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February 15, 2013
via e-mail

Peter G. McCabe, Secretary
Standing Committee on Rules of Prac. and Proc.
Judicial Conference of the United States
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Bldg.
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**COMMENTS OF THE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
Concerning Proposed Amendments to the Federal Rules
of Criminal Procedure
Published for Comment in August 2012**

Dear Mr. McCabe:

The National Association of Criminal Defense Lawyers is pleased to submit our comments with respect to the proposed changes in the Federal Rules of Criminal Procedure. NACDL's comments on the proposed amendments to the Evidence Rules are being submitted separately. Our organization has more than 10,000 members; in addition, NACDL's 94 state and local affiliates, in all 50 states, comprise a combined membership of over 30,000 private and public defenders. NACDL, which celebrated its 50th Anniversary in 2008, is the preeminent organization in the United States representing the views, rights and interests of the defense bar and its clients.

CRIMINAL RULES 5(d) and 58(b) - VIENNA CONVENTION

We generally supported the version of these identical amendments as originally proposed for comment in 2010, although we noted that the phrasing of the amendments "could be clearer." See 10-CR-001, Comments of National Association of Criminal Defense Lawyers. We commented that it was important that the Magistrate or District Judge's advice not misstate (and particularly, that it not understate) the rights of the detainee under the Vienna Convention. Regrettably, the revised proposal continues to use the unclear phrase, "if the defendant is held in custody." Our position remains the same as it was two years ago, including our suggestion that the language of the amendments be made more clear insofar as it attempts to summarize the

detainee's treaty rights, and with respect to whether the phrase "is held" refers to the defendant's status at the commencement of, or at the conclusion of, the hearing.

The National Association of Criminal Defense Lawyers is grateful for the opportunity to submit its views on these proposals. We look forward to continuing to work with the Committee in the years to come.

Very truly yours,
s/Peter Goldberger

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National Association of Criminal Defense Lawyers
Committee on Rules of Procedure

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