

# PRELIMINARY DRAFT OF

## Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

### Request for Comment

Comments are sought on Amendments to:

**Appellate Rules** 4, 5, 21, 25, 26, 27, 28.1, 29, 32, 35, and 40, and Forms 1, 5, 6, and New Form 7

**Bankruptcy Rules** 1010, 1011, 2002, 3002, 3002.1, 3007, 3012, 3015, 4003, 5009, 7001, 9006, 9009, and New Rule 1012, and Official Forms 11A, 11B, 106J, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, 207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 312, 313, 314, 315, 401, 410, 410A, 410S1, 410S2, 416A, 416B, 416D, 424, and Instructions, and New Official Forms 106J-2 and 113

**Civil Rules** 4, 6, and 82

**Criminal Rules** 4, 41, and 45

All Written Comments are Due by  
February 17, 2015



THE UNITED STATES COURTS

Prepared by the  
Committee on Rules of Practice and Procedure of the  
Judicial Conference of the United States

AUGUST 2014

1 **Rule 41. Search and Seizure**

2 \* \* \* \* \*

3 **(b) Authority to Issue a Warrant.** At the request of a  
4 federal law enforcement officer or an attorney for the  
5 government:

6 \* \* \* \* \*

7 (6) a magistrate judge with authority in any district  
8 where activities related to a crime may have  
9 occurred has authority to issue a warrant to use  
10 remote access to search electronic storage media  
11 and to seize or copy electronically stored  
12 information located within or outside that district  
13 if:

14 (A) the district where the media or information  
15 is located has been concealed through  
16 technological means; or

17 (B) in an investigation of a violation of  
18 18 U.S.C. § 1030(a)(5), the media are  
19 protected computers that have been  
20 damaged without authorization and are  
21 located in five or more districts.

22 \* \* \* \* \*

23 **(f) Executing and Returning the Warrant.**

24 **(1) *Warrant to Search for and Seize a Person or***  
25 ***Property.***

26 \* \* \* \* \*

27 (C) *Receipt.* The officer executing the warrant  
28 must give a copy of the warrant and a  
29 receipt for the property taken to the person  
30 from whom, or from whose premises, the  
31 property was taken or leave a copy of the  
32 warrant and receipt at the place where the  
33 officer took the property. For a warrant to

34 use remote access to search electronic  
35 storage media and seize or copy  
36 electronically stored information, the  
37 officer must make reasonable efforts to  
38 serve a copy of the warrant on the person  
39 whose property was searched or whose  
40 information was seized or copied. Service  
41 may be accomplished by any means,  
42 including electronic means, reasonably  
43 calculated to reach that person.

44 \* \* \* \* \*

**Committee Note**

**Subdivision (b)(6).** The amendment provides that in two specific circumstances a magistrate judge in a district where activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and seize or copy electronically stored information even when that media or information is or may be located outside of the district.

First, subparagraph (b)(6)(A) provides authority to issue a warrant to use remote access within or outside that district when the district in which the media or information is located is not known because of the use of technology such as anonymizing software.

Second, (b)(6)(B) allows a warrant to use remote access within or outside the district in an investigation of a violation of 18 U.S.C. § 1030(a)(5) if the media to be searched are protected computers that have been damaged without authorization, and they are located in many districts. Criminal activity under 18 U.S.C. § 1030(a)(5) (such as the creation and control of “botnets”) may target multiple computers in several districts. In investigations of this nature, the amendment would eliminate the burden of attempting to secure multiple warrants in numerous districts, and allow a single judge to oversee the investigation.

As used in this rule, the terms “protected computer” and “damage” have the meaning provided in 18 U.S.C. §1030(e)(2) & (8).

The amendment does not address constitutional questions, such as the specificity of description that the Fourth Amendment may require in a warrant for remotely searching electronic storage media or seizing or copying electronically stored information, leaving the application of this and other constitutional standards to ongoing case law development.

**Subdivision (f)(1)(C).** The amendment is intended to ensure that reasonable efforts are made to provide notice

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of the search, seizure, or copying to the person whose information was seized or copied or whose property was searched.