OR REDUCTION OF SENTENCE

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

Rule 36
CLERICAL MISTAKES

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

VIII. APPEAL

Rule 37
VACANT

Rule 38
STAY OF EXECUTION, AND RELIEF PENDING REVIEW

(a) Stay of Execution.

(1) Vacant.

(2) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal. If not stayed, the court may recommend to the Attorney General that the defendant be retained under conditions, and at a place, which permit the defendant to assist in the preparation of his/her appeal to the court of appeals.

(3) Fine. A sentence to pay a fine or fine and costs, if an appeal is taken, may be stayed. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his/her assets.

(4) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed, the court shall fix the terms of the stay.

Rule 39
VACANT

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40
VACANT

Rule 41
SEARCH AND SEIZURE

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a judge upon the request of a policeman or an attorney for the government.

(b) Property or Persons Which May be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any

(1) property that constitutes evidence of the commission of a criminal offense; or

(2) contraband, the fruits of crime, or things otherwise criminally possessed; or

(3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents.

(1) Warrant Upon Affidavit. A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on an affidavit or affidavits sworn to before a judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge shall issue a warrant identifying the property or person to be seized and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he/she may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a policeman. It shall command the officer to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property or person specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate the judge to whom it shall be returned.

(2) Warrant Upon Oral Testimony.

(A) General Rule. If the circumstances make it reasonable to dispense with a written affidavit, a judge may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(B) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim to the judge. The judge shall enter, verbatim, what is so read to such judge on a document to be known as the original warrant. The judge may direct that the warrant be modified.

(C) Issuance. If the judge is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the

application exist or that there is probable cause to believe that they exist, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) **Recording and Certification of Testimony.** When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the judge shall record by means of such device all of the call after the caller informs the judge that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the judge shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the judge shall file a signed copy with the court.

(E) **Contents.** The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) **Additional Rule for Execution.** The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) **Motion to Suppress Precluded.** Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(d) **Execution and Return With Inventory.** The policeman taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave a copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises was taken, if they are present, or in the presence of at least one credible person from whose possession or premises the property was taken, and shall be verified by the policeman. The judge shall upon request deliver a copy of the inventory to the person from whom or whose premises the property was taken and to the applicant for the warrant.

(e) **Motion for Return of Property.** A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing after an information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) **Motion to Suppress.** A motion to suppress evidence may be made as provided in Rule 12.

(g) Return of Papers to Clerk. The judge before whom the warrant is issued shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk of court.

(h) Scope and Definition. This rule does not modify any act, inconsistent with it, regulating search and seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers, and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m.

Rule 42 CRIMINAL CONTEMPT

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered on record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice may be given orally by the judge in open court in the presence of the defendant or, on application of the government attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a finding of guilt the court shall enter an order fixing the punishment.

X. GENERAL PROVISIONS

Rule 43 PRESENCE OF THE DEFENDANT

(a) Presence Required. The defendant shall be present at arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required. The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived his/her right to be present whenever a defendant, initially present,

(1) voluntarily absents himself/herself after the trial has commenced (whether or not he/she has been informed by the court of his/her obligation to remain during the trial), or

(2) after being warned by the court that disruptive conduct will cause him/her to be removed from the courtroom, persists in conduct which is such as to justify his/her being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

- (1) A corporation may appear by counsel for all purposes.
- (2) In prosecutions for offenses punishable by fine or imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and the imposition of sentence in the defendant's absence.
- (3) At a conference or argument upon a question of law.
- (4) At a reduction of sentence under Rule 35.

Rule 44 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him/her at every stage of the proceedings from his/her initial appearance before a judge through appeal, unless he/she waives such appointment.

(b) Assignment Procedure. The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by orders of the court in the absence of any such law.

(c) Joint Representation. Whenever two or more defendants have been jointly charged pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of his/her right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

Rule 45 TIME

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the Commonwealth Court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" is the same listed in Rule 6(a), Rules of Civil Procedure.

The foregoing amendment shall govern all proceedings commenced after the effective date of the rules in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings in criminal cases then pending.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion

(1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or

(2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may end the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) Vacant.

(d) For Motions; Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served, not later than five (5) days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one (1) day before the hearing unless the court permits them to be served at a later date.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him/her and the notice or other paper is served upon him/her by mail, three (3) days shall be added to the prescribed period.

Rule 46 RELEASE FROM CUSTODY

(a) Release Prior to Trial.

(1) Any person charged with an offense shall, at his/her appearance before a judge, be ordered released pending trial on his/her personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judge, unless the judge determines, in the exercise of the judge's discretion, that such a release will not reasonably assure the appearance of the person as required. When such determination is made, the judge shall either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(A) place the person in the custody of a designated person or organization agreeing to supervise him/her;

(B) place restrictions on the travel, association or place of abode of the person during the period of release;

(C) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed ten (10) per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(D) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(E) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) In determining which conditions of release will reasonably assure appearance, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his/her residence in the community, his/her record of convictions, and his/her record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(3) A judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his/her release and shall advise him/her that a warrant for his/her arrest will be issued immediately upon any such violation.

(4) A person for whom conditions of release are imposed and who after 24 hours from the time of the release hearing continues to be detained as a result of his/her inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judge who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judge shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he/she return to custody after specified hours shall, upon application, be entitled to a review by the judge who imposed the conditions. Unless the requirement is removed and the person is thereupon released on another condition, the judge shall set forth in writing the reasons for continuing the requirement. In the event that the judge who imposed conditions of release is not available, any other judge may review such conditions.

(5) A judge ordering the release of a person on any condition specified in this section may at any time amend his/her order to impose additional or different conditions of release, provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his/her inability to meet such conditions or in the release of the person on a condition requiring him/her to return to custody after specified hours, the provisions of subsection (4) shall apply.

(6) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(7) If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his/her presence by subpoena, a judge shall impose conditions of release pursuant to Rules 46(a)(1) through (6) above. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to Rule 15.

(b) Release During Trial. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his/her presence during the trial or to assure that his/her conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Pending Sentence and Notice of Appeal. A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in accordance with the provisions of Rule 46(a)(1) through (6) above, unless the court has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

(d) Justification of Sureties. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he/she proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertaking for bail entered into by him/her and remaining undischarged and all of his/her other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture.

(1) Declaration. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of Detention Pending Trial. The court shall exercise supervision over the detention of the defendants and witnesses pending trial for the purpose of eliminating all unnecessary detention. The attorney for the government shall make a bi-weekly report to the court listing each defendant and witness who has been held in custody pending information, arraignment, or trial for a period in excess of ten (10) days. As to each witness so listed, the attorney for the government shall make a statement of the reasons why such witness should not be released with or without the taking of deposition

pursuant to Rule 15(a). As to each defendant so listed, the attorney for the government shall make a statement of the reasons why the defendant is still held in custody.

Rule 47 MOTIONS

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 48 DISMISSAL

(a) By Attorney for the Government. The attorney for the government may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate. Such a dismissal may be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint.

Rule 49 SERVICE AND FILING OF PAPERS

(a) Service: When Required. Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party herself/himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail a notice thereof to each party, or shall have each party served with a notice thereof. The clerk shall note in the docket the provision and method of service. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed except as permitted by the appellate rules.

(d) Filing. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

Rule 50 VACANT

Rule 51
EXCEPTIONS UNNECESSARY

Exceptions to rulings or orders of the court are unnecessary for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he/she desires the court to take or his/her objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52
HARMLESS ERROR AND PLAIN ERROR

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53
REGULATIONS OF CONDUCT IN THE COURTROOM

The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.

Rule 54
VACANT

Rule 55
RECORDS

The clerk of the court shall keep such records in criminal proceedings as the Presiding Judge shall prescribe. The clerk shall enter in the records each order or judgment of the court and the date each entry is made. The entry of an order or judgment shall show the date the entry is made.

Rule 56
COURTS AND CLERKS

The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The clerk's office with the clerk or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Presiding Judge may provide by order of court that the clerk's office shall be open for specified hours on Saturdays or particular legal holidays.

Rule 57
RULES OF COURT

(a) Vacant.

(b) Procedure Not Otherwise Specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

Rule 58
VACANT

Rule 59
TITLE

These rules may be known and cited as the Commonwealth Rules of Criminal Procedure (Com.R.Cr.P.)