

## MEMORANDUM

TO: Hon. David G. Campbell, Chair  
Committee on Rules of Practice and Procedure

FROM: Hon. Michael A. Chagares, Chair  
Advisory Committee on Appellate Rules

RE: Addendum to the Report of the Advisory Committee on Appellate Rules

DATE: June 11, 2017

### I. Introduction

Following publication of the Agenda Book for the June 12 meeting of the Standing Committee, the Advisory Committee on Appellate Rules decided to recommend minor revisions to the text of the proposed amendments for final approval to Appellate Rule 25 and 41. This memorandum describes and explains those revisions. The complete revised text of the proposed amendments for final approval of these rules are attached to this memorandum.

Also attached to this memorandum is the text of proposed amendments for final approval to Rules 28.1 and 31. Although the Advisory Committee's Report presents and describes these proposed amendments, separate copies of their texts were not included in the Agenda Book.

### II. Revisions to Appellate Rule 25

The Advisory Committee recommends revising three subdivision headings in Appellate Rule 25 so that they match the corresponding headings in Civil Rule 5 (see Agenda Book at 423). The recommended revisions are as follows:

- ▶ The header for subdivision (a)(2)(B)(i), as shown in the Agenda Book at 121, lines 70-71, should be changed from "**By a Represented Person—Required; Exceptions**" to "**By a Represented Person—Generally Required; Exceptions.**"
- ▶ The header for subdivision (a)(2)(B)(ii), as shown in the Agenda Book at 121, lines 78-79, should be changed from "**Unrepresented Person—When Allowed or Required**" to "**By an Unrepresented Person—When Allowed or Required.**"

- ▶ The header for subdivision (a)(2)(B)(iv), as shown in the Agenda Book at 122, line 95, should be changed from "Same as Written Paper" to "Same as **a** Written Paper."

The Advisory Committee also recommends revising the subdivision of Rule 25 addressing electronic signatures to match the corresponding provision in Bankruptcy Rule 5005(a)(2)(C). Rule 25(a)(2)(B)(iii), as shown in the Agenda Book at 122, lines 89-94, provides:

An authorized filing made through a person's electronic-filing account, together with the person's name on a signature block, constitutes the person's signature.

The recommended revision is to delete the word "authorized" so that the subdivision would provide:

~~An authorized~~ filing made through a person's electronic-filing account, together with the person's name on a signature block, constitutes the person's signature.

## II. Revision to Rule 41(b)

The Advisory Committee also recommends minor revisions to the version of Rule 41(d) shown in the Agenda Book at 139-141. Based on comments from the Style Consultants and further reflection by the Committee, the Advisory Committee recommends adding headings to subdivisions (d)(1), (d)(2), (d)(3), and (d)(4) and rewriting subdivision (d)(2). The changes would not alter the substance of the proposal. As revised, the recommended final text of Rule 41 is as follows:

1           **Rule 41. Mandate: Contents; Issuance and Effective Date; Stay**

2           \* \* \* \* \*

3           (d) **Staying the Mandate Pending a Petition for Certiorari.**

4                           ~~(1) On Petition for Rehearing or Motion.~~ The timely  
5                           filing of a petition for panel rehearing, petition for rehearing en  
6                           banc, or motion for stay of mandate, stays the mandate until  
7                           disposition of the petition or motion, unless the court orders  
8                           otherwise.

9                           ~~(2) Pending Petition for Certiorari.~~

10                           ~~(A)~~ **(1) Motion to Stay.** A party may move to stay the  
11                           mandate pending the filing of a petition for a writ of certiorari in

12 the Supreme Court. The motion must be served on all parties and  
13 must show that the ~~certiorari~~ petition would present a substantial  
14 question and that there is good cause for a stay.

15 ~~(B)~~ **(2) Duration of Stay; Extensions.** The stay must not  
16 exceed 90 days, unless:

17 **(A)** the period is extended for good cause; or

18 **(B)** unless the party who obtained the stay files a  
19 petition for the writ and so notifies the circuit clerk in  
20 writing within the period of the stay:

21 **(i) that the time for filing a petition for a writ**  
22 **of certiorari in the Supreme Court has been**  
23 **extended, in which case the stay continues for the**  
24 **extended period; or**

25 **(ii) that the petition has been filed.** ~~In that~~  
26 ~~case,~~ in which case the stay continues until the  
27 Supreme Court's final disposition.

28 ~~(C)~~ **(3) Security.** The court may require a bond or other  
29 security as a condition to granting or continuing a stay of the  
30 mandate.

31 ~~(D)~~ **(4) Issuance of Mandate.** The court of appeals must  
32 issue the mandate immediately on receiving ~~when~~ a copy of a  
33 Supreme Court order denying the petition ~~for writ of certiorari is~~  
34 ~~filed,~~ **unless extraordinary circumstances exist.**

### Attachments

1. Revised Text of Proposed Amendments to Rule 25 and 41 for Final Approval (Including Summaries of Public Comment).
2. Text of Proposed Amendments to Rule 28.1 and 31 for Final Approval (Including Summaries of Public Comment)

1 **Rule 25. Filing and Service**

2 **(a) Filing.**

3 (1) **Filing with the Clerk.** A paper required or  
4 permitted to be filed in a court of appeals must  
5 be filed with the clerk.

6 (2) **Filing: Method and Timeliness.**

7 **(A) Nonelectronic Filing.**

8 ~~(A)(i)~~ **In general.** ~~Filing~~For a paper  
9 not filed electronically, filing  
10 may be accomplished by mail  
11 addressed to the clerk, but filing  
12 is not timely unless the clerk  
13 receives the papers within the  
14 time fixed for filing.

15 ~~(B)(ii)~~ **A brief or appendix.** A brief or  
16 appendix not filed electronically  
17 is timely filed, however, if on or  
18 before the last day for filing, it is:

- 19 (i)• mailed to the clerk by ~~First-~~  
20 ~~Class Mail~~first-class mail,  
21 or other class of mail that is  
22 at least as expeditious,  
23 postage prepaid; or  
24 (ii)• dispatched to a third-party  
25 commercial carrier for  
26 delivery to the clerk within  
27 3 days.

28 ~~(C)~~(iii) **Inmate filing.** If an institution  
29 has a system designed for legal  
30 mail, an inmate confined there  
31 must use that system to receive  
32 the benefit of this  
33 Rule 25(a)(2)(C)~~(A)~~(iii). A  
34 paper ~~filed~~not filed electronically  
35 by an inmate is timely if it is  
36 deposited in the institution's

37 internal mail system on or before  
38 the last day for filing and:  
39 (i) it is accompanied by: a  
40 declaration in compliance  
41 with 28 U.S.C. § 1746—or  
42 a notarized statement—  
43 setting out the date of  
44 deposit and stating that  
45 first-class postage is being  
46 prepaid; or evidence (such  
47 as a postmark or date  
48 stamp) showing that the  
49 paper was so deposited and  
50 that postage was prepaid; or  
51 (ii) the court of appeals  
52 exercises its discretion to  
53 permit the later filing of a  
54 declaration or notarized

55 statement that satisfies  
56 Rule 25(a)(2)(C)(i)(A)(iii).

57 ~~(D) **Electronic filing.** A court of appeals may~~  
58 ~~by local rule permit or require papers to be~~  
59 ~~filed, signed, or verified by electronic~~  
60 ~~means that are consistent with technical~~  
61 ~~standards, if any, that the Judicial~~  
62 ~~Conference of the United States establishes.~~  
63 ~~A local rule may require filing by electronic~~  
64 ~~means only if reasonable exceptions are~~  
65 ~~allowed. A paper filed by electronic means~~  
66 ~~in compliance with a local rule constitutes a~~  
67 ~~written paper for the purpose of applying~~  
68 ~~these rules.~~

69 **(B) Electronic Filing and Signing.**

70 **(i) By a Represented Person—**

71 **Generally Required;**

72 **Exceptions.** A person

73 represented by an attorney must  
74 file electronically, unless  
75 nonelectronic filing is allowed by  
76 the court for good cause or is  
77 allowed or required by local rule.

78 **(ii) By an Unrepresented Person—**

79 **When Allowed or Required. A**

80 person not represented by an  
81 attorney:

- 82 • may file electronically only if  
83 allowed by court order or by  
84 local rule; and
- 85 • may be required to file  
86 electronically only by court  
87 order, or by a local rule that  
88 includes reasonable  
89 exceptions.

90                                    (iii) Signing. A filing made through a  
91                                    person's electronic-filing  
92                                    account, together with the  
93                                    person's name on a signature  
94                                    block, constitutes the person's  
95                                    signature.

96                                    (iv) Same as a Written Paper. A  
97                                    paper filed electronically is a  
98                                    written paper for purposes of  
99                                    these rules.

100                    (3) **Filing a Motion with a Judge.** If a motion  
101                    requests relief that may be granted by a single  
102                    judge, the judge may permit the motion to be  
103                    filed with the judge; the judge must note the  
104                    filing date on the motion and give it to the clerk.

105                    (4) **Clerk's Refusal of Documents.** The clerk must  
106                    not refuse to accept for filing any paper  
107                    presented for that purpose solely because it is not

108 presented in proper form as required by these  
109 rules or by any local rule or practice.

110 (5) **Privacy Protection.** An appeal in a case whose  
111 privacy protection was governed by Federal Rule  
112 of Bankruptcy Procedure 9037, Federal Rule of  
113 Civil Procedure 5.2, or Federal Rule of Criminal  
114 Procedure 49.1 is governed by the same rule on  
115 appeal. In all other proceedings, privacy  
116 protection is governed by Federal Rule of Civil  
117 Procedure 5.2, except that Federal Rule of  
118 Criminal Procedure 49.1 governs when an  
119 extraordinary writ is sought in a criminal case.

120 (b) **Service of All Papers Required.** Unless a rule  
121 requires service by the clerk, a party must, at or before  
122 the time of filing a paper, serve a copy on the other  
123 parties to the appeal or review. Service on a party  
124 represented by counsel must be made on the party's  
125 counsel.

126 (c) **Manner of Service.**

127 (1) ~~Service~~Nonelectronic service may be any of the  
128 following:

129 (A) personal, including delivery to a  
130 responsible person at the office of counsel;

131 (B) by mail; or

132 (C) by third-party commercial carrier for  
133 delivery within 3 days; ~~or,~~

134 ~~(D) by electronic means, if the party being~~  
135 ~~served consents in writing.~~

136 (2) ~~If authorized by local rule, a party may use the~~  
137 ~~court's transmission equipment to make~~  
138 ~~electronic service under Rule~~

139 ~~25(e)(1)(D)~~ Electronic service of a paper may be  
140 made (A) by sending it to a registered user by  
141 filing it with the court's electronic-filing system  
142 or (B) by sending it by other electronic means

143           that the person to be served consented to in  
144           writing.

145           (3) When reasonable considering such factors as the  
146           immediacy of the relief sought, distance, and  
147           cost, service on a party must be by a manner at  
148           least as expeditious as the manner used to file the  
149           paper with the court.

150           (4) Service by mail or by commercial carrier is  
151           complete on mailing or delivery to the carrier.  
152           Service by electronic means is complete  
153           on ~~transmission~~filing, unless the party making  
154           service is notified that the paper was not received  
155           by the party served.

156   **(d) Proof of Service.**

157           (1) A paper presented for filing other than through  
158           the court's electronic-filing system must contain  
159           either of the following:

- 160 (A) an acknowledgment of service by the  
161 person served; or
- 162 (B) proof of service consisting of a statement  
163 by the person who made service certifying:
- 164 (i) the date and manner of service;
- 165 (ii) the names of the persons served; and
- 166 (iii) their mail or electronic addresses,  
167 facsimile numbers, or the addresses of  
168 the places of delivery, as appropriate  
169 for the manner of service.
- 170 (2) When a brief or appendix is filed by mailing or  
171 dispatch in accordance with  
172 Rule 25(a)(2)(~~B~~)(2)(A)(ii), the proof of service  
173 must also state the date and manner by which the  
174 document was mailed or dispatched to the clerk.
- 175 (3) Proof of service may appear on or be affixed to  
176 the papers filed.

177 (e) **Number of Copies.** When these rules require the  
178 filing or furnishing of a number of copies, a court may  
179 require a different number by local rule or by order in  
180 a particular case.

### **Committee Note**

The amendments conform Rule 25 to the amendments to Federal Rule of Civil Procedure 5 on electronic filing, signature, service, and proof of service. They establish, in Rule 25(a)(2)(B), a new national rule that generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule. The amendments establish national rules regarding the methods of signing and serving electronic documents in Rule 25(a)(2)(B)(iii) and 25(c)(2). The amendments dispense with the requirement of proof of service for electronic filings in Rule 25(d)(1).

---

### **Changes Made After Publication and Comment**

- In subdivision (a)(2)(C), the location of the proposed additional words “not filed electronically” are moved because of amendments to this subdivision that became effective in December 2016.
- Subdivision (a)(2)(B)(iii) is rewritten to change the standard for what constitutes a signature.
- Subdivision 25(c)(2) is rephrased for clarity.
- The headings of subdivisions (a)(2)(B)(i),(ii), and (iv) are revised.

## Summary of Public Comments

**Judge Jon O. Newman, U.S. Court of Appeals for the Second Circuit (AP-2016-0002-0006)**—In proposed rule 25(c)(2), a comma is needed after “user”; a comma is needed after “system”; and the word “served” should be inserted after “person.”

**Ms. Cheryl L. Siler, Aderant CompuLaw (AP-2016-0002-0009)**—Subdivision 25(c)(2) should be revised to be uniform with proposed Civil Rule (5)(b)(2).

**Mr. Michael Rosman (AP-2016-0002-0010)**—Subdivision 25(a)(2)(B)(iii) does not define “user name” or “password.” A person filing a paper might not yet be an attorney of record. The subdivision does not address in a clear manner the requirements for documents (like agreements) that should be signed by both parties.

**Heather Dixon, Esq. (AP-2016-0002-0014)**—The signature provision should be revised to make it clear that the attorney’s user name and password are not to be included in the signature block.

**New York City Bar Association (AP-2016-0002-0017)**—Rule 25(a)(2)(B)(iii) could be read to mean that the attorney’s user name and password should be included on any paper that is electronically filed.

**Sai (AP-2016-0002-0018)**—The amendments should (1) remove the presumptive prohibition on pro se use of electronic filing and instead grant presumptive access; (2) treat pro se status as a rebuttably presumed good cause for nonelectronic filing; (3) require courts to allow pro se access on par with attorney filers; (4) permit individualized

prohibitions for good cause, e.g., for vexatious litigants; (5) change and conform the “signature” paragraph with Federal Rule of Civil Procedure 5.

**National Association of Criminal Defense Counsel (AP-2016-0002-0019)**—The elimination of the requirement of a certificate of service for electronically served documents should be made. The proposed rule on filing by unrepresented parties is satisfactory. The proposed amendment overlooks an important change applicable to filings by non-parties. Rule 25(b) has not been, but should be, amended in the same manner as the concurrently proposed amendment to Criminal Rule 45, so as to require service on all parties of papers filed not only by parties but also by non-parties.

**Rule 41. Mandate: Contents; Issuance and Effective Date; Stay**

(a) **Contents.** Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) **When Issued.** The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) **Effective Date.** The mandate is effective when issued.

(d) **Staying the Mandate Pending a Petition for Certiorari.**

~~(1) **On Petition for Rehearing or Motion.** The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay~~

~~of mandate, stays the mandate until disposition  
of the petition or motion, unless the court orders  
otherwise.~~

~~(2) — **Pending Petition for Certiorari.**~~

~~(A) — (1) **Motion to Stay.** A party may move to stay the  
mandate pending the filing of a petition for a writ  
of certiorari in the Supreme Court. The motion  
must be served on all parties and must show that  
the ~~certiorari~~ petition would present a substantial  
question and that there is good cause for a stay.~~

~~(B) — (2) **Duration of Stay; Extensions.** The stay must  
not exceed 90 days, unless:~~

~~(A) the period is extended for good cause; or~~

~~(B) unless the party who obtained the stay files  
a petition for the writ and so notifies the  
circuit clerk in writing within the period of  
the stay:~~

(i) that the time for filing a petition for writ of certiorari in the Supreme Court has been extended, in which case the stay continues for the extended period;  
or

(ii) that the petition has been filed. In that case, in which case the stay continues until the Supreme Court's final disposition.

~~(C)~~ (3) **Security.** The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

~~(D)~~ (4) **Issuance of Mandate.** The court of appeals must issue the mandate immediately ~~when~~ on receiving a copy of a Supreme Court order denying the petition ~~for writ of certiorari is filed, unless~~ extraordinary circumstances exist.

## Committee Note

**Subdivision (b).** Subdivision (b) is revised to clarify that an order is required for a stay of the mandate and to specify the standard for such stays.

Before 1998, the Rule referred to a court’s ability to shorten or enlarge the time for the mandate’s issuance “by order.” The phrase “by order” was deleted as part of the 1998 restyling of the Rule. Though the change appears to have been intended as merely stylistic, it has caused uncertainty concerning whether a court of appeals can stay its mandate through mere inaction or whether such a stay requires an order. There are good reasons to require an affirmative act by the court. Litigants—particularly those not well versed in appellate procedure—may overlook the need to check that the court of appeals has issued its mandate in due course after handing down a decision. And, in *Bell v. Thompson*, 545 U.S. 794, 804 (2005), the lack of notice of a stay was one of the factors that contributed to the Court’s holding that staying the mandate was an abuse of discretion. Requiring stays of the mandate to be accomplished by court order will provide notice to litigants and can also facilitate review of the stay.

**Subdivision (d).** Three changes are made in subdivision (d).

Subdivision (d)(1)—which formerly addressed stays of the mandate upon the timely filing of a motion to stay the mandate or a petition for panel or en banc rehearing—has been deleted and the rest of subdivision (d) has been renumbered accordingly. In instances where such a petition or motion is timely filed, subdivision (b) sets the presumptive date for issuance of the mandate at 7 days after entry of an order denying the petition or motion. Thus, it

seems redundant to state (as subdivision (d)(1) did) that timely filing of such a petition or motion stays the mandate until disposition of the petition or motion. The deletion of subdivision (d)(1) is intended to streamline the Rule; no substantive change is intended.

Under the new subdivision (d)(2)(B)(i), if the court of appeals issues a stay of the mandate for a party to file a petition for certiorari, and a Justice of the Supreme Court subsequently extends the time for filing the petition, the stay automatically continues for the extended period.

Subdivision (d)(4)—i.e., former subdivision (d)(2)(D)—is amended to specify that a mandate stayed pending a petition for certiorari must issue immediately once the court of appeals receives a copy of the Supreme Court’s order denying certiorari, unless the court of appeals finds that extraordinary circumstances justify a further stay. Without deciding whether the prior version of Rule 41 provided authority for a further stay of the mandate after denial of certiorari, the Supreme Court ruled that any such authority could be exercised only in “extraordinary circumstances.” *Ryan v. Schad*, 133 S. Ct. 2548, 2551 (2013) (per curiam). The amendment to subdivision (d)(4) makes explicit that the court may stay the mandate after the denial of certiorari, and also makes explicit that such a stay is permissible only in extraordinary circumstances. Such a stay cannot occur through mere inaction but rather requires an order.

The reference in prior subdivision (d)(2)(D) to the *filing* of a copy of the Supreme Court’s order is replaced by a reference to the court of appeals’ *receipt* of a copy of the Supreme Court’s order. The filing of the copy and its receipt by the court of appeals amount to the same thing (*cf.* Rule 25(a)(2), setting a general rule that “filing is not timely unless the clerk receives the papers within the time

fixed for filing”), but “upon receiving a copy” is more specific and, hence, clearer.

---

### **Changes Made After Publication and Comment**

- In subdivision (b), the proposed additional sentence is deleted. The proposed sentence would have provided that a court may extend the time when the mandate must issue only in extraordinary circumstances.
- A new clause is added to subdivision (d)(2) that extends a stay automatically if the time for filing a certiorari petition is extended.

### **Summary of Public Comments**

**Judge Jon O. Newman, U.S. Court of Appeals for the Second Circuit (AP-2016-0002-0006)**—A court of appeals might wish to extend the mandate even if extraordinary circumstances do not exist. For example, when a party has not filed a petition for panel rehearing or a petition for rehearing en banc, a court of appeals sometimes delays issuance of the mandate because one or more members of the court of appeals are considering whether to request a poll of active judges to consider a rehearing in banc or because the court has ordered a rehearing en banc on its own motion and is considering the disposition of such a rehearing. Neither of these circumstances would qualify as “extraordinary circumstances.”

**Catherine O'Hagan Wolfe, United States Court of Appeals for the Second Circuit (AP-2016-0002-0006)**—All the active judges of the U.S. Court of Appeals for the Second Circuit and all the senior judges who have had the

opportunity to review Judge Newman’s comment endorse his call for reconsideration of Rule 41(b).

**Zachary Shemtob, New York City Bar Association (AP-2016-0002-0006)**—We agree with the comments submitted by Judge Newman and recommend that the Committee delete the proposed last sentence to Rule 41(b).

**National Association of Criminal Defense Counsel (AP-2016-0002-0019)**—The “extraordinary circumstances” standard for withholding issuance of a mandate is too restrictive and too strong in its wording to cover all the unanticipated circumstances that might arise, particularly in capital cases.

1 **Rule 28.1. Cross-Appeals**

2 \* \* \* \* \*

3 **(f) Time to Serve and File a Brief.** Briefs must be  
4 served and filed as follows:

5 (1) the appellant’s principal brief, within 40 days  
6 after the record is filed;

7 (2) the appellee’s principal and response brief,  
8 within 30 days after the appellant’s principal  
9 brief is served;

10 (3) the appellant’s response and reply brief, within  
11 30 days after the appellee’s principal and  
12 response brief is served; and

13 (4) the appellee’s reply brief, within ~~14~~21 days after  
14 the appellant’s response and reply brief is served,  
15 but at least 7 days before argument unless the  
16 court, for good cause, allows a later filing.

### Committee Note

Subdivision (f)(4) is amended to extend the period for filing a reply brief from 14 days to 21 days. Before the elimination of the “three-day rule” in Rule 26(c), attorneys were accustomed to a period of 17 days within which to file a reply brief, and the committee concluded that shortening the period from 17 days to 14 days could adversely affect the preparation of useful reply briefs. Because time periods are best measured in increments of 7 days, the period is extended to 21 days.

---

### Changes Made After Publication and Comment

None.

### Summary of Public Comments

- **The Pennsylvania Bar Association (AP-2016-0002-0012)**—The amendments are reasonable in light of the December 1, 2016 amendment to Rule 26(c).
- **National Association of Criminal Defense Counsel (AP-2016-0002-0019)**—The additional days for filing reply briefs will enhance the ability of practitioners to manage their workloads and improve the quality of reply briefing.

1     **Rule 31. Serving and Filing Briefs**

2     **(a) Time to Serve and File a Brief.**

3           (1) The appellant must serve and file a brief within  
4           40 days after the record is filed. The appellee  
5           must serve and file a brief within 30 days after  
6           the appellant’s brief is served. The appellant may  
7           serve and file a reply brief within ~~14~~21 days after  
8           service of the appellee’s brief but a reply brief  
9           must be filed at least 7 days before argument,  
10          unless the court, for good cause, allows a later  
11          filing.

12                                   \* \* \* \* \*

**Committee Note**

Subdivision (a)(1) is revised to extend the period for filing a reply brief from 14 days to 21 days. Before the elimination of the “three-day rule” in Rule 26(c), attorneys were accustomed to a period of 17 days within which to file a reply brief, and the committee concluded that shortening the period from 17 days to 14 days could adversely affect the preparation of useful reply briefs. Because time periods are best measured in increments of 7 days, the period is extended to 21 days.

---

### **Changes Made After Publication and Comment**

None.

### **Summary of Public Comments**

- **The Pennsylvania Bar Association (AP-2016-0002-0012)**—The amendments are reasonable in light of the December 1, 2016 amendment to Rule 26(c).
- **National Association of Criminal Defense Counsel (AP-2016-0002-0019)**—The additional days for filing reply briefs will enhance the ability of practitioners to manage their workloads and improve the quality of reply briefing.

replaced in new subsection (b)(1) by language drawn from Civil Rule 5(d)(1). That provision used to state “Any paper . . . that is required to be served—together with a certificate of service—must be filed within a reasonable time after service.” A contemporaneous amendment to Civil Rule 5(d)(1) has subdivided this provision into two parts, one of which addresses the Certificate of Service. Although the Criminal Rules version is not subdivided in the same way, it parallels the Civil Rules provision from which it was drawn. Because “within” might be read as barring filing before the paper is served, “no later than” is substituted to ensure that it is proper to file a paper before it is served.

The second sentence of subsection (b)(1), which states that no certificate of service is required when service is made using the court’s electronic filing system, mirrors the contemporaneous amendment to Civil Rule 5. When service is not made by filing with the court’s electronic-filing system, a certificate of service must be filed.

**Rule 49(b)(2).** New subsection (b)(2) lists the three ways papers can be filed. (A) provides for electronic filing using the court’s electronic-filing system and includes a provision, drawn from the Civil Rule, stating that ~~the user name and password of an attorney of record serves as the attorney’s~~ a filing made through a person’s electronic-filing account, together with the person’s name on a signature block, serves as the person’s signature. The last sentence of subsection (b)(2)(A) contains the language of former Rule 49(d), providing that e-filed papers are “written or in writing,” deleting the words “in compliance with a local rule” as no longer necessary.

Subsection (b)(2)(B) carries over from the Civil Rule two nonelectronic methods of filing a paper: delivery to the court clerk and delivery to a judge who agrees to accept it for filing.