

MAY 17, 2002

RULES OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT

Rule 1  
Name of Court

This court shall be known as the Foreign Intelligence Surveillance Court.

Rule 2  
Clerk of Court

The clerk shall maintain the docket, records, and seal of the court and shall have the usual powers of a clerk of court.

Rule 3  
Duties of Presiding Judge

The presiding judge designated by the Chief Justice of the United States from among the membership of the court shall be responsible for (a) allocating the business of the court to the judges thereof on an equitable and impartial basis, (b) calling the judges of the court to sit from time to time so that at least one judge will always be available to serve on the court at the seat of government, (c) placing matters before the judges for collegial consideration, such as administrative actions and amendments of these rules, and (d) calling meetings of the full court. The presiding judge or his designee will remain available to be reached in emergency situations by the Attorney General for the purposes set forth in section 105(e) of the Act.

Rule 4  
Powers of Individual Judges

Each judge of the court is empowered to administer oaths and affirmations; to hold hearings and to consider applications and such affidavits, exhibits, testimony, and other evidence as may be presented to the court; to require the applicant to furnish such other information as may be necessary to a determination; to issue orders pursuant to section 105 of the Act; to grant extensions of an order upon an application for an extension; and to assess compliance with minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated. A judge may, for the court, also act on an application to approve an emergency authorization pursuant to section 105(e).

Rule 5  
Submission of Applications

Each application for an order under section 104 of the Act shall contain, in addition to other information required to be provided by statute or by the court, a marginal annotation to the left of the first line of each paragraph thereof indicating the appropriate part of the Act to which each paragraph pertains.

Rule 6  
Procedure on Denial of Application

(a) No judge of the court may hear the same application for electronic surveillance under the Act which has been

denied previously by another judge of the court. When an application is denied, the judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted by the clerk, under seal, to the Foreign Intelligence Surveillance Court of Review.

(b) If the emergency employment of electronic surveillance has been previously authorized by the Attorney General pursuant to section 105(e), and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of --

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that, during the period, information was or was not obtained.

On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court may forego ordering the serving of the notice required under this subsection.

Rule 7  
Meetings of the Full Court

The full court shall meet at the call of the presiding judge or on the request of any judge of the court. Policy determinations by the court shall be governed by majority vote of those present and voting.

Rule 8  
Docket, Order File, and Indices

(a) The clerk shall maintain a computerized record system known as the "docket" in such form as may be approved by the court and shall enter therein all applications and other filings to which these rules are made applicable. Applications shall be assigned consecutive file numbers which file numbers shall be entered in the docket, along with a description of each filing. All matters filed with the clerk and all appearances, orders, exhibits, papers and other records required by the court to be filed shall be entered chronologically in the docket. Docket entries shall be brief but shall reflect the nature of each filing and each order issued. The docket shall also show the dates filings are made and orders entered.

(b) The clerk shall keep in such form as the court may prescribe a copy of each order and any memorandum opinion.

(Amended May 2002)

(c) Suitable indices of the docket and of any order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court.

Rule 9  
Attorneys and Government Agents

(a) Only those attorneys who have been duly admitted to the bar of any United States court, and who have been duly empowered by the Attorney General to practice before this court, will be permitted to represent the government before the bar of this court.

(b) Only those agents whose authority to represent the government is established to the satisfaction of the court shall be permitted to be present in the court or to participate in any hearing before the court. Any agent appearing as a witness, or any other government witness, must be duly sworn to testify truthfully or must affirm, and a record shall be made of his oath or affirmation.

Rule 10  
Search Warrant Returns

All search warrant returns shall contain a cover filing from the Government's attorney certifying that they have reviewed the return and believe it to be true and correct.

Returns on search warrants shall be timely filed with the Clerk of Court no later than 21 days following execution of the warrant. Returns filed more than 21 days after execution of the warrant shall contain an explanation of the reason for the delay. (Added November 2000)

Rule 11  
Criminal Investigations in FISA Cases

All FISA applications shall include informative descriptions of any ongoing criminal investigations of FISA targets, as well as the substance of any consultations between the FBI and criminal prosecutors at the Department of Justice or a United States Attorney's Office. (Added April 2002)