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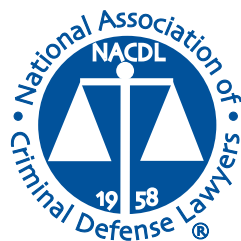
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Executive Director

Norman L. Reimer Washington, DC



Rick Jones
President

National Association of Criminal Defense Lawyers
12th Floor, 1660 L Street, NW
Washington, DC 20036

February 15, 2018

Rebecca A. Womeldorf, Esq.
Secretary, Committee on Practice & Procedure
Judicial Conference of the United States

AMENDMENTS TO APPELLATE RULES PROPOSED FOR
COMMENT, Aug. 2017

Dear Ms. Womeldorf:

The National Association of Criminal Defense Lawyers is pleased to submit our comments on the proposed changes to Rules 26.1 of the Federal Rules of Appellate Procedure.

Our organization has nearly 10,000 direct members; in addition, NACDL's 94 state and local affiliates, in all 50 states, comprise a combined membership of some 40,000 private and public defenders. NACDL, founded in 1958, is the preeminent organization in the United States representing the views, rights and interests of the defense bar and its clients.

**APPELLATE RULE 26.1(b) – DISCLOSURE STATEMENT
REGARDING ORGANIZATIONAL VICTIMS IN CRIMINAL
APPEALS**

The proposed new Appellate Rule 26.1(b) would for the first time require a disclosure statement to be filed by the government in criminal appeals, to identify organizational victims. On behalf of the criminal defense bar, NACDL is pleased to see in this proposal a clear recognition that victims and alleged victims are not parties to the criminal case or to a criminal appeal. We have some concern, however, that the government may seek to overuse the suggested "good cause" exception in Rule 26.1(b). This could encourage judges to refrain from appropriate recusal in cases with numerous victims that may have sustained relatively minor losses. The appearance of judicial impartiality is especially important to criminal

defendants facing loss of liberty, and a defendant's confidence in the fairness of the court – which in turn is important to the integrity and success of our criminal justice system – may be affected by a failure to recuse even when the matter seems minor in financial terms. With those considerations in mind, we encourage the Committee to consider strengthening the wording of the now very brief Advisory Committee Note to emphasize that excusing the government from making a disclosure should be the rare exception. However, with confidence that federal judges will not misapply the newly created “good cause” exception when sought to be invoked, NACDL agrees that the flexibility that this amendment would afford the government in making the required notification seems ultimately unobjectionable.

We thank the Committee for its excellent work and for this opportunity to contribute our thoughts. NACDL looks forward to continuing our longstanding relationship with the advisory committee as a regular submitter of written comments.

Respectfully submitted,
THE NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

By: Peter Goldberger
Ardmore, PA

*Chair, Committee on
Rules of Procedure*

Cheryl D. Stein
Washington, DC

Alexander Bunin
Houston, TX

In Memoriam:
William J. Genego
Santa Monica, CA
Late Co-Chair

Please respond to:
Peter Goldberger, Esq.
50 Rittenhouse Place
Ardmore, PA 19003
E: peter.goldberger@verizon.net