

National Association of Criminal Defense Lawyers
12th Floor, 1660 L Street, NW
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February 15, 2017

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

AMENDMENTS TO CRIMINAL RULES PROPOSED FOR COMMENT, Aug. 2016

Dear Ms. Womeldorf:

The National Association of Criminal Defense Lawyers is pleased to submit our comments on the proposed changes to Rules 12.4, 45(c) and 49 of the Federal Rules of Criminal 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.

CRIMINAL RULE 12.4 – PRETRIAL IDENTIFICATION OF VICTIMS

The criminal defense bar strongly endorses all efforts to clarify that alleged victims are not parties to the criminal case. At the same time, judges must not be encouraged to refrain from appropriate recusal by overemphasizing the allowance for cases with alleged victims that may have sustained minor losses in multi-victim cases. Such undue restraint could conceivably occur through abuse of the new “good cause” exception in Rule 12.4(a)(2). The appearance of impartiality is especially important to criminal defendants facing loss of liberty, and a defendant's confidence in the fairness of the court – which is so important to the integrity and success of our criminal courts – may be affected by a failure to recuse even when the matter seems minor in financial terms. With those considerations in mind, and with confidence that federal judges will not misapply the newly created “good cause” exception when sought to be invoked, NACDL agrees that the added flexibility that this amendment would afford the government in making the required notification seems entirely unobjectionable.

CRIMINAL RULES 45 and 49 – FILING AND SERVICE

NACDL is pleased to see the proposal of a stand-alone rule on this subject for criminal cases. We are also pleased to see the effective elimination, for papers filed electronically (which is to say, nearly all) of the requirement for a separate document called a “certificate of service,” Prop. Rule 49(b)(1) (NEF constitutes certificate of service). (If elimination of written and signed certificates of service was not intended, then the proposed rule is to say the least unclear in this regard.)

We are satisfied with the Committee's proposed resolution of the question of filing by unrepresented parties and by non-parties. Prop. Rule 49(b)(3)(B),(c). (The First Amendment demands that the press have an efficient and effective way to seek intervention to enforce the public's right of access to most criminal-case papers and proceedings, for example. Yet it has not heretofore been clear that all such papers must be served on the defendant. Qualified victims, who are not parties, also have a right to file papers in certain situations governed by Rule 60, making it helpful that Rule 49(c) will govern such filings and thus require service on the defendant – a practice that has heretofore been inconsistent.)

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 frequent attendee at public meetings and a regular submitter of written comments.

Respectfully submitted,
THE NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

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