DISTRICT COURT RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRIUCTION

1. Scope and Applicability. — Except for Rules 3, 4 and 5, which apply exclusively in felony proceedings, these rules govern the procedure in the District Court or before justices of the peace or before bail commissioners in all misdemeanor criminal proceedings.

2. Purpose and Construction. — These rules are intended to provide for the just determination of every criminal proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

II. PRELIMINARY PROCEEDINGS IN FELONY CASES

3. The Complaint. — The complaint is a written statement setting forth the offense charged. It shall be made upon oath before a judge of the District Court or an officer empowered to issue warrants against persons charged with committing criminal offenses. If the defendant is not in custody or before the court, the judge or other officer shall examine under oath the complainant and any witnesses the defendant may produce, and shall require their statements be reduced to writing and be subscribed and sworn to by the persons making them.

4. Warrant or Summons Upon Complaint. — (a) *Issuance.* If it appears from the complaint, or from the statement or statements made and subscribed to before a judge of the District Court or other officer empowered to issue warrants, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officers authorized by law to execute it. Upon request of the representative of the State a summons instead of a warrant 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) *Form.*

(1) *Warrant.* The warrant shall be signed by the judicial officer issuing it and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. The judge or other officer issuing a warrant may endorse upon it the amount of bail if the offense is

bailable by that judge or officer. It shall be directed to any officers or other persons authorized by law to execute same and shall command that the defendant be arrested and, unless otherwise provided by law, be brought before a judge of the District Court for the division in which the crime was committed.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear at a stated time and place before a judge of the District Court for the division in which the offense is alleged to have been committed.

(c) *Execution or Service; and Return.*

(1) *By Whom.* The warrant shall be executed by any officer authorized by law. The summons may be served by any person authorized to execute a warrant.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the State of Rhode Island.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

(4) *Return.* The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 5. Upon execution of a warrant, or service of a summons, or surrender by a defendant the attorney for the State shall cause any copies of the warrant or summons, or any unexecuted warrant or summons issued against the defendant for the same offense to be returned to the judicial officer by whom it was issued to be cancelled by him or her. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judicial officer before whom the summons is returnable. At the request of the attorney for the State 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 judicial officer who issued same to any authorized person for execution or service.

5. Proceedings Before the District Court. — (a) *Appearance Before the District Court.* Unless otherwise provided by statute, an officer making an arrest under a warrant issued upon a complaint shall take the arrested person without unnecessary delay before a judge of the District Court as commanded in the warrant. Any person making an arrest without a warrant shall take the arrested person without

unnecessary delay before a judge of the District Court as commanded in the warrant. Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judge of the District Court for the division in which the arrest was made or in which the crime was committed. When a person arrested without a warrant is brought before a judge, a complaint shall be filed forthwith. Whenever an arrest shall be made, the arrested person shall be afforded a prompt hearing for the purpose of admission to bail before a judge of the District Court or an officer authorized to bail persons; if the arrest is made pursuant to warrant and the amount of bail has been endorsed on the warrant, the person shall also be entitled to be taken promptly before an officer authorized to accept bail. If a defendant is charged with any of the offenses set forth in § 12-13-1.1 of the General Laws of 1956 (1969 Reenactment), the judge of the District Court before whom the defendant has been brought may order that the defendant be brought before a justice of the Superior Court as soon as practicable, but not later than forty-eight hours thereafter, not counting any intervening Saturday, Sunday or legal holiday. The justice of the Superior Court before whom the defendant is brought pursuant to such order shall at that time either hold a bail hearing or set a hearing date, which shall be the earliest practicable date for the hearing to be held.

(b) *Statement by the Judge.* The judge before whom the defendant is brought shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel, of the defendant's right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the defendant's right to have a preliminary examination. The judge shall also inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against him or her. The judge shall allow the defendant reasonable time and opportunity to consult counsel and, where authorized by statute, shall admit the defendant to bail as provided in these rules.

(c) *Preliminary Examination.* The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the judge of the District Court shall forthwith hold the defendant to answer in the Superior Court. If the defendant does not waive examination, the judge shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf. If from the evidence it appears to the judge that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge shall forthwith hold the defendant to answer in the Superior Court; otherwise the judge shall discharge the defendant. The judge shall, where authorized by statute, admit the defendant to bail as provided in these rules. After concluding the proceeding the judge shall transmit forthwith to the clerk of the Superior Court for the appropriate county all papers in the proceeding and any bail taken by him or her.

6. The Complaint. — (a) *Nature and Contents.* The complaint shall be a plain, concise and definite written statement setting forth the offense charged. A complaint which provides the defendant and the court with adequate notice of the offense being charged shall be sufficient if the offense is charged either (1) by using the name given to the offense by the common law or by statute, or (2) by stating the definition of the offense in terms of either the common law or the statute defining the offense, or in terms of substantially the same meaning. 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 count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The complaint shall state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

(b) *How Made.* It shall be made upon oath before a judge of the District Court or an officer empowered to issue warrants against persons charged with committing criminal offenses. If the defendant is not in custody or before the court, the judge or other officer shall examine under oath the complainant and any witnesses he or she may produce, and shall require their statements be reduced to writing and be subscribed and sworn to by the persons making them.

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

(d) *Amendment of Complaint.* The court may permit a complaint 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.

(e) *Bill of Particulars.* Upon motion of a defendant the court shall direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten 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.

7. Joinder of Offenses and of Defendants. — (a) *Joinder of Offenses.* Two or more offenses may be charged in the same complaint 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 same complaint 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.

8. Warrant or Summons Upon Complaint. — (a) *Issuance.* If it appears from the complaint, or from the statement or statements made and subscribed to before a judge of the District Court or other officer empowered to issue warrants, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officers authorized by law to execute it. Upon request of the representative of the State a summons instead of a warrant 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) *Form.*

(1) *Warrant.* The warrant shall be signed by the judicial officer issuing it and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. The judge or other officer issuing a warrant may endorse upon it the amount of bail. It shall be directed to any officers or other persons authorized by law to execute same and shall command that the defendant be arrested and, unless otherwise provided by law, be brought before a judge of the District Court for the division in which the crime was committed.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear at a stated time and place before a judge of the District Court for the division in which the offense is alleged to have been committed.

(c) *Execution or Service; and Return.*

(1) *By Whom.* The warrant shall be executed by any officer authorized by law. The summons may be served by any person authorized to execute a warrant.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the State of Rhode Island.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time

of the arrest, the officer shall then inform the defendant of the offense charged and that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

(4) *Return.* The officer executing a warrant shall make return thereof to the judge before whom the defendant is brought pursuant to Rule 9. Upon execution of a warrant, or service of a summons, or surrender by a defendant, the attorney for the State shall cause any copies of the warrant or summons, or any unexecuted warrant or summons is sued against the defendant for the same offense to be returned to the judicial officer by whom it was issued to be cancelled by him or her. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judicial officer before whom the summons is returnable. At the request of the prosecuting attorney made 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 judicial officer who issued same to any authorized person for execution or service.

9. Proceedings Before a District Judge. — (a) *Appearance Before A District Judge.* Unless otherwise provided by statute, an officer making an arrest under a warrant issued upon a complaint shall take the arrested person without unnecessary delay before a judge of the District Court as commanded in the warrant. Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judge of the District Court for the division in which the arrest was made or in which the crime was committed. When a person arrested without a warrant is brought before a judge, a complaint shall be filed forthwith. Whenever an arrest shall be made, the arrested person shall be afforded a prompt hearing for the purpose of admission to bail before a judge of the District Court or an officer authorized to bail persons; if the arrest is made pursuant to warrant and the amount of bail has been endorsed on the warrant, the person shall also be entitled to be taken promptly before an officer authorized to accept bail.

(b) *Statement by the Judge.* The judge before whom the defendant is brought or before whom the defendant appears pursuant to summons shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith and of the defendant's right to retain counsel. The judge shall also inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against him or her. The judge shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules. If the offense charged is punishable by imprisonment for a term of more than six (6) months the judge shall inform the defendant (i) that

the defendant has a right to request the assignment of counsel if the defendant is unable to obtain counsel and (ii) that the defendant has a right to trial by jury in the first instance but, in the event the defendant chooses to waive that right and to stand trial in the District Court without a jury and is found guilty, the defendant is entitled to appeal that judgment to the Superior Court where the defendant will receive a trial de novo before a jury.

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

11. Pleas. — A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty (or nolo contendere) unless it is satisfied that there is a factual basis for the plea.

12. Pleadings and Motions Before Trial — Defenses and Objections. — (a) *Pleadings and Motions.* Pleadings in criminal proceedings shall be the complaint, 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) *The Motion Raising Defenses and Objections.*

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* The defense of double jeopardy and all other defenses and objections based on defects in the institution of the prosecution or in the complaint other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made no later than fifteen days after the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) *Hearing on Motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

(5) *Effect of Determination.* If a motion is determined adversely to the defendant the defendant shall be permitted to plead if he or she had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the complaint, it may also order that the defendant be held in custody or that his or her bail be continued for a specified time pending the filing of a new complaint.

(c) *Defense of Insanity.*

(1) *Notice.* If a defendant who pleads not guilty intends to rely in any way on the defense of insanity the defendant shall not later than thirty days after the defendant enters his or her plea file a written notice of such intention with the court and serve a copy thereof upon the attorney for the State. The notice shall contain the names and addresses of persons the defendant intends to call as witnesses to establish that the defendant was insane at the time of the alleged offense. In the event the defendant gives notice that he or she intends to rely on the defense of insanity, the attorney for the State shall, not later than thirty days prior to commencement of trial, file with the court and serve upon the defendant a written notice stating the names and addresses of persons whom the State intends to call as witnesses to establish the defendant's sanity at the time of the alleged offense.

(2) *Failure to Comply.* In the event a notice is not filed and served as required by this subdivision, the court may refuse to permit the party in default to present evidence at the trial with respect to the defense of insanity, or may in its discretion enter such other order as it deems appropriate under the circumstances.

13. Trial Together of Complaints. — The Court may order two or more complaints to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.

14. [Reserved.]

15. Depositions. — (a) *When Taken.* If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the witness' testimony is material and that it is necessary to take the witness' deposition in order to prevent a failure of justice, the court at any time after the filing of a complaint

may upon motion of a defendant or the State and notice to the parties order that the witness' testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, 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 the witness' 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 other 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.

(c) *Defendant's Counsel and Payment of Expenses.* If a defendant who is charged with an offense which is punishable by imprisonment for a term of more than six months is without counsel, the court shall advise the defendant of his or her right and assign counsel to represent the defendant unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expense of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the State. If a deposition is taken at the instance of the prosecution or of a witness who has been committed for failure to give bail, the defendant's attorney and a defendant not in custody shall be paid by the State their expenses for travel and subsistence for attendance at the examination. If a deposition is to be taken at the instance of any party or of a witness committed for failure to give bail, a defendant who is in custody shall be permitted to attend the taking of the deposition at the expense of the State.

(d) *How Taken.* A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(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 if it appears: That the witness is dead; or that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. 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 or her to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) *Objections to Admissibility.* Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

16. Discovery and Inspection. — (a) *Defendant's Statements; Reports of Examination and Tests; Defendant's Grand Jury Testimony.* Upon motion of a defendant the court may order the attorney for the State to permit the defendant to inspect and copy or photograph any relevant (1) written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the State, (2) written or recorded statements or confessions, or written summaries of oral statements or confessions, or copies thereof, which the State intends to introduce at trial and which were made by a co-defendant who is to be tried together with the moving defendant; (3) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the State, and (4) recorded testimony, if any, before a grand jury of the defendant, or in the case of a corporate defendant, of any present or former officer or employee of the defendant corporation concerning activities carried on, or knowledge acquired, within the scope of or reasonably relating to his or her employment.

(b) *Other Books, Papers, Documents, Tangible Objects or Places.* Upon motion of a defendant the court may order the attorney for the State to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the State, upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable. Except as provided in subdivision (a)(3), this rule does not authorize discovery or inspection of reports, memoranda or other internal State documents made by State agents in connection with the investigation or prosecution of the case, or of statements made by State witnesses or prospective State witnesses (other than the defendant or a co-defendant who is to be tied together with the moving defendant) to agents of the State except as provided in Rule 26.1.

(c) *Discovery by the State.* If the court grants relief sought by the defendant under subdivision (a)(3) or subdivision (b) of this rule, it may, upon motion of the State, condition its order by requiring that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control, upon a showing of materiality to the preparation of the State's case and that the request is

reasonable. 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 the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant or a co-defendant, or by State or defense witnesses, or by prospective State or defense witnesses, to the defendant, the defendant's agents or attorneys.

(d) *Time, Place and Manner of Discovery and Inspection.* An order of the court granting relief under this rule shall specify the time, place and the manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(e) *Protective 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 the State the court may permit the State to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting a protective order, and the defendant is found guilty and appeals to the Superior Court for a trial de novo, the Superior Court shall not be bound by a prior determination of the District Court restricting discovery.

(f) *Time of Motions.* A motion under this rule may be made only within 15 days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(g) *Continuing Duty to Disclose; Failure to Comply.* If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, the party shall promptly notify the other party or the other party's attorney or the court of the existence of the additional material. 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 or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

17. Subpoena. — (a) *For Attendance of Witnesses; Form; Issuance.* Every subpoena shall be issued by the clerk of court or a notary public or other officer authorized by statute, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) *Defendants Unable to Pay.* The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the cost incurred by the process and fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed on behalf of the State.

(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 tangible things 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 the sheriff, by the sheriff's deputy, by a constable, 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 the person the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued in behalf of the State or an officer or agency thereof, fees and mileage need not be tendered.

(e) *Place of Service.*

(1) *In Rhode Island.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Rhode Island.

(2) *Out of State.* A subpoena directed to a witness outside the State of Rhode Island shall issue under the circumstances and in the manner and be served as provided in the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases, G.L. 1956 (1969 Reenactment), §§ 12-16-1 through 12-16-13.

(f) *For Taking Deposition; Place of Examination.*

(1) *Issuance.* An order to take a deposition constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein.

(2) *Place.* A person named or described in a subpoena for the taking of a deposition may be required to travel to and attend an examination at the place within the State designated in the notice required by Rule 15(b). The court, on motion of any party or of the person to be examined, may direct that the deposition be taken at some other place.

(g) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court in which the action is pending.

18. Place of Prosecution and Trial. — Except as otherwise permitted by statute or by these rules, the prosecution and trial shall be had in the division in which the offense was committed.

19, 20. [Reserved.]

21. Motion to Transfer. — (a) *For Prejudice in the Division.* The court upon motion of the defendant shall transfer the proceeding as to the defendant to another division whether or not such division is specified in the defendant's motion if the court is satisfied that there exists in the division where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that division.

(b) *Transfer in Other Cases.* For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to the defendant or any one or more of the counts thereof to another division.

(c) *Proceedings on Transfer.* When a transfer is ordered pursuant to subdivisions (a) or (b) of this rule the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that division. After judgment has been entered in the case, the clerk of the court in which the case was tried shall return the record thereof to the clerk of the court from which the case was transferred.

22. Time of Motion to Transfer. — A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

23. Trial by Jury or by the Court. — A defendant who is charged with an offense which is punishable by imprisonment for a term of more than six months shall be advised by the Court, at the time of the defendant's initial appearance, that the defendant has a right to trial by jury in the first instance, but in the event the defendant chooses to waive that right and to stand trial in the District Court without a jury and is found guilty the defendant is entitled to appeal that judgment to the Superior Court where the defendant will receive a trial de novo before a jury. The defendant shall also be informed that if within ten days of the date of his or her arraignment the defendant does not file a written waiver of his or her right to a jury

trial in the first instance, the proceedings shall be transferred to the Superior Court for trial in that court. If the defendant files such a waiver the case shall proceed in accordance with these rules. If the defendant does not file a waiver within ten days of his or her initial appearance before the Court, or if the defendant is allowed, for good cause shown, to withdraw his or her waiver after said ten-day period, the clerk shall transmit the record in the case to the clerk of the Superior Court for the county in which the offense was committed.

24. [Reserved]

25. Judge — Disability. — 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 finding of guilty, any other judge assigned thereto by order of the Chief Judge may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, the judge may in his or her discretion grant a new trial.

26. Evidence. — (a) *Form and Admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the statutes of this State, or under the rules of evidence applied in the courts of this State. The competency of a witness to testify shall be determined in like manner.

(b) *Reserved.*

(c) *Affirmation in Lieu of Oath.* Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) *Examination of Witnesses.* While examining or cross-examining a witness an attorney shall stand, unless the court otherwise permits.

26.1. Statements of Prosecution Witnesses. — (a) *Production of Statements.* After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the attorney for the State to produce any statement (as defined in subdivision (e)) of the witness in the possession of the attorney for the State, or under his or her control, which relates to the subject matter as to which the witness has testified. If the entire contents of a statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for the defendant's examination and use. When a statement is delivered to a defendant pursuant to this rule, the court in its discretion, upon application of the defendant, may recess proceedings in the trial for such time as it may determine to

be reasonably required for the examination of the statement by the defendant and the defendant's preparation for its use in the trial.

(b) *Unrelated Matter.* If the attorney for the State claims that any statement ordered to be produced under this rule contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the attorney for the State to deliver the statement for inspection by the court in camera. Upon inspection the court shall excise the portions of the statement which do not relate to the subject matter of the testimony of the witness. The court shall then order delivery of the excised statement to the defendant for his or her use. If any portion of a statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of the statement shall be preserved by the attorney for the State and, in the event the defendant appeals to the Superior Court for a trial de novo, the Superior Court shall not be bound by a prior determination of the District Court to excise portions of the statement.

(c) *Use of Statements.* A statement may be used at the trial only to impeach the credibility of a witness by demonstrating a material variance between the testimony of the witness and the witness' prior statement.

(d) *Production of Criminal Records.* After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the attorney for the State to provide the defendant with a written statement of all criminal convictions of the witness that are known to the attorney for the State or are contained in the files of the Attorney General's Division of Criminal Identification.

(e) *Statement Defined.* The term “statement,” as used in subdivisions (a), (b) and (c) of this rule, means

(1) a written statement made by a prosecution witness and signed or otherwise adopted or approved by him or her; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by a prosecution witness to an agent of the State and recorded contemporaneously with the making of such oral statement.

26.2. Opening Statements. — Before any evidence is offered at trial, the State may make an opening statement. If a defendant chooses to make an opening statement, the defendant may do so just prior to the introduction of evidence by the State, or just prior to presenting his or her case.

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.

28. Expert Witnesses and Interpreters. — (a) *Expert Witnesses.* The court may on its own motion or upon the motion of a party order the defendant or the State or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he or she consents to act. A witness so appointed shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his or her findings, if any, and may thereafter be called to testify by the court or by any party. The witness shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and may direct that it be paid either by the State or by the party who moved for appointment. The parties also may call expert witnesses of their own selection.

(b) *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 by the State.

29. Motion for Judgment of Acquittal. — The court on motion of a defendant or of its own motion shall, at the close of the evidence offered by the State, order the entry of judgment of acquittal of one or more offenses charged in the complaint if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal is not granted, the defendant may offer evidence without having reserved the right.

30. [Reserved.]

31. Conviction of an Included 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.

32. Sentence and Judgment. — (a) *Sentence.* (1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. A delay between finding of guilt and imposition of sentence will not be deemed unreasonable if a defendant has not moved for imposition of sentence. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask the defendant if the defendant wishes to make a

statement in his or her own behalf and to present any information in mitigation of punishment.

(2) *Notification of Right to Appeal.* After imposing sentence the court shall advise the defendant of his or her right to appeal to the Superior Court for a trial de novo.

(b) Judgment. A judgment of conviction shall set forth the offense charged, the plea, and the adjudication and sentence. If the defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(c) Presentence Investigation.

(1) *When Made.* The administrator of probation and parole, when directed to do so by the court, shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation. Unless the defendant consents, the report shall not be submitted to the court or its contents disclosed to anyone before the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about the defendant's characteristics, the defendant's financial condition and the circumstances affecting the defendant's 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. A copy of the report shall be furnished to the attorney for the State to aid him or her in making a recommendation to the court concerning the sentence to be imposed. The court before imposing sentence may disclose to the defendant or the defendant's counsel all or part of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or the defendant's counsel to comment thereon.

(d) *Withdrawal of Plea.* A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or probation is imposed or imposition of sentence is suspended.

(e) *Probation.* Unless otherwise provided by law, the defendant may be placed on probation without sentence being imposed or may be placed on probation after execution of sentence has been suspended.

(f) *Revocation of Probation.* The court shall not revoke probation or revoke a suspension of sentence or impose a sentence previously deferred except after a hearing at which the defendant shall be afforded the opportunity to be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. Prior to the hearing the State shall furnish the defendant and the court with a written statement specifying the grounds upon which action is sought under this subdivision. No revocation shall occur unless the State establishes by a fair preponderance of the evidence that the defendant breached a

condition of his/her probation or deferred sentence or failed to keep the peace or remain on good behavior.

33. [Reserved.]

34. Arrest of Judgment. — The court on motion of a defendant who has not claimed an appeal to the Superior Court shall arrest judgment if the complaint 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 30 days after finding of guilt, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 30-day period.

35. Correction or Reduction of Sentence. — If an appeal to the Superior Court has not been claimed, the court may correct an illegal sentence at any time. The court may correct a sentence imposed in an illegal manner and it may reduce any sentence within 5 days after the sentence is imposed. The court may reduce a sentence, the execution of which has been suspended, upon revocation of probation.

36. Clerical Mistakes. — Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

37. Appeal to the Superior Court. — A defendant aggrieved by a sentence of the District Court may appeal therefrom to the Superior Court for the county in which the division of the District Court is situated. The appeal may be claimed by giving oral or written notice of appeal in open court or by filing a written notice of appeal with the clerk of the division in which the sentence was imposed. Notice of appeal shall be given within five days of the imposition of sentence appealed from.

38 to 40. [Reserved.]

IV. GENERAL PROVISIONS

41. Search and Seizure. — (a) *Authority to Issue Warrant.* A search warrant authorized by this rule may be issued by a judge of the District Court, as well as by any justice of the Supreme or Superior Courts.

(b) *Grounds for Issuance.* A warrant may be issued under this rule to search for and seize any property.

(1) Stolen or embezzled, or obtained by any false pretense with intent to cheat or defraud;

(2) Designed or intended for use or which is or has been used as the means of committing a violation of law;

(3) Possession of which is unlawful;

(4) Which is evidence of the commission of a crime.

(c) *Issuance and Contents.* A warrant shall issue only on written application by an officer or other person authorized by law to apply for a search warrant and supported by an affidavit, sworn to before a person authorized by this rule to issue warrants, specifically designating the place to be searched, the owner or occupant thereof, if known to the affiant, and the person to be searched for, and establishing the grounds for issuing the warrant. If the judge or justice is satisfied that grounds for the application exist, or that there is probable cause to believe that they exist, he or she shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to any officer authorized by law to execute it where the person or place to be searched is located. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, unless for good cause shown it provides for its execution at any time of day or night. It shall designate the division of the district court to which it shall be returned.

(d) *Execution and Return With Inventory.* The warrant may be executed only within seven (7) days after its date. The officer 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 the 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 the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The person from whom or from whose premises the property was taken and the applicant for the warrant may obtain a copy of the inventory from the clerk of the division of the District Court where it has been filed.

(e) *Return of Papers to Clerk.* The warrant, a copy of the return, inventory and all other papers in connection therewith shall be filed with the clerk of the division of the District Court which has jurisdiction over the place where the property was seized.

(f) *Motion to Suppress Evidence.* A person aggrieved by an unlawful search and seizure may move in the division of the District Court which has jurisdiction over the place where the property was seized, or in the division of the District Court to which such person has been brought pursuant to either Rule 5 or Rule 8, to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. Whether or not a motion to suppress has been made initially in the District Court, the motion to suppress may be made in the Superior Court after an indictment has been returned or an appeal has been filed from the District Court and the Superior Court will not be bound by any prior determination of the District Court. The motion shall be made in the District Court before trial in cases involving misdemeanors or before preliminary examination in cases involving felonies unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(g) *Return of Illegally Seized Property.*

1. *Felony Cases.* If a motion to suppress is granted by the District Court in a case involving a felony, the court shall not order the State to return illegally seized property unless (i) an indictment charging an offense involving such property has not been returned within six (6) months of the determination of the District Court or (ii) the grand jury has pursuant to Rule 6(f) of the Superior Court Rules of Criminal Procedure reported its failure to find an indictment charging an offense involving such property. In no event, shall property which is otherwise subject to lawful detention be ordered returned.

2. *Misdemeanor Cases.* If a motion to suppress is granted by the District Court prior to or during trial, the court shall not order illegally seized property which is not otherwise subject to lawful detention to be returned unless (i) the defendant is acquitted or, (ii) the defendant is convicted and does not file a notice of appeal within the time permitted under Rule 37.

(h) *Scope and Definition.* This rule does not modify any act, inconsistent with it, regulating search, 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.

42. Criminal Contempt. — (a) *Summary Disposition.* A criminal contempt may be punished summarily if the judge certifies that he or she 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, the adjudication and sentence and shall be signed by the judge and entered of 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 shall be given orally by the judge in open court in the presence of the defendant or, on application of an attorney for the State 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. In a proceeding under this subdivision, 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 reciting the facts, the adjudication and the sentence. The order shall be signed by the judge and entered of record.

43. Presence of the Defendant. — The defendant shall be present at the arraignment and at the imposition of sentence, except as otherwise provided by statute or by these rules. The defendant shall be present at every stage of the trial, except that the defendant may be excluded from the proceedings if, after appropriate warning, the defendant persists in conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the court that the trial cannot be carried on with the defendant in the courtroom. The defendant's voluntary absence after the trial has been commenced in his or her presence shall not prevent continuing the trial to and including the decision of the court. A corporation may appear by counsel for all purposes. The defendant's presence is not required at a reduction of sentence under Rule 35.

44. Assignment of Counsel. — If a defendant appears in District Court without counsel, the court shall advise the defendant of his or her right to be represented by counsel. If the offense charged is punishable by imprisonment for a term of more than six months or by a fine in excess of $500, the court shall advise the defendant of his or her right to assignment of counsel and shall assign counsel to represent the defendant at every stage of the proceeding unless the defendant is able to obtain his or her own counsel or elects to proceed without counsel.

45. Time. — (a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Sunday or

a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court 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 where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 34, 35 and 37 except to the extent and under the conditions stated in them.

(c) *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 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown 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 later than 1 day before the hearing, unless the court permits them to be served at some other time.

(d) *Additional Time After Service by Mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, 1 day shall be added to the prescribed period.

46. Release on Bail.— (a) *Right to Bail.*

(1) Before and After Conviction. In accordance with the Constitution and laws of this State, a defendant shall be admitted to bail before conviction and may be admitted to bail after conviction pending appeal.

(2) Extradition Proceedings. A person arrested in connection with an extradition proceeding may in the discretion of the court be admitted to bail except where the person is charged with an offense punishable by death or life imprisonment under the laws of the demanding state.

(b) *Bail for Witness.* If upon a hearing it appears that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the person's presence by subpoena, the court may require the person to give bail for his or her appearance as a witness, in an amount fixed by the court. If the person fails to give bail the court may commit the person pending final disposition of the proceeding in which the testimony is needed, may order the person's release if the person has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

(c) *Terms.* If the defendant is admitted to bail, the terms thereof shall be such as in the judgment of the court will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the financial ability of the defendant to give bail, the character of the defendant, and the policy against unnecessary detention of defendants pending trial.

(d) *Form and Conditions.* A person required or permitted to give bail shall execute a recognizance in such form as may be prescribed to assure for the person's appearance, for the person's good behavior and that the person will keep the peace. The court, having regard to the considerations set forth in subdivision (c), may require one or more sureties, may authorize the acceptance of cash or bonds or other security in an amount equal to or less than the face amount of the recognizance, or may authorize the release of the defendant without security upon the person's written agreement to appear at a specified time and place and upon such conditions as may be prescribed to insure the person's appearance.

(e) *Violation of Terms of Recognizance.* In addition to other remedies provided for in this rule or otherwise provided for by law, violation of the terms of a recognizance may be punished as a contempt of court.

(f) *Justification of Sureties.* Every surety, except a corporate surety authorized by law to give a recognizance, shall justify by affidavit or oral testimony under oath and may be required to describe the property by which he or she proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him or her and remaining undischarged and all his or her other liabilities. No recognizance shall be approved unless the surety thereon appears to be qualified.

(g) *Forfeiture.*

(1) *Declaration.* If there is a breach of condition of a recognizance, the court upon motion of the attorney for the State 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 recognizance 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.

(5) *Settlement.* The Attorney General may settle with any obligor liable upon forfeited recognizance upon such terms and in such manner as he or she shall deem most advantageous to the interest of the State.

(h) *Exoneration.* When the condition of the recognizance bond has been satisfied or the forfeiture thereof has been set aside or remitted or settled, 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.

(i) *Supervision of Detention Pending Trial.* For the purpose of eliminating all unnecessary detention, the District Court shall exercise supervision over the detention of defendants and witnesses who have been detained pending preliminary examination, arraignment, or trial in the District Court. The Attorney General shall make a biweekly report to the Chief Judge listing each defendant and witness who has been held in custody for a period in excess of ten days. As to each witness so listed the Attorney General shall make a statement of the reasons why such witness should not be released with or without the taking of the witness' deposition pursuant to Rule 15(a). As to each defendant so listed the Attorney General shall make a statement of the reasons why the defendant is still held in custody.

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 with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

48. Dismissal. — (a) *By Attorney for State.* The attorney for the State may file a dismissal of a complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) *By Court.* If there is unnecessary delay in bringing a defendant to trial, the court may dismiss the complaint.

49. Service and Filing of Papers. — (a) *Service: When Required.* Written motions other than those which are heard ex parte, written notices 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 himself or herself 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 and which is not issued orally from the bench, the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing.

(d) *Filing: No Proof of Service Required.* All papers required to be served shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or party's attorney shall constitute a representation by him or her that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

(e) *Filing With the Court Defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event he or she shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(f) *Effect of Failure to File.* If any party to an action fails to file within five days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own initiative, may order the papers to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

50. Appearance and Withdrawal of Attorneys. — (a) *Appearance.*

(1) *In General.* The attorney for a defendant in a criminal action shall forthwith file his or her appearance in writing with the clerk of the division of the District Court wherein the action is pending.

(2) *Out of State Counsel.* No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing or trial in the District Court unless granted leave to do so by the District Court or by the Supreme Court. Unless the District Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the District Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Article II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the District Court in its discretion upon a miscellaneous petition signed by the petitioner in a form approved by the court [Exhibit A], supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel [Exhibit B], and assented to by the party being represented in a client certification [Exhibit C].

(b) *Withdrawal.* An attorney who has appeared on behalf of any defendant in a criminal action may not withdraw unless he or she first obtains the consent of the court. All withdrawals shall be upon motion with notice to the defendant and the attorney for the State. A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append to his or her motion the last known address of his or her client, which shall be the official address to which notices may be sent. A motion to withdraw shall be accompanied by an affidavit setting forth facts showing the military status of the defendant. If it appears that the defendant is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, the motion shall not be granted unless the defendant consents thereto in writing or another attorney appears of record as counsel at the time of such withdrawal.

51, 52. [Reserved.]

53. Regulation of Conduct in the Courtroom. — The taking of photographs in the courtroom during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.

54. Application of Terms. — As used in these rules, "oath" includes affirmation; "attorney for the State" and "representative of the State" mean the Attorney General, an authorized assistant Attorney General, or such other person or persons as may be authorized by law to act as a representative of the State of Rhode Island in a criminal proceeding; "Attorney General" includes an authorized assistant Attorney General; the words "demurrer," "motion to quash," "plea in abatement," "plea in bar," and "special plea in bar," or words to the same effect in any statute of the State of Rhode Island shall be construed to mean the motion raising a defense or objection provided in Rule 12.

55. Records. — The clerk of the court shall keep such records in criminal proceedings as required by law or by order of the judges of the court. Among the records required to be kept by the clerk shall be a book known as the "criminal

docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

56. Courts and Clerks. — (a) *District Court Always Open; Clerk's Office.* Subject to law, the District 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 for each division with the clerk or deputy or an assistant in attendance shall be open during business hours on all days except Sundays, and legal holidays.

(b) *Transmission of Papers.* If a defendant appeals pursuant to Rule 37, the clerk shall certify and transmit all the papers in the case to the Superior Court for the appropriate county.

57. Rules of Practice and Orders. — A majority of the judges of the District Court may from time to time adopt rules of practice and general orders to further regulate in criminal matters the practice and conduct of business therein not inconsistent with these rules. If no procedure is prescribed by these rules, or by rules of practice or general orders adopted pursuant to the authority contained in this rule, the court shall proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

58. Forms. — The forms contained in the Appendix of Forms are illustrative and not mandatory.

59. Effective Date. — These rules take effect on September 1, 1972. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

60. Title. — These rules may be known and cited as the District Court Rules of Criminal Procedure and may be cited as Dist.R.Crim.P.