

AMENDMENTS TO THE FEDERAL RULES OF  
APPELLATE PROCEDURE

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COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT  
OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF APPELLATE PROCEDURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO 28 U.S.C. 2074(a); PUBLIC LAW 100-702, SEC. 401(a); (102 STAT. 4649)



MAY 4, 2017.—Referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE



SUPREME COURT OF THE UNITED STATES,  
*Washington, DC, April 27, 2017.*

Hon. PAUL D. RYAN,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendment to the Federal Rules of Appellate Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; and an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States.

Sincerely,

JOHN G. ROBERTS, Jr.,  
*Chief Justice.*

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein an amendment to Appellate Rule 4.

[*See infra* pp. \_\_\_\_\_.]

2. That the foregoing amendment to the Federal Rules of Appellate Procedure shall take effect on December 1, 2017, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

**PROPOSED AMENDMENT TO THE  
FEDERAL RULES OF APPELLATE PROCEDURE**

**Rule 4. Appeal as of Right—When Taken**

**(a) Appeal in a Civil Case.**

\* \* \* \* \*

**(4) Effect of a Motion on a Notice of Appeal.**

\* \* \* \* \*

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

2 FEDERAL RULES OF APPELLATE PROCEDURE

- (ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
- (iii) No additional fee is required to file an amended notice.

\* \* \* \* \*



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

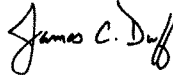
THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States  
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF  
APPELLATE PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Appellate Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a "clean" copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; and (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference.

Attachments

**PROPOSED AMENDMENT TO THE  
FEDERAL RULES OF APPELLATE PROCEDURE\***

1 **Rule 4. Appeal as of Right—When Taken**

2 **(a) Appeal in a Civil Case.**

3 \* \* \* \* \*

4 **(4) Effect of a Motion on a Notice of Appeal.**

5 \* \* \* \* \*

6 (B)(i) If a party files a notice of appeal after the  
7 court announces or enters a judgment—but  
8 before it disposes of any motion listed in  
9 Rule 4(a)(4)(A)—the notice becomes  
10 effective to appeal a judgment or order, in  
11 whole or in part, when the order disposing  
12 of the last such remaining motion is  
13 entered.

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\* New material is underlined.



## 2 FEDERAL RULES OF APPELLATE PROCEDURE

14 (ii) A party intending to challenge an order  
15 disposing of any motion listed in  
16 Rule 4(a)(4)(A), or a judgment's alteration  
17 or amendment upon such a motion, must  
18 file a notice of appeal, or an amended  
19 notice of appeal—in compliance with  
20 Rule 3(c)—within the time prescribed by  
21 this Rule measured from the entry of the  
22 order disposing of the last such remaining  
23 motion.

24 (iii) No additional fee is required to file an  
25 amended notice.

26 \* \* \* \* \*

**Committee Note**

**Subdivision (a)(4)(B)(iii).** This technical amendment restores the former subdivision (a)(4)(B)(iii) that was inadvertently deleted in 2009.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

**REPORT OF THE JUDICIAL CONFERENCE  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

\* \* \* \* \*

**FEDERAL RULES OF APPELLATE PROCEDURE**

*Rule Recommended for Approval and Transmission*

The Advisory Committee on Appellate Rules submitted a proposed technical amendment to Rule 4(a)(4)(B) to restore a subsection which had been inadvertently deleted in 2009, with a recommendation that the amendment be approved and transmitted to the Judicial Conference.

On December 14, 2016, the Office of the Law Revision Counsel (OLRC) in the U.S. House of Representatives advised that Rule 4(a)(4)(B)(iii) had been deleted by a 2009 amendment to Rule 4. Subdivision (iii), which concerns amended notices of appeal, states: “No additional fee is required to file an amended notice.” The deletion of this subdivision in 2009 was inadvertent due to an omission of ellipses in the version submitted to the Supreme Court. The OLRC deleted subdivision (iii) from its official document as a result, but the document from which the rules are printed was not updated to show deletion of subdivision (iii). As a result, Rule 4(a)(4)(B) was published with subdivision (iii) in place that year and every year since.

The proposed technical amendment restores subdivision (iii) to Rule 4(a)(4)(B). The advisory committee did not believe publication was necessary given the technical, non-substantive nature of this correction.

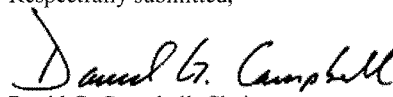
The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Appellate Rules.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

**Recommendation:** That the Judicial Conference approve the proposed amendment to Appellate Rule 4(a)(4)(B) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

\* \* \* \* \*

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

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