

## **1.05 Commitment to another district (removal proceedings)**

Fed. R. Crim. P. 40

- A. Appearance before a magistrate judge by a defendant arrested in this district for an alleged offense committed in another district (U.S. attorney will have filed a Petition for Removal).
1. Ascertain from U.S. attorney or arresting officer:
    - (a) where the alleged offense was committed;
    - (b) when defendant was arrested and whether the arrest was with or without a warrant;
    - (c) whether an indictment has been returned or an information or complaint filed;
    - (d) whether a warrant has been issued.
  2. If you are unsure, ask defendant if he or she can speak and understand English. If defendant has an attorney, ask if counsel has been able to communicate with defendant in English. If you doubt defendant's capacity to understand English, use a certified interpreter. See 18 U.S.C. § 1827.
  3. Advise the defendant of his or her:
    - (a) general rights under Fed. R. Crim. P. 5 (nature of charge, right to counsel, right to remain silent—see 1.01: Initial appearance);
    - (b) right to waive removal and voluntarily return to the district where charges are pending;
    - (c) right, if charges are based on complaint and warrant, to:
      - (1) have a preliminary examination in this district,
      - (2) have a preliminary examination in the district where the charges are pending, or
      - (3) waive preliminary examination;