

# FEDERAL RULES OF CRIMINAL PROCEDURE

As amended to December 31, 2004

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## VI. TRIAL

### Rule 23. Jury or Nonjury Trial

(a) **Jury Trial.** If the defendant is entitled to a jury trial, the trial must be by jury unless:

- (1) the defendant waives a jury trial in writing;
- (2) the government consents; and
- (3) the court approves.

(b) **Jury Size.**

(1) **In General.** A jury consists of 12 persons unless this rule provides otherwise.

(2) **Stipulation for a Smaller Jury.** At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:

- (A) the jury may consist of fewer than 12 persons; or
- (B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins.

(3) **Court Order for a Jury of 11.** After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.

(c) **Nonjury Trial.** In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

(As amended Feb. 28, 1966, eff. July 1, 1966; July 30, 1977, eff. Oct. 1, 1977; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### Rule 24. Trial Jurors

(a) **Examination.**

(1) **In General.** The court may examine prospective jurors or may permit the

attorneys for the parties to do so.

**(2) Court Examination.** If the court examines the jurors, it must permit the attorneys for the parties to:

- (A) ask further questions that the court considers proper; or
- (B) submit further questions that the court may ask if it considers them proper.

**(b) Peremptory Challenges.** Each side is entitled to the number of peremptory challenges to prospective jurors specified below. The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.

**(1) Capital Case.** Each side has 20 peremptory challenges when the government seeks the death penalty.

**(2) Other Felony Case.** The government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year.

**(3) Misdemeanor Case.** Each side has peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.

**(c) Alternate Jurors.**

**(1) In General.** The court may impanel up to 6 alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

**(2) Procedure.**

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

**(3) Retaining Alternate Jurors.** The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

**(4) Peremptory Challenges.** Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below. These additional challenges may be used only to remove alternate jurors.

(A) *One or Two Alternates.* One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) *Three or Four Alternates.* Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) *Five or Six Alternates.* Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002.)

## Rule 25. Judge's Disability

**(a) During trial.** Any judge regularly sitting in or assigned to the court may complete a jury trial if:

- (1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and
- (2) the judge completing the trial certifies familiarity with the trial record.

**(b) After a Verdict or Finding of Guilty.**

**(1) In General.** After a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

**(2) Granting a New Trial.** The successor judge may grant a new trial if satisfied that:

- (A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or
- (B) a new trial is necessary for some other reason.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 29, 2002, eff. Dec. 1, 2002.)

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## Rule 26. Taking Testimony

In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute or by rules adopted under [28 U.S.C. sec. 2072-2077](#).

(As amended Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### Rule 26.1. Foreign Law Determination

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source--including testimony--without regard to the [Federal Rules of Evidence](#).

(As added Feb. 28, 1966, eff. July 1, 1966; amended Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### Rule 26.2. Producing a Witness's Statement

**(a) Motion to Produce.** 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, must order an attorney for the government or the defendant and the defendant's attorney 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 of the witness's testimony.

**(b) Producing the Entire Statement.** If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

**(c) Producing a Redacted Statement.** If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

**(d) Recess to Examine a Statement.** The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

**(e) Sanction for Failure to Produce or Deliver a Statement.** If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

**(f) "Statement" Defined.** As used in this rule, a witness's "statement" means:

- (1) a written statement that the witness makes and signs, or otherwise adopts or approves;
- (2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or
- (3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

**(g) Scope.** This rule applies at trial, at a suppression hearing under [Rule 12](#), and to the extent specified in the following rules:

- (1) [Rule 5.1](#)(h) (preliminary hearing);
- (2) [Rule 32](#)(i)(2) (sentencing);
- (3) [Rule 32.1](#)(e) (hearing to revoke or modify probation or supervised release);
- (4) [Rule 46](#)(j) (detention hearing); and
- (5) Rule 8 of the Rules Governing Proceedings under [28 U.S.C. sec. 2255](#).

(As added Apr. 30, 1979, eff. Dec. 1, 1980; amended Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### Rule 26.3. Mistrial

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

(As added Apr. 22, 1993, eff. Dec. 1, 1993; amended Apr. 29, 2002, eff. Dec. 1, 2002.)

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### **Rule 27. Proving an Official Record**

A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002)

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### **Rule 28. Interpreters**

The court may select, appoint, and set the reasonable compensation for an interpreter. The compensation must be paid from funds provided by law or by the government, as the court may direct.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### **Rule 29. Motion for a Judgment of Acquittal**

**(a) Before Submission to the Jury.** After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

**(b) Reserving Decision.** The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), 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. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

**(c) After Jury Verdict or Discharge.**

**(1) Time for a Motion.** A defendant may move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later, or within any other time the court sets during the 7-day period.

**(2) Ruling on the Motion.** If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

**(3) No Prior Motion Required.** A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

**(d) Conditional Ruling on a Motion for a New Trial.**

**(1) Motion for a New Trial.** If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

**(2) Finality.** The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

**(3) Appeal.**

(A) *Grant of a Motion for a New Trial.* If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) *Denial of a Motion for a New Trial.* If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 10, 1986, eff. Dec. 10, 1986; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 29, 2002, eff. Dec. 1, 2002.)

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### **Rule 29.1. Closing Argument**

Closing arguments proceed in the following order:

- (1) the government argues;
- (2) the defense argues; and
- (3) the government rebuts.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; amended Apr. 29, 2002, eff. Dec. 1, 2002.)

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### **Rule 30. Jury Instructions**

**(a) In General.** Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

**(b) Ruling on a Request.** The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

**(c) Time for Giving Instructions.** The court may instruct the jury before or after the arguments are completed, or at both times.

**(d) Objections to Instructions.** A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under

[Rule 52\(b\)](#).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Apr. 29, 2002, eff. Dec. 1, 2002.)

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**Rule 31. Jury Verdict**

**(a) Return.** The jury must return its verdict to a judge in open court. The verdict must be unanimous.

**(b) Partial Verdicts, Mistrial, and Retrial.**

**(1) Multiple Defendants.** If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

**(2) Multiple Counts.** If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

**(3) Mistrial and Retrial.** If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

**(c) Lesser Offense or Attempt.** A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;

(2) an attempt to commit the offense charged; or

(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

**(d) Jury Poll.** After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002)

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