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Chapter 1 : What is Preliminary Report? definition and meaning

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If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless: A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending. The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay. At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings. If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations. If a party disobeys a Rule Notes of Advisory Committee on Rulesâ€" Rule 5. Giving state or local judicial officers authority to conduct a preliminary examination does not seem necessary. Wright, Federal Practice and Procedure: Moore, Federal Practice [4] 2d ed. United States, F. A grand jury indictment may properly be based upon hearsay evidence. United States, U. Moore, Federal Practice 6. This being so, there is practical advantage in making the evidentiary requirements for the preliminary examination as flexible as they are for the grand jury. Otherwise there will be increased pressure upon United States Attorneys to abandon the preliminary examination in favor of the grand jury indictment. New York State, which also utilizes both the preliminary examination and the grand jury, has under consideration a new Code of Criminal Procedure which would allow the use of hearsay at the preliminary examination. For the same reason, subdivision a also provides that the preliminary examination is not the proper place to raise the issue of illegally obtained evidence. This is current law. That issue was for the trial court. Dicta in Costello v. In United States ex rel. Commissioners are not empowered to consider or act upon such motions. The rule rejects this view for reasons largely of administrative necessity and the efficient administration of justice. The Congress has decided that a preliminary examination shall not be required when there is a grand jury indictment 18 U. Increasing the procedural and evidentiary requirements applicable to the preliminary examination will therefore add to the administrative pressure to avoid the preliminary examination. Allowing objections to evidence on the ground that evidence has been illegally obtained would require two determinations of admissibility, one before the United States magistrate and one in the district court. The objective is to reduce, not increase, the number of preliminary motions. To provide that a probable cause finding may be based upon hearsay does not preclude the magistrate from requiring a showing that admissible evidence will be available at the time of trial. The fact that a defendant is not entitled to object to evidence alleged to have been illegally obtained does not deprive him of an opportunity for a pretrial determination of the admissibility of evidence. He can raise such an objection prior to trial in accordance with the provisions of rule Subdivision b makes it clear that the United States magistrate may not only discharge the defendant but may also dismiss the complaint. Current federal law authorizes the magistrate to discharge the defendant but he must await authorization from the United States Attorney before he can close his records on the case by dismissing the complaint. Making dismissal of the complaint a separate procedure accomplishes no worthwhile objective, and the new rule makes it clear that the magistrate can both discharge the defendant and

file the record with the clerk. Subdivision b also deals with the legal effect of a discharge of a defendant at a preliminary examination. This issue is not dealt with explicitly in the old rule. Existing federal case law is limited. What cases there are seem to support the right of the government to issue a new complaint and start over. State law is similar. In the Tell case the Wisconsin court stated the common rationale for allowing the prosecutor to issue a new complaint and start over: The state has no appeal from errors of law committed by a magistrate upon preliminary examination and the discharge on a preliminary would operate as an unchallengeable acquittal. Subdivision c is based upon old rule 5 c and upon the Federal Magistrates Act, 18 U. It provides methods for making available to counsel the record of the preliminary examination. The new rule is designed to eliminate delay and expense occasioned by preparation of transcripts where listening to the tape recording would be sufficient. Ordinarily the recording should be made available pursuant to subdivision c 1. A written transcript may be provided under subdivision c 2 at the discretion of the court, a discretion which must be exercised in accordance with Britt v. North Carolina, U. A defendant who claims the right to a free transcript does not, under our cases, bear the burden of proving inadequate such alternatives as may be suggested by the State or conjured up by a court in hindsight. In this case, however, petitioner has conceded that he had available an informal alternative which appears to be substantially equivalent to a transcript. Accordingly, we cannot conclude that the court below was in error in rejecting his claim. No substantive change is intended. Committee Notes on Rulesâ€" Amendment The addition of subdivision d mirrors similar amendments made in which extended the scope of Rule As indicated in the Committee Notes accompanying those amendments, the primary reason for extending the coverage of Rule That need, the Committee believes, extends to a preliminary examination under this rule where both the prosecution and the defense have high interests at stake. Changes Made to Rule 5. The Committee made no changes to the published draft. These changes are intended to be stylistic, except as noted below. First, the title of the rule has been changed. Although the underlying statute, 18 U. What happens at this proceeding is more than just an examination; it includes an evidentiary hearing, argument, and a judicial ruling. Further, the phrase preliminary hearing predominates in actual usage. That provision is taken from current Rule 40 a. The Committee is aware that in most districts, magistrate judges perform these functions. The revised rule includes language that expands the authority of a United States magistrate judge to grant a continuance for a preliminary hearing conducted under the rule. Currently, the rule authorizes a magistrate judge to grant a continuance only in those cases in which the defendant has consented to the continuance. If the defendant does not consent, then the government must present the matter to a district judge, usually on the same day. The proposed amendment conflicts with 18 U. The Committee believes that this restriction is an anomaly and that it can lead to needless consumption of judicial and other resources. The Committee believes that the change in the rule will provide greater judicial economy and that it is entirely appropriate to seek this change to the rule through the Rules Enabling Act procedures. Under those procedures, approval by Congress of this rule change would supersede the parallel provisions in 18 U. Similar language was added to Rule 4 in In the Committee Note on the amendment, the Advisory Committee explained that the language was included to make it clear that a finding of probable cause may be based upon hearsay, noting that there had been some uncertainty in the federal system about the propriety of relying upon hearsay at the preliminary hearing. See Advisory Committee Note to Rule 5. Federal law is now clear on that proposition. Thus, the Committee believed that the reference to hearsay was no longer necessary. Further, the Committee believed that the matter was best addressed in Rule d 3 , Federal Rules of Evidence. Instead of including detailed information in the rule itself concerning records of preliminary hearings, the Committee opted simply to direct the reader to the applicable Judicial Conference regulations governing records. The Committee did not intend to make any substantive changes in the way in which those records are currently made available. Finally, although the rule speaks in terms of initial appearances being conducted before a magistrate judge, Rule 1 c makes clear that a district judge may perform any function in these rules that a magistrate judge may perform. Committee Notes on Rulesâ€" Amendment The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45 a.