ADVISORY COMMITTEE
ON
APPELLATE RULES

October 15, 2025

ADVISORY COMMITTEE ON APPELLATE RULES
Meeting of October 15, 2025
Washington, DC

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RULES COMMITTEES — CHAIRS AND REPORTERS

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(Standing Committee)

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Administrative Office of the U.S. Courts
Washington, DC

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Chair	Reporter
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Andrew L. Adler, Esq. Office of the Federal Public Defender Fort Lauderdale, FL	Linda Coberly, Esq. Winston & Strawn LLP Chicago, IL
George W. Hicks, Jr., Esq. Kirkland & Ellis LLP Washington, D.C.	Professor Bert Huang Columbia Law School New York, NY
Honorable Leondra R. Kruger Supreme Court of California San Francisco, CA	Honorable Carl J. Nichols United States District Court Washington, DC
D. John Sauer, Esq. Solicitor General (ex officio) United States Department of Justice Washington, DC	Honorable Sidney R. Thomas United States Court of Appeals Billings, MT
Honorable Richard C. Wesley United States Court of Appeals Geneseo, NY	

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Clerk of Court Representative

Christopher Wolpert, Esq.
Clerk
United States Court of Appeals
Denver, CO

ADVISORY COMMITTEE ON APPELLATE RULES

Members	Position	District/Circuit	Start Date		End Date
Allison H. Eid Chair	C	Tenth Circuit	Member: Chair:	2024 2024	---- 2027
Andrew Adler	ESQ	Federal Public Defender (Florida)		2025	2028
Linda Coberly	ESQ	Illinois		2023	2026
George W. Hicks, Jr.	ESQ	Washington, DC		2022	2028
Bert Huang	ACAD	New York		2022	2028
Leondra R. Kruger	JUST	California		2021	2027
Carl J. Nichols	D	District of Columbia		2021	2027
D. John Sauer, ex officio	DOJ	Washington, DC		----	Open
Sidney R. Thomas	C	Ninth Circuit		2023	2028
Richard C. Wesley	C	Second Circuit		2020	2026
Edward Hartnett Reporter	ACAD	New Jersey		2018	2027

ADVISORY COMMITTEE ON APPELLATE RULES
SUBCOMMITTEES
(effective October 1, 2025)

Administrative Stays Subcommittee Mark Freeman, Esq. Prof. Bert Huang Andrew Pincus, Esq.	**Intervention on Appeal Subcommittee** Mark Freeman, Esq. Prof. Bert Huang Hon. Leondra Kruger Tim Reagan (Federal Judicial Center)
Reopen Time to Appeal Subcommittee Hon. Carl Nichols, Chair George Hicks, Esq. Hon. Richard Wesley Chris Wolpert (Clerk)	**Rule 15 Subcommittee** Bert Huang, Chair Mark Freeman, Esq. Andrew Pincus, Esq.

Inactive subcommittees likely to be disbanded:	
Amicus Subcommittee Andrew Adler, Esq. Linda Coberly, Esq. Prof. Bert Huang	Bankruptcy Appeals Subcommittee George Hicks, Esq. Prof. Bert Huang Hon. Leondra Kruger
Costs on Appeal Subcommittee Judge Nichols, Chair Mark Freeman, Esq. Hon. Richard Wesley	IFP Form 4 Subcommittee Andrew Adler, Esq. Prof. Bert Huang Hon. Leondra Kruger

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Liaison for the Advisory Committee on Bankruptcy Rules	Dean Troy A. McKenzie *(Standing)*
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Liaisons for the Advisory Committee on Evidence Rules	TBD (*Criminal*) Hon. Edward M. Mansfield *(Standing)* Hon. M. Hannah Lauck (*Civil*)

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
Staff

Carolyn A. Dubay, Esq.
Chief Counsel
Office of the General Counsel—Rules Committee Staff
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, # 7-300
Washington, DC 20544

Bridget M. Healy, Esq.
Counsel

Sarah A. Sraders, Esq.
Rules Law Clerk

Shelly Cox
Management Analyst

Rakita Johnson
Administrative Analyst

FEDERAL JUDICIAL CENTER
Staff

Hon. Robin L. Rosenberg
Director
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, # 6-100
Washington, DC 20544

Appellate Rules Committee
Tim Reagan, Ph.D., J.D.
Senior Research Associate

Bankruptcy Rules Committee
Carly Giffin, Ph.D., J.D.
Senior Research Associate

Civil Rules Committee
Emery G. Lee, Ph.D., J.D.
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Criminal Rules Committee
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Research Associate

Elizabeth Wiggins, Ph.D., J.D.
Division Director

Evidence Rules Committee
Elizabeth Wiggins, Ph.D., J.D.
Division Director

Timothy Lau, Ph.D., J.D.
Senior Research Associate

Standing Committee
Tim Reagan, Ph.D., J.D.
Senior Research Associate

	FRAP Item	Proposal	Source	Current Status
	16-AP-D	Rule 3(c)(1)(B) and the Merger Rule	Neal Katyal	Effective 12/2021
	17-AP-G	Rule 42(b)– dismissal of appeal on consent of all parties	Christopher Landau	Effective 12/2022
	18-AP-E	Privacy in Railroad Retirement Act cases	Railroad Retirement Board	Effective 12/2022
	None assigned	Rules for Future Emergencies Rules 2 and 4	Congress (CARES Act)	Effective 12/2023
	None assigned	Add Juneteenth to Rule 26	Congress	Effective 12/2023
	18-AP-A	Rules 35 and 40 – Comprehensive review	Department of Justice	Effective 12/2024
7	21-AP-D	Costs on Appeal; Rule 39	Alan Morrison	Initial consideration of suggestion and subcommittee formed F21 Discussed at S22 meeting Discussed at F22 meeting Discussed at S23 meeting Draft approved for submission to Standing Committee S23 Draft approved for publication by Standing Committee June 23 Final approval for submission to Standing Committee S24 Approved by Standing Committee June 24 Approved by Judicial Conference Sept 24 Approved by Supreme Court April 25
7	None assigned	Appeals in Bankruptcy Cases; Rule 6	Bankruptcy Committee	Discussed at F22 meeting and subcommittee formed Discussed at S23 meeting Draft approved for submission to Standing Committee S23 Draft approved for publication by Standing Committee June 23 Final approval for submission to Standing Committee S24 Approved by Standing Committee June 24 Approved by Judicial Conference Sept 24 Approved by Supreme Court April 25

	FRAP Item	Proposal	Source	Current Status
6	20-AP-D (19-AP-C 21-AP-B)	IFP Forms	Sai	Initial consideration F20 and referred to IFP subcommittee Discussed at S21 meeting Discussed at F21 meeting Discussed at S22 meeting Discussed at F22 meeting and held Draft approved for submission to Standing Committee S24 Draft approved for publication by Standing Committee June 24 Noted at F24 meeting Final approval for submission to Standing Committee S25 Approved by Standing Committee June 25 Approved by Judicial Conference Sept 25
6	21-AP-C (21-AP-G 21-AP-H 22-AP-A 23-AP-A 23-AP-B 23-AP-I 23-AP-K 24-AP-A 24-AP-D)	Amicus Disclosures	Senator Whitehouse & Representative Johnson	Issue noted and subcommittee formed F19 Initial consideration of suggestion S21 Discussed at F21 meeting Discussed at S22 meeting Discussed at F22 meeting Discussed at S23 meeting Discussed at F23 meeting Draft approved for submission to Standing Committee S24 Draft approved for publication by Standing Committee June 24 Discussed at F24 meeting Final approval for submission to Standing Committee S25 Approved by Standing Committee June 25 Approved by Judicial Conference Sept 25
3	24-AP-G	Rule 15; premature petitions	Judge Randolph	Initial consideration and subcommittee formed S24 Discussed at F24 meeting Draft approved for submission to Standing Committee S25 Draft approved for publication by Standing Committee June 25
1	21-AP-E	Electronic Filing by Pro Se Litigants	Sai	Initial consideration of suggestion and referred to reporters F21 Discussed at S22 meeting Discussed at F22 meeting Discussed at S23 meeting Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting

	FRAP Item	Proposal	Source	Current Status
				Discussed at S25 meeting
1	20-AP-C	Pro Se Electronic Filing	Usha Jain	Initial consideration F20 and tabled pending consideration by Civil Rules Committee Referred to reporters F21 See 21-AP-E
1	22-AP-E	Social Security Numbers in Court Filings	Senator Widen	Initial consideration S23 Discussed at S23 meeting Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting Discussed at S25 meeting
1	22-AP-G	Intervention on Appeal	Stephen Sachs	Initial consideration and subcommittee formed S23 Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting Discussed at S25 meeting
1	23-AP-C	Intervention on Appeal	Judith Resnik	Initial consideration and subcommittee formed S23 See 22-AP-G
1	24-AP-B	Use of pseudonym for minors	DOJ	Initial consideration S24 See 22-AP-E
1	24-AP-C	Comment on 24-AP-B	American Association for Justice	Initial consideration F24 See 22-AP-E
1	24-AP-M	Rule 4; Reopening time to appeal	Judge Sutton Judge Gregory	Initial consideration and subcommittee formed F24 Discussed at S25 meeting
1	24-AP-L	Administrative stays	Will Havemann	Initial consideration and subcommittee formed F24 Discussed at S25 meeting
1	25-AP-A	Destination of Appeal	Anthony Mallgren	Initial consideration F25
1	25-AP-B	Bar Admission	National Women's Law Center	Initial consideration F25
1	25-AP-C	Privacy	American Association for Justice	Initial consideration F25

	FRAP Item	Proposal	Source	Current Status
1	25-AP-D	Treatment of Tribes	National Tribal Association	Initial consideration F25
0	None assigned	Review of rules regarding appendices	Committee	Discussed at F17 meeting and a subcommittee formed to review Discussed at S18 meeting and removed from agenda Will reconsider in S21 Discussed at S21 meeting and postponed until S24 Discussed at S24 meeting and retained on agenda
0	22-AP-C (22-AP-D)	Third-Party Litigation Funding Disclosure	Lawyers for Civil Justice	Initial consideration F22 Discussed and held pending Civil Committee S23
0	24-AP-E	Rule 28; standards of review	Jonathan Cohen	Initial consideration and removed from agenda F24
0	24-AP-F	Comment on costs on appeal	Sai	Initial consideration and removed from agenda F24
0	24-AP-H	Name styling	Sai	Initial consideration and removed from agenda F24
0	24-AP-I	Common local rules as Federal Rules	Sai	Initial consideration and removed from agenda F24
0	24-AP-J	New federal common rules	Sai	Initial consideration and removed from agenda F24
0	24-AP-K	Standardize word and page equivalents	Sai	Initial consideration and removed from agenda F24
0	24-AP-N	Computing Time	Jack Metzler	Initial consideration and removed from agenda S25

0 recently removed from agenda or deferred to future meeting
1 pending before Advisory Committee prior to public comment
2 approved by Advisory Committee and submitted to Standing Committee for publication
3 out for public comment
4 pending before Advisory Committee after public comment
5 final approval by Advisory Committee and submitted to Standing Committee
6 approved by Standing Committee
7 approved by SCOTUS

Effective (no earlier than) December 1, 2025, unless otherwise noted

Current Step in REA Process:

- Transmitted to Congress (Apr 2025)

REA History:

- Transmitted to Supreme Court (Oct 2024)
- Approved by Standing Committee (June 2024 unless otherwise noted)
- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 6	The proposed amendments would address resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case by adding a sentence to Appellate Rule 6(a) to provide that the reference in Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read as a reference to the time allowed for the equivalent motions under the applicable Federal Rule of Bankruptcy Procedure. In addition, the proposed amendments would make Rule 6(c) largely self-contained rather than relying on Rule 5 and would provide more detail on how parties should handle procedural steps in the court of appeals.	BK 8006
AP 39	The proposed amendments would provide that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court. In addition, the proposed amendments would provide a clearer procedure that a party should follow if it wants to request that the court of appeals to reconsider the allocation of costs.	
BK 3002.1 and Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R	Previously published in 2021. Like the prior publication, the 2023 republished amendments to the rule are intended to encourage a greater degree of compliance with the rule's provisions. A proposed midcase assessment of the mortgage status would no longer be mandatory notice process brought by the trustee but can instead be initiated by motion at any time, and more than once, by the debtor or the trustee. A proposed provision for giving only annual notices HELOC changes was also made optional. Also, the proposed end-of-case review procedures were changed in response to comments from a motion to notice procedure. Finally, proposed changes to 3002.1(i), redesignated as 3002.1(i) are meant to clarify the scope of relief that a court may grant if a claimholder fails to provide any of the information required under the rule. Six new Official Forms would implement aspect of the rule.	
BK 8006	The proposed amendments to Rule 8006(g) would clarify that any party to an appeal from a bankruptcy court (not merely the appellant) may request that a court of appeals authorize a direct appeal (if the requirements for such an appeal have otherwise been met). There is no obligation to file such a request if no party wants the court of appeals to authorize a direct appeal.	AP 6
Official Form 410	The proposed amendments would change the last line of Part 1, Box 3 to permit use of the uniform claim identifier for all payments in cases filed under all chapters of the Code, not merely electronic payments in chapter 13 cases. The amended form went into effect December 1, 2024.	

Effective (no earlier than) December 1, 2025, unless otherwise noted

Current Step in REA Process:

- Transmitted to Congress (Apr 2025)

REA History:

- Transmitted to Supreme Court (Oct 2024)
- Approved by Standing Committee (June 2024 unless otherwise noted)
- Published for public comment (Aug 2023 – Feb 2024 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
CV 16	The proposed amendments to Civil Rule 16(b) and 26(f) would address the "privilege log" problem. The proposed amendments would call for development early in the litigation of a method for complying with Civil Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials.	CV 26
CV 16.1 (new)	The proposed new rule would provide the framework for the initial management of an MDL proceeding by the transferee judge. Proposed new Rule 16.1 would provide a process for an initial MDL management conference, submission of an initial MDL conference report, and entry of an initial MDL management order.	
CV 26	The proposed amendments to Civil Rule 16(b) and 26(f) would address the "privilege log" problem. The proposed amendments would call for development early in the litigation of a method for complying with Civil Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials.	CV 16

Effective (no earlier than) December 1, 2026

Current Step in REA Process:

- Approved by Standing Committee (June 2025 unless otherwise noted)

REA History:

- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 29	The proposed amendments to Rule 29 relate to amicus curiae briefs. The proposed amendments, among other things, would require all amicus briefs to include a concise description of the identity, history, experience, and interests of the amicus curiae, together with an explanation of how the brief and the perspective of the amicus will help the court. In addition, they would require an amicus that has existed for less than 12 months to state the date the amicus was created. With regard to the relationship between a party and an amicus, two new disclosure requirements would be added. Also, the proposed amendments would retain the member exception in the current rule, but limit the exception to those who have been members for the prior 12 months. Finally, the proposed amendments would require leave of court for all amicus briefs, not just those at the rehearing stage.	Rule 32; Appendix
AP 32	The proposed amendments to Rule 32 would conform to the proposed amendments to Rule 29.	Rule 29
AP Appendix	The proposed amendments to the Appendix would conform to the proposed amendments to Rule 29.	Rule 29
AP Form 4	The proposed amendments to Form 4 would simplify Form 4, with the goal of reducing the burden on individuals seeking in forma pauperis status (IFP) while providing the information that courts of appeals need and find useful when deciding whether to grant IFP status.	
BK 1007	The proposed amendments to Rule 1007(c)(4) eliminate the deadlines for filing certificates of completion of a course in personal financial management. The proposed amendments to Rule 1007(h) clarify that a court may require a debtor to file a supplemental schedule to report postpetition property or income that comes into the estate under § 115, 1207, or 1306 of the Bankruptcy Code.	
BK 3018	The proposed amendments to subdivision (c) would allow for more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case.	
BK 5009	The proposed amendments to Rule 5009(b) would provide an additional reminder notice to the debtors that the case may be closed without a discharge if the debtor's certificate of completion of a personal financial management course has not been filed.	
BK 9006	The proposed amendments conform to the proposed amendments to Rule 1007.	

Effective (no earlier than) December 1, 2026

Current Step in REA Process:

- Approved by Standing Committee (June 2025 unless otherwise noted)

REA History:

- Published for public comment (Aug 2024 – Feb 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
BK 9014	The proposed amendments to Rule 9014(d) relaxes the standard for allowing remote testimony in contested matters to "cause and with appropriate safeguards." The current standard, imported from the trial standard in Civil Rule 43(a), which is applicable across bankruptcy (in both contested matters and adversary proceedings) is cause "in compelling circumstances and with appropriate safeguards."	
BK 9017	The proposed amendments to Rule 9017 removes the reference to Civil Rule 43 leaving the proposed amendment to Rule 9014(d) to govern the standard for allowing remote testimony in contested matters, and Rule 7043 to govern the standard for allowing remote testimony in adversary proceedings.	
BK 7043	Rule 7043 is new and works with proposed amendments to Rules 9014 and 9017. It would make Civil Rule 43 applicable to adversary proceedings (though not to contested matters	
BK Official Form 410S1	The proposed changes would conform the form the pending amendments to Rule 3002.1 that are on track to go into effect on **December 1, 2025,** and would go into effect on the same date as the rule change.	
EV 801	The proposed amendments to Rule 801(d)(1)(A) would provide that all prior inconsistent statements admissible for impeachment are also admissible as substantive evidence, subject to Rule 403.	

Effective (no earlier than) December 1, 2027

Current Step in REA Process:

- Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 15	The proposed amendment to Rule 15 would remove a potential trap for the unwary in the current rule. The proposed amendment reflects the party-specific nature of appellate review of administrative decisions and would require a party that wants to challenge the result of agency reconsideration to file a new or amended petition.	
BK 2002	The proposed amendment to Rule 2002(o) would provide that the caption of a notice given under Rule 2002 must include the information that Official Form 416B requires.	
BK Official Form 101	The proposed amendment to Question 4 in Part 1 of Form 101 would modify the language to read: "EIN (Employer Identification Number) issued to you, if any. Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."	
BK Official Form 106C	The proposed amendments would amend Form 106C to provide a total of the specific-dollar exemption amounts along with the addition of a space on the form for the total value of the debtor's interest in property for which exemptions are claimed.	
CR 17	The proposed amendments to Rule 17 relate to third-party subpoenas for documents and other items and address seven areas: application to proceedings other than trial; the standard for when such subpoenas are available; when a motion and order are required; when a party may make its request ex parte; the place of production; the preservation of Rule 16's disclosure policies; and which subparts of Rule 17 apply to different proceedings.	
CV 7.1	The proposed amendments to Rule 7.1(a) substitute "business organization" for the term "corporation" and require disclosure of business organizations that "directly or indirectly own 10% or more of" a party rather than disclosure based on ownership of "stock" in a party.	
CV 26	The proposed amendment to Rule 26 adds a pretrial disclosure requirement for parties to state whether any witness they expect to present at trial will testify in person or remotely.	Rule 45(c)
CV 41	The proposed amendments to Rule 41(a) would clarify that: (1) the rule permits the dismissal of one or more claims in an action rather than only allowing dismissal of the entire action; (2) only the signatures of active parties who remain in a case are required to sign a stipulation of dismissal.	
CV 45	The proposed amendments to Rule 45 include amendments to Rule 45(b) relating to service of subpoenas and Rule 45(c) relating to subpoenas for remote testimony. There is a correlating proposed amendment to Rule 26 relating to	Rule 26

Effective (no earlier than) December 1, 2027

Current Step in REA Process:

- Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	pretrial disclosures as to whether testimony at trial will be offered in person or by remote means. The proposed amendments to Rule 45(b) specify that the methods for service of a subpoena are personal delivery, leaving it at the person's abode with someone of suitable age and discretion who resides there, sending it by mail or commercial carrier if it includes confirmation of receipt, or another method authorized by the court for good cause. The amendment would also add a default 14-day notice period and provide that the tender of witness fees is not required to effect service of the subpoena so long as the fees are tendered upon the witness's appearance. The proposed amendments to Rule 45(c) adds a "place of compliance" for subpoenas for remote testimony and specifies that it is "the location where the person is commanded to appear in person."	
CV 81	The proposed amendment to Rule 81(c) clarifies whether and when a jury demand must be made after removal and makes clear that Rule 38 applies to removed cases. The proposed amendment also removes the prior exemption from the jury demand requirement in cases removed from state courts in which an express demand for a jury trial is not required.	
EV 609	There are two proposed amendments to Rule 609. First, the proposed amendment to Rule 609(a)(1)(B) clarifies the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant's character for truthfulness by adding "substantially" before the word "outweighs." Second, the proposed amendment to Rule 609(b) clarifies that the 10-year time-period for the rule's applicability is measured from the date of conviction or end of confinement, whichever is later, until the "date that the trial begins."	
EV 707	Proposed new Rule 707 provides that if machine-generated evidence is introduced without an expert witness, and it would be considered expert testimony if presented by a witness, then the standards of Rule 702(a)-(d) are applicable to that output. The proposed rule further provides that it does not apply to the output of simple scientific instruments.	

Legislation That Directly or Effectively Amends the Federal Rules
119th Congress
(January 3, 2025–January 3, 2027)

Ordered by most recent legislative action; most recent first

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Rape Shield Enhancement Act of 2025	**H.R. 3596** *Sponsor:* Mace (R-SC)	EV 412; CV 26; CR 16	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr3596/BILLS-119hr3596ih.pdf **Summary:** Would require the Judicial Conference to submit to Congress reports reviewing Evidence Rule 412, Civil Rule 26, and Criminal Rule 16. Would also require the Judicial Conference to identify potential rules amendments that further limit the admissibility of or scope of discovery regarding information of an alleged sexual assault victim and that increase privacy protections for sexual assault victims.	5/23/2025: H.R. 3596 introduced in House; referred to Judiciary Committee
Protecting Our Courts from Foreign Manipulation Act of 2025	**H.R. 2675** *Sponsor:* Cline (R-VA)	CV 26	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr2675/BILLS-119hr2675ih.pdf **Summary:** Would require additional disclosures under Civil Rule 26(a) for any non-party foreign person, foreign state, or sovereign wealth fund that has a right to receive payment that is contingent on the outcome of a civil action. Would also prohibit third-party ligation funding by foreign states and sovereign wealth funds.	04/07/2025: H.R. 2675 introduced in House; referred to Judiciary Committee
Sunshine in the Courtroom Act of 2025	**S. 1133** *Sponsor:* Grassley (R-IA) *Cosponsors:* Klobuchar (D-MN) Durbin (D-IL) Blumenthal (D-CT) Markey (D-MA) Cornyn (R-TX)	CR 53	**Most Recent Bill Text:** https://www.congress.gov/119/bills/s1133/BILLS-119s1133is.pdf **Summary:** Would permit court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.	03/26/2025: Introduced in Senate; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Trafficking Survivors Relief Act of 2025	**H.R. 1379** *Sponsor:* Fry (R-SC) *Cosponsors:* 15 bipartisan cosponsors	CR 29	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr1379/BILLS-119hr1379ih.pdf **Summary:** Would permit a person convicted of certain federal offenses as a result of having been a victim of trafficking to move the convicting court to vacate the judgment of conviction, to enter a judgment of acquittal, and to order that references the arrest and criminal proceedings be expunged from official records.	• 02/14/2025: H.R. 1379 introduced in House; referred to Judiciary Committee
Litigation Transparency Act of 2025	**H.R. 1109** *Sponsor:* Issa (R-CA) *Cosponsors:* 7 Republican cosponsors	CV 5, 26	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf **Summary:** Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to produce to the court and other parties any such agreement.	• 02/07/2025: H.R. 1109 introduced in House; referred to Judiciary Committee
Alexandra's Law Act of 2025	**H.R. 780** *Sponsor:* Issa (R-CA) *Cosponsors:* Kiley (R-CA) Obernolte (R-CA)	EV 410	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf **Summary:** Would permit a previous nolo contendere plea in a case involving death resulting from the sale of fentanyl to be used as evidence to prove in an 18 U.S.C. § 1111 or § 1112 case that the defendant had knowledge that the substance provided to the decedent contained fentanyl.	• 01/28/2025 introduced in House; referred to Judiciary and Energy & Commerce Committees
Protect the Gig Economy Act of 2025	**H.R. 100** *Sponsor:* Biggs (R-AZ)	CV 23	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf **Summary:** Would add a requirement to Civil Rule 23(a) that a member of a class may sue or be sued as representative parties only if "the claim does not allege the misclassification of employees as independent contractors."	• 01/03/2025 introduced in House; referred to Judiciary Committee

Legislation Requiring Only Technical or Conforming Changes
118th Congress
(January 3, 2023–January 3, 2025)

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Easter Monday Act of 2025	**H.R. 2951** *Sponsor:* Moore (R-WV) *Cosponsor:* McDowell (R-NC) **S. 1426** *Sponsor:* Schmitt (R-MO)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr2951/BILLS-119hr2951ih.pdf https://www.congress.gov/119/bills/s1426/BILLS-119s1426is.pdf **Summary:** Would make Easter Monday a federal holiday.	• 04/17/2025: H.R. 2951 Introduced in House; referred to Oversight & Accountability Committee • 04/10/2025: S. 1426 Introduced in Senate; referred to Judiciary Committee
St. Patrick's Day Act	**H.R. 2119** *Sponsor:* Fitzpatrick (R-PA)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr2119/BILLS-119hr2119ih.pdf **Summary:** Would make St. Patrick's Day a federal holiday.	• 03/14/2025: Introduced in House; referred to Oversight & Accountability Committee
Rosa Parks Day Act	**H.R. 964** *Sponsor:* Sewell (D-AL) *Cosponsors:* 62 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/bill/119th-congress/house-bill/964/text?s=3&r=2&q=%7B%22search%22%3A%22federal+holiday%22%7D **Summary:** Would make Rosa Parks Day a federal holiday.	• 02/04/2025: Introduced in House; referred to Committee on Oversight & Government Reform
Lunar New Year Day Act	**H.R. 794** *Sponsor:* Meng (D-NY) *Cosponsors:* 39 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr794/BILLS-119hr794ih.pdf **Summary:** Would make Lunar New Year Day a federal holiday.	• 01/28/2025: Introduced in House; referred to Committee on Oversight & Government Reform
Election Day Act	**H.R. 6267** *Sponsor:* Fitzpatrick (R-PA) *Cosponsors:* Dingell (D-MI) Wilson (R-SC) Houlahan (D-PA) Courtney (D-CT)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/119/bills/hr154/BILLS-119hr154ih.pdf **Summary:** Would make Election Day a federal holiday.	• 01/03/2025: Introduced in House; referred to Committee on Oversight & Government Reform

Federal Judicial Center

Date: August 28, 2025

To: Advisory Committees on Rules of Practice and Procedure

From: Tim Reagan (Research)
Maureen Kieffer (Education)
Christine Lamberson (History)
Federal Judicial Center

Re: Federal Judicial Center Research and Education

This memorandum summarizes recent efforts by the Federal Judicial Center relevant to federal-court practice and procedure. Center researchers attend rules committee, subcommittee, and working-group meetings and provide empirical research as requested. The Center also conducts research to develop manuals and guides; produces education programs for judges, court attorneys, and court staff; and provides public resources on federal judicial history.

RESEARCH

Current Research for Rules Committees

Intervention on Appeal

At the request of the Appellate Rules Committee, the Center conducted research on interventions on appeal and submitted its report to a subcommittee.

Attorney Admissions

The Center provides the standing rules committee's subcommittee on attorney admissions with occasional research support.

Complex Criminal Litigation

As suggested by the Criminal Rules Committee, the Center is developing a collection of resources on complex criminal litigation as one of its curated websites.

Completed Research for Other Judicial Conference Committees

Review of Local District and Appellate Rules Governing Redaction of Private Information in Federal Court Filings

At the request of the Judicial Conference Committee on Court Administration and Case Management, the Center reviewed local rules in the

federal district courts and courts of appeals to identify rules requiring redaction of specified private information from court filings (www.fjc.gov/content/394726/review-local-district-and-appellate-rules-governing-redaction-private-information).

Review of Local Bankruptcy Rules, Orders, and Procedures Governing Redaction of Private Information in Federal Court Filings

At the request of the Judicial Conference Committee on Court Administration and Case Management, the Center reviewed local rules in the federal bankruptcy courts to identify rules requiring redaction of specified private information from court filings (www.fjc.gov/content/394727/review-local-bankruptcy-rules-orders-and-procedures-governing-redaction-private).

Supplemental Analysis of Unredacted Social Security Numbers in Federal Court PACER Documents

The Center examined unredacted Social Security numbers in its 2024 study of public filings to determine whether unredacted personally identifiable information is more common in particular types of court filings and proceedings (www.fjc.gov/content/394725/supplemental-analysis-unredacted-social-security-numbers-federal-court-pacer). The analysis was prepared at the request of the Judicial Conference Committee on Court Administration and Case Management.

Appeals of Sua Sponte Remand Orders in Class Action Fairness Act (CAFA) Removals, 2014–2023

Prepared for the Committee on Federal–State Jurisdiction, this study examines how often sua sponte remands were ordered in putative class actions removed to federal court on Class Action Fairness Act (CAFA) grounds and how often appeals of those sua sponte remand orders were sought (www.fjc.gov/content/393642/appeals-sua-sponte-remand-orders-class-action-fairness-act-cafa-removals-2014-2023).

Current Research for Other Judicial Conference Committees

Evaluation of a Pilot Program in Which Comparative Sentencing Information Is Incorporated Into Presentence Investigation Reports

At the request of the Committee on Criminal Law, the Center is evaluating a two-year pilot program in which selected districts incorporated comparative sentencing information from the Sentencing Commission's Judiciary Sentencing Information (JSIN) platform into presentence investigation reports.

The Privacy Study: Unredacted Sensitive Personal Information in Court Filings

At the request of the Committee on Court Administration and Case Management, the Center is conducting research on unredacted personal information in public filings. The Center presented to the rules committees' privacy working group a report on the role unredacted Social Security numbers play in civil, criminal, and appellate litigation suggesting that Social Security numbers usually appear in public filings because they appear in documents presented to the courts as exhibits for other reasons.

Case Weights for Bankruptcy Courts

The Center has collected data and is conducting analyses for updating bankruptcy-court case weights. Case weights are used in the computation of weighted caseloads, which in turn are used when assessing the need for judgeships. The research was requested by the Committee on Administration of the Bankruptcy System.

Other Completed Research

Consumer Bankruptcy Law: Chapters 7 & 13, Second Edition

This monograph provides an overview of consumer bankruptcy law and describes the statutory framework for bankruptcy relief under Chapters 7 and 13 of the Bankruptcy Code, Title 11 of the U.S. Code (www.fjc.gov/content/393646/consumer-bankruptcy-law-chapters-7-13-second-edition).

Condensed Report on 2023 Federal Judiciary Workplace Survey

This condensed report presents a detailed summary of the results of the 2023 Workplace Survey for the Federal Judiciary, which was conducted by the Federal Judicial Center for the Federal Judiciary Workplace Conduct Working Group (www.fjc.gov/content/392606/condensed-report-2023-federal-judiciary-workplace-survey). Center staff prepared this report at the working group's request to provide context for the working group's recommendations stemming from the survey results (*Report of the Federal Judiciary Workplace Conduct Working Group on the Judiciary's 2023 National Workplace Survey*, www.uscourts.gov/administration-policies/workplace-conduct-federal-judiciary#workinggroup). The survey obtained information on the number of employees who said they had experienced wrongful conduct and input about how well the procedures for addressing wrongful conduct are working. It also obtained information about the judiciary's general working environment to inform the working group about the judiciary's progress toward the goal of its strategic plan, updated in 2020, to provide an "exemplary workplace free from discrimination, harassment, retaliation, and abusive conduct," where all employees are treated with dignity and respect.

JUDICIAL GUIDES

In Preparation

Manual for Complex Litigation

The Center is preparing a fifth edition of its *Manual for Complex Litigation* (fourth edition, www.fjc.gov/content/manual-complex-litigation-fourth).

Reference Manual on Scientific Evidence

The Center is collaborating with the National Academies of Science, Engineering, and Medicine to prepare a fourth edition of the *Reference Manual on Scientific Evidence* (third edition, www.fjc.gov/content/reference-manual-scientific-evidence-third-edition-1).

Manual on Recurring Issues in Criminal Trials

The Center is preparing a seventh edition of what previously was called *Manual on Recurring Problems in Criminal Trials* (sixth edition, www.fjc.gov/content/manual-recurring-problems-criminal-trials-sixth-edition-0).

Benchbook for U.S. District Courts

The Center is preparing a seventh edition of its *Benchbook for U.S. District Courts* (sixth edition, www.fjc.gov/content/benchbook-us-district-court-judges-sixth-edition).

HISTORY

Exhibits

The Center's History website includes comprehensive exhibits, presenting data about the federal judiciary at various points in its evolution, aimed at helping a general-public audience understand these topics (www.fjc.gov/history/exhibits). Two recently posted exhibits are *Prohibition in the Federal Courts: A Timeline* (www.fjc.gov/history/exhibits/prohibition-in-federal-courts-timeline) and *The Judiciary Act of 1801* (www.fjc.gov/history/exhibits/judiciary-act-1801). In addition, the Center has updated *Demography of Article III Judges, 1789–2024* (www.fjc.gov/history/exhibits/graphs-and-maps/demography-article-iii-judges-1789-2024-introduction).

Spotlight on Judicial History

Since 2020, the Center has posted twenty-six short essays about judicial history on a variety of topics (www.fjc.gov/history/spotlight-judicial-history). Recently posted is "Supreme Court Meeting Places" (www.fjc.gov/history/spotlight-judicial-history/supreme-court-meeting-places).

Summer Institute for Teachers

In June 2025, the Center collaborated with the ABA to present a weeklong professional-development conference for teachers, focusing on three famous historical trials: *United States v. Anthony*, the flag-salute cases, and the Chicago Seven trial. The Center presents information about these and other

famous federal trials on its website (www.fjc.gov/history/cases/famous-federal-trials).

EDUCATION

Specialized Workshops

Workshop on Science-Informed Decision-Making

Presented in June by the FJC and the Center for Law, Brain & Behavior at Massachusetts General Hospital, this three-day program provided guidance on how judges and probation and pretrial services officers could incorporate behavioral science into their decision-making in criminal cases that unfold outside of the context of problem-solving courts and where diversion may not be an option.

Emerging Issues in Neuroscience for Federal Judges

A two-day, in-person judicial seminar held in cooperation with the American Association for the Advancement of Science explored developments in neuroscience and the role that neuroscience may play in making legal determinations, from the admissibility of evidence to decisions about criminal culpability.

Distance Education

Evaluating Historical Evidence

The Center is offering judges a six-part, interactive online series that provides tools for managing cases with significant historical evidence. Historians discuss historical methodology and provide practical tips on evaluating historical evidence, whether presented in the form of expert witnesses, amicus briefs, or litigant arguments. The first four episodes were "An Introduction: What Do Historians Do and How Do They Do It?"; "Researching the Law on the Ground: How Do Historians Research and Come to Understand Encounters with the Courts?"; "The U.S. Government and 'the People': How Do Historians Research Activists' and Administrators' Influence in Shaping Law and Policy in Practice?"; and "How Do Historians Use Context to Move Beyond 'Anecdotes' to Good History?"

Court Web

This periodic webcast included as recent episodes "Supreme Court Review, October 2024 Term" (featuring Erwin Chemerinsky and Paul Clement) and "The Bail Reform Act in Practice" (featuring Central District of Illinois Judge Jonathan E. Hawley and Middle District of Florida Magistrate Judge Anthony Porcelli).

Wm. Matthew Byrne, Jr. Judicial Clerkship Institute for Career Law Clerks

Presented in collaboration with the Wm. Matthew Byrne, Jr. Judicial Clerkship Institute at Pepperdine University's Caruso School of Law, this program was formerly conducted as a two-day, in-person program, but it

was conducted in 2025 as four weekly online sessions. It offered information on managing high-profile cases and serving self-represented parties, and it also offered summaries of pending Supreme Court cases.

General Workshops

National Workshops for Trial-Court Judges

Three-day workshops are held for district judges in even-numbered years and annually for magistrate judges and bankruptcy judges. The 2025 workshop for bankruptcy judges included a plenary session on the application of evidence rules to bankruptcy cases.

Circuit Workshops for U.S. Appellate and District Judges

The Center has recently put on a three-day workshop for Article III judges in the Second Circuit.

Workshop for Federal Court Mediators

In August, the Center held a three-day workshop for court mediators.

National Conference for Appellate Staff Attorneys

The Center put on this three-day workshop in June.

Orientation Programs

Orientation Programs for New Trial-Court Judges

The Center invites newly appointed trial-court judges to attend two one-week conferences focusing on skills unique to judging. The first phase includes sessions on trial practice, case management, and judicial ethics. In addition, district judges learn about the sentencing process, magistrate judges learn about search warrants, and bankruptcy judges learn about the bankruptcy code. The second phase includes sessions on such topics as civil-rights litigation, employment discrimination, security, self-represented litigants, relations with the media, and ethics.

Orientation for New Circuit Judges

Orientation programs for new circuit judges include a three-day program hosted by the Center and a program at New York University School of Law for both state and federal appellate judges.

Orientation for New Term Law Clerks

The Center offers online orientation to new term law clerks. Phase I is offered before the clerkship begins, and phase II is offered after the clerkship has begun.

TAB 2

TAB 2A

MINUTES

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

June 10, 2025

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in Washington, D.C., on June 10, 2025. All members were present:

Judge John D. Bates, Chair
Judge Paul J. Barbadoro
Elizabeth J. Shapiro, Esq.[1]
Elizabeth J. Cabraser, Esq.
Louis A. Chaiten, Esq.
Judge Joan N. Ericksen
Judge Stephen Higginson
Justice Edward M. Mansfield
Dean Troy A. McKenzie
Judge Patricia A. Millett
Andrew J. Pincus, Esq.
Judge D. Brooks Smith
Kosta Stojilkovic, Esq.
Judge Jennifer G. Zipps

The following individuals also attended to support the work of the Standing Committee: Professor Catherine T. Struve, Reporter for the Standing Committee; Carolyn A. Dubay, Secretary to the Standing Committee and Chief Counsel, Rules Committee Staff; Kyle Brinker, Law Clerk to the Standing Committee; and Professor Bryan A. Garner and Professor Joseph Kimble, Style Consultants to the Standing Committee. Professor Daniel R. Coquillette, Consultant to the Standing Committee, attended remotely.

The following individuals attended on behalf of the Advisory Committees:

Advisory Committee on Appellate Rules:
Judge Allison H. Eid, Chair
Professor Edward Hartnett, Reporter

Advisory Committee on Bankruptcy Rules:
Judge Rebecca B. Connelly, Chair
(attended remotely)
Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter

Advisory Committee on Civil Rules:
Judge Robin L. Rosenberg, Chair
Professor Richard L. Marcus, Reporter
Professor Andrew Bradt, Associate Reporter
Professor Edward H. Cooper, Consultant
(attended remotely)

Advisory Committee on Criminal Rules:
Judge James C. Dever III, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

Advisory Committee on Evidence Rules:
Judge Jesse M. Furman, Chair
Professor Daniel J. Capra, Reporter

[1]Ms. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Todd Blanche.

Other attendees at the meeting included: S. Scott Myers, Esq. and Bridget M. Healy, Esq., Rules Committee Staff Counsel; Shelly Cox and Rakita Johnson, Rules Committee Staff; Laurie Spolidoro, Deputy General Counsel, Administrative Office of the U.S. Courts; John S. Cooke, Director, Federal Judicial Center (FJC); and Dr. Tim Reagan, Senior Research Associate, FJC. Guests who attended remotely included: Chief Judge Michael A. Chagares, on behalf of the Executive Committee of the Judicial Conference; and Judge Sarah Vance, as incoming Chair of the Advisory Committee on Civil Rules.

1. OPENING BUSINESS

A. Welcome and Opening Remarks

Judge John D. Bates, Chair of the Standing Committee, called the meeting to order and welcomed the members and participants, including those attending remotely. Judge Bates also recognized members nearing the end of their terms on the Standing Committee, including Judge Jennifer Zipps, Judge Patricia Millett, and Mr. Kosta Stojilkovic.

Judge Bates acknowledged that it was his final meeting as the Chair of the Standing Committee[2] and noted that Judge James Dever, Chair of the Criminal Rules Committee, will serve as the next Chair of the Standing Committee while Judge Michael Mosman will succeed Judge Dever to serve as the next Chair of the Criminal Rules Committee. Judge Bates also informed the members that Judge Sarah Vance will replace Judge Robin Rosenberg as Chair of the Advisory Committee on Civil Rules. Judge Rosenberg will become the new Director of the FJC, replacing John Cooke. Judge Bates congratulated Judge Rosenberg on her selection as FJC Director and thanked her for her service to the Advisory Committee. Judge Bates also thanked John Cooke for his extraordinary service to the FJC.

Judge Bates informed the members about recent changes in the Rules Committee Staff. Ms. Carolyn Dubay is the new Chief Counsel for the Rules Committee Staff and Secretary to the Standing Committee. In addition, Scott Myers, staff attorney with the Rules Committee Staff, will retire at the end of June. Judge Bates thanked Mr. Myers and wished him the best in all his future endeavors after commending his bankruptcy rules expertise and noting that Mr. Myers had been a wonderful member of the staff for many years.

Judge Bates also welcomed members of the public and press, who observed the meeting in-person and remotely.

B. Discussion and Approval of the Meeting Minutes

After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee approved the minutes of the January 7, 2025, meeting.

[2]A summary of remarks offered in tribute to Judge Bates on the occasion of his last meeting as Chair of the Standing Committee is provided in Part 5 of these minutes.

C. Comments on the 2025 Strategic Plan for the Judiciary

Chief Judge Michael Chagares, on behalf of the Executive Committee of the Judicial Conference and in his capacity as Judiciary Planning Coordinator, provided an update on the draft 2025 Strategic Plan for the Judiciary. Chief Judge Chagares noted that the draft 2025 Strategic Plan was sent to all chief judges and all committee chairs for feedback and asked Committee members to submit any feedback by the end of June. Judge Bates requested that Committee members submit their comments to him for coordination of feedback. The draft 2025 Strategic Plan is expected to be submitted to the Judicial Conference for consideration at its September 2025 session.

2. ACTION ITEMS – REPORTS OF THE ADVISORY COMMITTEES

The Standing Committee next heard reports on action items from each of the five Advisory Committees.[3] A summary of changes made by the Standing Committee to proposed amendments presented for final approval are set forth in the Appendix to these minutes.

A. Advisory Committee on Evidence Rules – Judge Jesse M. Furman, Chair

Judge Furman presented three action items on behalf of the Advisory Committee on Evidence Rules, which last met on May 2, 2025, in Washington, D.C. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 55.

1. *Amendments for Final Approval*

a. Amendments to Rule 801(d)(1)(A)

Judge Furman presented the Advisory Committee's request for the Standing Committee to recommend to the Judicial Conference final approval of amendments to Rule 801(d)(1)(A) regarding the hearsay exclusion for prior inconsistent statements of testifying witnesses. The text of the proposed amendment appears on page 64 of the agenda book and the written report begins on page 56. Judge Furman noted the current rule limits admissibility of prior inconsistent statements to those that were given under oath and subject to cross-examination. The amendment eliminates that limitation and provides that all prior inconsistent statements of a testifying witness are admissible over a hearsay objection, regardless of whether the prior statement was given under oath and subject to cross-examination.

Judge Furman reported that during the public comment period, which ran from August 15, 2024, to February 17, 2025, the Advisory Committee received eight comments, which were overwhelmingly positive and included support from the Federal Magistrate Judges Association, the American College of Trial Lawyers, and the National Association of Criminal Defense Lawyers. The comments echoed the reasons put forward by the Advisory Committee for the amendment. Namely, the amendment would eliminate the need for a confusing jury instruction on whether and when prior inconsistent statements can be considered for their truth as opposed to impeachment only. The amendment would also align the rule with Rule 801(d)(1)(B)'s treatment of prior consistent statements. The amendment would further address a perceived imbalance in the rules that favor the government in criminal cases, as most witnesses testify for the prosecution,

[3] Information items presented by the Advisory Committees are set forth in Part 3 of these minutes.

and thus the government is able to secure prior statements under oath by having those witnesses testify before the grand jury. Judge Furman also noted that the Advisory Committee recommended final approval of the amendment to Rule 801(d)(1)(A) by a vote of 8-1.

Judge Furman also informed the Standing Committee of edits made to the committee note after the public comment period. First, the note was updated to observe that the amendment would remove the need for a confusing jury instruction attempting to distinguish between substantive and impeachment uses for prior inconsistent statements. The committee note also points out that the amended rule treats consistent and inconsistent statements similarly. Second, the updated committee note stresses that the rule governs admissibility rather than sufficiency. These changes were already reflected in the committee note set out in the agenda book. Judge Furman noted one additional change not set out in the agenda book: in the committee note, the word "exception" found on page 65, line 32 of the agenda book, should read "objection."

The members then discussed the proposed amendment.

A judge member observed that Rule 613(a) requires a party, on request, to show or disclose the contents of a prior statement to an adverse party's attorney when examining a witness about the prior statement. With the proposed amendment to Rule 801(d)(1)(A) allowing prior statements to be considered for their truth, the judge member asked whether Rule 613(a) should also be changed to require disclosure without a request from the adverse party. Professor Capra explained that Rule 613(a) is inapplicable in those circumstances and Rule 613(b) would apply. Specifically, Rule 613(a) speaks to cross-examination with a prior inconsistent statement, while Rule 613(b) speaks to admitting a prior inconsistent statement. Since the prior statements are offered not for cross-examination but for proof of a fact, a party must introduce evidence of the statement and Rule 613(b) controls.

Judge Bates further asked whether there was substance to a commenter's concern that a "deepfake" (digitally fabricated or altered evidence) might be proffered to try to show a prior inconsistent statement. Professor Capra acknowledged that deepfakes may be a problem in general for any rule of admissibility, but that issue would be addressed with potential rule development regarding deepfakes rather than a rule about prior inconsistent statements. Judge Bates also raised a question about language in the committee note on page 66, line 52 of the agenda book, which provided in part that if statements "are admissible for purposes of proving the witness's credibility, they are admissible as substantive proof." He proposed changing "proving" to "assessing." Judge Furman and Professor Capra agreed to this edit.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee unanimously approved recommending to the Judicial Conference final approval of the amendment to Rule 801(d)(1)(A), with the minor revisions discussed above and indicated in the Appendix.

2. *Preliminary Drafts for Publication for Public Comment*

Judge Furman next presented the Advisory Committee's request that the Standing Committee approve publication for public comment on proposed amendments to Rule 609 and proposed new Rule 707.

a. Preliminary Draft of Amendments to Rule 609

Judge Furman first presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 609, which relates to use of prior criminal convictions for impeachment purposes. The text of the proposed amendments begins on page 71 of the agenda book and the written report begins on page 57.

The proposed amendment to Rule 609(a)(1)(B) addresses the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant's character for truthfulness. Judge Furman provided background for the Advisory Committee's request, and noted that in 2023, the Advisory Committee received a proposal to abrogate Rule 609 entirely. The Advisory Committee ultimately decided to proceed with a more modest proposed amendment to the rule text, as well as a shortened committee note. Judge Furman explained that the proposed amendment addresses the concern that district courts were not heeding Congress's intent that the default rule weigh *against* admissibility of prior convictions. Specifically, the proposed amendment adds "substantially" before the word "outweighs" in Rule 609(a)(1)(B).

Judge Furman recounted developments since the Advisory Committee's discussion of the proposed amendments at its fall 2024 meeting. First, additional recent cases indicated that some courts were continuing to admit such evidence, effectively applying a default rule in favor of admissibility of prior convictions. Second, the Department of Justice's original objections and concerns about language in the committee note had been addressed, and DOJ now supports the proposed amendment to Rule 609(a)(1)(B). Third, Judge Furman noted that the New York Council of Defense Lawyers submitted a letter supporting the proposed amendment.

Judge Furman next described the proposed amendment to Rule 609(b), which provides for an exclusionary balancing test for admissibility of convictions where more than 10 years have passed since the later of conviction or release from confinement. The current rule specifies when the 10-year period begins but does not specify when the time-period ends. The proposed amendment addresses a circuit split over when the period ends, and as Judge Furman explained, courts have used several different end dates, including the date of the alleged offense, the date of indictment, the date of trial, and the date of the witness's testimony. The Advisory Committee decided that the date of trial is the best available option because it is the date least subject to manipulation by the parties. The proposed amendment clarifies that the 10-year time-period for the rule's applicability is measured from the date of conviction or end of confinement, whichever is later, until the "date of trial."

Judge Furman noted that the Advisory Committee voted 8-1 to recommend the proposed amendments to Rule 609(a)(1)(B) and 609(b) for publication for public comment.

The members then discussed the proposed amendments.

Regarding Rule 609(a)(1)(B), a judge member asked if adding "substantially" in Rule 609(a) would effectively import the caselaw interpreting "substantially outweigh" in Rule 609(b)(1), which generally does not permit evidence of a prior conviction. Professor Capra responded that this change likely would import that standard; however, he said, a study of cases applying Rule 609(b) indicated that it does not result in automatic exclusion of the convictions to which it applies.

Another judge member asked if the fourth paragraph of the draft committee note, found on page 74 of the agenda book, properly describes as "problematic" the practice of some courts to admit only the fact of a felony conviction to impeach a defendant. Judge Furman responded that the Advisory Committee viewed this practice as problematic; it leaves the jury to guess as to what the felony conviction was. Professor Capra said that the original note was more detailed, and the current draft note reflects a compromise with the DOJ. As to this issue, a practitioner member asked how the paragraph relates to the amendment and thought that describing the practice as "problematic" was gratuitous. Professor Capra said that the paragraph explains that such practice by courts is inappropriate because Rule 609(a)(1)(B)'s balancing test requires weighing the probative value and prejudicial effect of evidence of a particular criminal conviction, not of a generic "felony conviction." The language in the note, he reiterated, is a result of compromise. The judge member said it could be helpful for the committee note to cite an appellate decision that provides guidance about the permissible scope of cross-examination concerning the facts underlying a conviction. Professor Capra commented that the second paragraph of the committee note, starting on page 73, line 54 of the agenda book, addresses this concern. That paragraph observes that the permissible specifics concerning a conviction are governed by Rule 609. Professor Capra explained that, under the caselaw, the jury may know only that the defendant was convicted, what the conviction was for, and the date of the conviction.

Another judge member expressed concern that if the fourth paragraph of the committee note describes the only-the-fact-of-a-felony-conviction compromise as "problematic," that might lead judges to think that the note was saying it was inappropriate to adopt such a compromise even in instances when the defendant affirmatively agrees to the only-the-fact-of-a-felony-conviction approach. Another judge member agreed; she suggested that the issue is a nuanced one where the interests of the defendant will play out differently depending on the circumstances. She argued that the comment should not say flatly that this type of compromise is always bad. Sometimes the defendant wants the jury to know the name of the conviction, but there are times when the name of the conviction is misleading.

A practitioner member suggested changing the sentence on page 74, line 75 of the agenda book, to begin: "Absent agreement by the parties, that solution is problematic…." Professor Capra and Judge Furman agreed. With that change, Judge Furman suggested, the paragraph could be retained in the committee note as published for public comment, and the Advisory Committee would reconsider the committee note with the benefit of comments by the Standing Committee and the public. A judge member asked whether the initial phrase should refer to "agreement by the defendant" rather than "agreement by the parties"; but Judge Furman and Professor Capra preferred "agreement by the parties." Judge Furman accepted a style suggestion to remove the comma after "problematic." In the same sentence of the committee note (page 74, line 79), Judge Bates suggested changing "character of truthfulness" to "character for truthfulness," and this change was agreed to. A judge member proposed changing "is problematic" to "may be problematic." Judge Furman responded that the Advisory Committee's view is that the practice is

problematic, and Professor Capra argued for retaining "is problematic," especially in light of the addition of "Absent agreement by the parties." The practitioner member who had initially questioned the use of the term "problematic" reiterated that the term does not provide actual guidance. Professor Capra reiterated that the language was a compromise with the DOJ. Judge Bates suggested keeping the language "is problematic" for the public comment period to receive feedback.

As to the third paragraph of the committee note, Judge Bates asked if the example starting on page 74, line 63 of the agenda book discusses the application of Rule 403, not Rule 609. If so, Judge Bates asked whether a discussion of how Rule 403 is applied belongs in the committee note to Rule 609. Professor Capra and Judge Furman both stated that they thought the example was helpful but that they would not have strong objections to removing it from the committee note.

Judge Bates raised two additional points. In the last paragraph of the committee note (page 74, line 82), Judge Bates suggested removing "original" or replacing it with "current" because it is not referring to the rule as first promulgated. Several members and consultants then suggested "existing," "prior," and "earlier." Judge Bates, Judge Furman, and Professor Capra agreed to use "existing." Second, Judge Bates observed that the committee note's second paragraph (agenda book page 73, lines 56-57) uses the terms "bad acts" and "specific acts," though these terms do not appear in the Evidence Rules. Rather, the rules use the term "instances of conduct." Professor Capra said that "bad acts" is a very common reference and suggested retaining the term. A judge member proposed using "conduct underlying the conviction." Judge Furman supported using "specific instances of conduct," which is found in Rule 608(b). Professor Capra thought that "conduct" does not distinguish the act from the conviction itself. Judge Bates responded that Rule 608(b) uses the term "conduct." Professor Capra accepted the change to "specific instances of conduct."

Regarding the proposed amendment to Rule 609(b), a judge member asked whether the phrase "the date of trial" (agenda book page 72, line 28) was sufficiently clear. Did it mean the first day of trial? The date jury selection begins? The member asked whether the language should be more specific, such as referring to the date the jury is convened. Judge Furman and Professor Capra offered that any difference in interpretation would likely be a matter of days and ultimately not a material difference. Judge Furman noted that the rule cannot be tethered to a date concerning the jury because the rule would apply in a non-jury trial as well. He said that he was not averse to a different term, but he thought date of trial is clear. Professor Capra asked if the "date that trial is set" is more specific than "date of trial." Another judge member said that there can be a big difference between the date that a trial is initially scheduled and the date that the jury for that trial is impaneled. Professor Capra stressed that the rule was merely being approved for publication for public comment. Judge Bates suggested using "the date that trial commences" as an end date that is more specific and addresses some of the concerns raised. Judge Furman said he is fine with "the date that trial commences" but thought "commences" still introduces ambiguity. Judge Furman and Professor Capra reiterated that the specific end date is likely immaterial because the difference between them would most likely be in terms of days or weeks. Professor Capra said that the goal was certainty and "the date that trial commences" would be fine. Professor Garner noted that "commence" is routinely changed to "begin" throughout the rules. Professor Capra and Judge Bates supported using "begins."

Judge Furman summarized the Standing Committee's revisions to the proposed amendment. In proposed Rule 609(b) "the date of trial" was changed to "the date trial begins," and a conforming change was made to the last sentence of the committee note. In the second paragraph of the committee note, "bad acts" was changed to "specific instances of conduct." The third sentence of the fourth paragraph was changed to read: "Absent agreement by the parties, that solution is problematic because…." Also in the fourth paragraph, "character of truthfulness" was changed to "character for truthfulness." In the fifth paragraph, "original rule" was changed to "existing rule."

Following this discussion, upon motion and a second, with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 609(a) and Rule 609(b), with the revisions discussed above.

b. Preliminary Draft of New Rule 707

Judge Furman next reported on the Advisory Committee's efforts to address two concerns with the increased use of artificial intelligence and machine-generated evidence: (1) authenticity concerns with possible deepfakes,[4] and (2) reliability concerns when machine learning output is offered as evidence. Proposed new Rule 707 addresses the latter concern and sets standards for admissibility of machine-generated evidence offered without an expert witness. The text of proposed Rule 707 begins on page 75 of the agenda book and the written report begins on page 58.

Judge Furman explained that the Advisory Committee viewed the reliability issues attendant to machine-generated output as akin to reliability issues attendant to expert testimony under Rule 702, which applies in situations when a testifying expert uses machine-learning to reach a conclusion. There are circumstances, however, when machine-generated output may be introduced without a testifying expert. As examples, Judge Furman explained how machine-generated output can be used without an expert to find patterns in vast amounts of stock trading data, to assess the complexity of software programs to determine the likelihood that code was misappropriated, or to determine whether two works are substantially similar. In these examples, the machine output could be offered without the use of expert testimony subject to Rule 702, such as through a lay witness or directly with a certification of authenticity under Rule 902(13). Judge Furman noted that the Advisory Committee felt that a new rule to address this situation was preferable to amending Rule 702. Rule 702 was recently amended in 2023, and the Advisory Committee tries to avoid multiple amendments to a single rule over a short time period. Also, Rule 702 is a rule of general applicability, so a separate subdivision dealing with machine-generated evidence would be difficult to draft because of its highly specific application. Therefore, the Advisory Committee recommended a new rule to address machine-generated output that requires the same showing of reliability required for a testifying expert under Rule 702(a)-(d).

Judge Furman noted that the Advisory Committee included an exception to the required showing under new Rule 707 when the output is produced by basic scientific instruments. This exception

[4] The Advisory Committee's efforts to address deepfakes are described in the information items set forth in Section 3 of these minutes.

is designed to avoid litigation over the output of instruments that can be presumed reliable. Given the wide range of potential instruments and technological change, however, the Advisory Committee felt it was better to leave it to judges to determine whether a particular instrument falls within the exception set forth in proposed Rule 707. Judge Furman noted that a prior draft of new Rule 707 included an exception for routinely relied upon commercial software, but the Advisory Committee removed that language because they felt it would create too broad an exception. Judge Furman noted that the Advisory Committee is aware that this topic raises some related issues concerning disclosure requirements (for example, of the source codes that underly machine-generated output), but feels that such disclosure issues are better addressed by the Advisory Committees for the Civil and Criminal Rules.

Judge Furman noted that the Advisory Committee voted 8-1 to recommend proposed new Rule 707 for publication for public comment. The DOJ was the sole dissenting vote. Judge Furman observed that sometimes when the Advisory Committee forwards a proposed rule for publication, it does so on the assumption that the proposal will be on track for future approval. This was not the case here and the Advisory Committee is agnostic as to whether the rule should ultimately gain final approval. But, as this is an area of significant concern and complexity, the Advisory Committee felt it is important to learn from public comment. Professor Capra added that the Advisory Committee has previously held two panels with experts regarding artificial intelligence and its possible impact on the Evidence Rules, and the public comment period will be valuable.

The members then discussed proposed new Rule 707.

Judge Bates commended the Advisory Committee for starting the effort to address this sensitive but important subject. He asked whether the draft rule should affirmatively state that it applies when machine-generated evidence would be subject to Rule 702 if testified to by an "expert" witness, not just any witness. Judge Furman responded that the Advisory Committee initially had the same thought but realized that specifying "expert" would be tautological because Rule 702 applies only to expert testimony.

As to the draft rule's requirement that machine-generated evidence must "satisf[y] the requirements of Rule 702 (a)-(d)," Judge Bates asked whether the specific reference to subdivisions (a)-(d) was necessary. Professor Capra noted that Rule 702 has introductory language dealing with qualifications that the Advisory Committee did not think appropriate to incorporate into new Rule 707. A practitioner member asked how Rule 702(a) would apply to machine-generated evidence alone because Rule 702(a) scrutinizes how an expert's scientific, technical, or other specialized knowledge will help the trier of fact. Judge Furman explained that to the extent that Rule 702(a)-(d)'s requirements are an awkward fit for a machine rather than a person, the Advisory Committee thought the advantage of the courts' familiarity with the standards in Rule 702 outweighed the disadvantages of importing the requirements wholesale. Professor Capra added that public comment might elucidate the instances in which machine-generated evidence would cover obvious points that the jury would already know about on its own.

A judge member observed that while the proposed rule text made an exception for "basic scientific instruments" (agenda book page 72, lines 6-7), the committee note (page 77, line 68) used the term "simple scientific instruments." This member suggested that "simple" captured the idea better than "basic." She asked whether it would be helpful to refer to instruments that were traditionally or

historically employed. Professor Capra and Judge Bates discussed whether the language "simple" is an improvement over "basic" and whether judges would have difficulty determining what fits in that category. Professor Capra agreed to update the draft rule text to refer to "simple" rather than "basic," noting that the language may still change based on public comment.

A judge member expressed enthusiasm about this rulemaking effort and had two comments. First, the committee note (page 77, lines 71-73) states that the rule does not apply when the court can take judicial notice that the machine output is reliable. The member asked if the Advisory Committee would consider deleting that sentence because it may encourage parties to attempt to avoid Rule 702 by asking the court to take judicial notice under Rule 201. Professor Capra said that judges currently take judicial notice of certain artificial intelligence outputs like Google Maps, and he explained that the Advisory Committee had added this passage to the committee note in response to input from a judge on the committee who questioned whether a Rule 707 hearing should be held for something when judicial notice has already been taken of its reliability. Second, the last paragraph of the draft committee note referred to "the notice principles applicable to expert opinion testimony." The member suggested that the language be changed to "the notice principles applicable to expert opinion testimony and reports of examinations and tests…" because machine-generated output is more similar to expert examinations and tests than expert opinion testimony. He said that this would expand the reference to encompass other salutary discovery provisions like a continuing duty to disclose and a district court's regulatory authority. Professor Capra and Judge Furman agreed that the proposed addition could be useful.

Judge Bates cautioned that while the committee note referred to "the notice principles applicable to expert opinion testimony," it was not clear what was intended by "the notice principles." Did this include the notice principles under Civil Rule 26 that include written reports as well as the principles in Criminal Rule 16? Professor Capra said that the Advisory Committee intended the language to be general because adding detailed notice provisions might hinder the efforts of the Civil and Criminal Rules Committees in this area. Ms. Shapiro observed that the DOJ had raised the issue of notice because, if machine-generated evidence is used at trial, the adverse party will need advance notice to prepare to rebut the evidence. More generally, she said that the DOJ's main concerns were that machine-generated evidence is a broad category – far broader than the advisory committee's actual target in this rule, which she took to be focused on addressing expert-opinion-like results produced using generative artificial intelligence. Ms. Shapiro also thought that the Advisory Committee will need to explore the relationship between Rule 902(13) ("Evidence That Is Self-Authenticating; Certified Records Generated by an Electronic Process or System") and this rule. Professor Capra responded that when a judge decides a question of admissibility under Rule 702, the judge applies Rule 104(a) – under which the judge must be persuaded by a preponderance of the evidence that the rule's requirements are met. By contrast, when a party seeks to authenticate evidence under Rules 901(b)(9) or 902(13), the proponent need only make a prima facie showing — enough evidence that a reasonable juror could find the item authentic. Meeting the prima facie test that applies under Rules 901(b)(9) and 902(13) would not suffice under proposed Rule 707.

A practitioner member, responding to Judge Bates, said that it would be difficult for the committee note to be very specific about the notice principles because it depends on the case. He pointed out that the committee note used the word "applicable" ("the notice principles applicable to expert opinion testimony"), and that this directed the reader to consider what kind of case it was and, thus, what rules would apply to such a case. Professor Capra agreed.

A judge member suggested making the notice principles clearer by referencing a particular rule that would be applicable for certain cases. For example, the note could say, "Rule X in civil cases and Rule Y in criminal cases." Professor Capra cautioned against using specific rule numbers because the rules can change. Professor Beale said that the note would have to list several criminal rules, and she advised against it. Professor King agreed that the committee note probably should not cite particular rules but suggested the note could say that "the rules governing discovery and disclosure applicable to expert testimony and reports of examinations and tests should be applied."

Judge Bates observed that the discussion indicated that the notice issue could be a real issue, and that it is difficult to determine what the committee note should say. Professor Capra suggested adding "and reports of examinations and tests" as previously mentioned and ending it there. A practitioner member suggested adding "that would be," thus: "the notice principles that would be applicable …." Professor Capra agreed and also suggested that if the committee wished to make the reference more general, it could refer to "the notice principles applicable under other rules." Judge Furman disagreed with the suggestion to add "under other rules" because there could be a notice principle from caselaw and not tethered to a specific rule that the Advisory Committee would think appropriate to be applied. He also acknowledged that the Advisory Committee views notice as an issue to discuss further, and the Advisory Committee may want to address the issue more with the benefit of public comments.

During this discussion, Judge Furman identified a typographical error in the rule text on page 75, line 5 of the agenda book ("it" and "if" were transposed). Professor Capra summarized the modifications agreed to thus far. In the rule text, "it if" was changed to "if it" and "basic scientific instruments" was changed to "simple scientific instruments." And the last paragraph of the committee note was modified to read in full: "Because Rule 707 applies the requirements of admitting expert testimony under Rule 702 to machine-generated output, the notice principles that would be applicable to expert opinion testimony and reports of examinations and tests should be applied to output offered under this rule."

Judge Bates asked three questions. First, on page 76, line 45, should the committee note say "self-authenticated" rather than simply "authenticated," given that Rule 902(13) concerns self-authentication? Professor Capra said that a party must still file a certificate for evidence to be self-authenticated, so saying "self-authenticated" would be confusing, but he could accept it. Second, on page 76, line 49, could the reference to "The rule" be confusing given that the preceding paragraph discussed Rule 902(13)? Judge Furman said that he would defer to the style consultants. Professor Capra said that the style consultants do not provide guidance for committee notes. He suggested "This rule," and Judge Bates agreed. Third, Judge Bates suggested that the reference on line 51 to "machine evidence" should be changed to "machine-generated evidence" (the term used elsewhere in the note). Professor Capra agreed.

Judge Furman summarized the modifications to the proposal. In the rule text, "it if" became "if it" and "basic scientific instruments" became "simple scientific instruments." In the committee note, at line 45, "authenticated" became "self-authenticated"; at line 49, "The rule" became "This rule"; at line 52, "machine" became "machine-generated"; and at lines 80-82, the end of the last sentence of the note was revised to read "the notice principles that would be applicable to expert opinion testimony and reports of examinations and tests should be applied to output offered under this rule."

Following the discussion, upon motion and a second, and over one objection (by the Department of Justice), the Standing Committee approved publication for public comment on proposed new Rule 707, with the minor revisions discussed above.

B. Advisory Committee on Appellate Rules – Judge Allison H. Eid, Chair

Judge Eid presented the action items on behalf of the Advisory Committee on Appellate Rules, which last met on April 2, 2025, in Atlanta, Georgia. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 101.

1. *Amendments for Final Approval*

Judge Eid reported on the Advisory Committee's request for the Standing Committee to recommend for final approval by the Judicial Conference amendments to Rule 29, along with conforming amendments to Rule 32 and the Appendix of Length Limits, and amendments to Form 4. The text of the proposed amendments begins on page 112 of the agenda book and the written report begins on page 102.

a. Amendments to Rule 29, Rule 32, and the Appendix of Length Limits

Judge Eid first presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rule 29 and conforming amendments to Rule 32 and the Appendix of Length Limits.

Judge Eid began by explaining changes made to the proposed amendments to Rule 29 after publication for public comment. The Advisory Committee received hundreds of comments and held a hearing on the proposed amendments. One item of particular concern during public feedback was a proposed change to Rule 29 made late in the drafting process to eliminate the option to file an amicus brief at the initial hearing stage on consent of the parties. This proposed change to Rule 29 was intended to address concerns about recusal issues caused by amicus filings, and would have required all nongovernmental amici to file a motion seeking the court's permission to file their briefs. Public comment was specifically invited on this point, and the public comments uniformly opposed elimination of the consent option. Commenters stated that the current culture of consent works well, that a motion requirement might change that culture by inviting parties to oppose motions, and that a motion requirement would increase work for lawyers and judges. Moreover, commenters asserted that imposing a motion requirement was not a particularly good solution to the recusal problem. Judge Eid reported that the Advisory Committee found the commenters' arguments persuasive, and ultimately the Advisory Committee unanimously agreed to abandon the proposal to amend Rule 29 to eliminate the consent option for nongovernmental amici.

Judge Eid reported that the public comments also expressed concerns about proposed Rule 29(a)(2)'s statement of the purpose of an amicus brief (which disfavored redundancy in amicus briefs). Public comments indicated that the proposed language was too restrictive and that avoiding redundancy in briefs would pose serious practical problems. This concern is tied to the concern about the proposed motion requirement, with commenters fearing that parties would oppose an amicus filing by asserting that it was redundant. In addition to dropping the proposal to eliminate the party-consent option, the Advisory Committee responded to commenters' concerns by revising

the statement of purpose to closely track that used by the Supreme Court and moved the redundancy language to the committee note.

Judge Eid next discussed the disclosure-related features of the proposal. As to these features, she reported, the public did not speak with one voice. There was considerable opposition to the proposed disclosure requirements, but also notable support. The most controversial provision was proposed Rule 29(b)(4), which in the preliminary draft published for public comment would have required an amicus to disclose whether "a party, its counsel, or any combination of parties, their counsel, or both has, during the 12 months before the brief was filed, contributed or pledged to contribute an amount equal to 25% or more of the total revenue of the amicus curiae for its prior fiscal year." Opponents of this change argued it would interfere with associational rights and discourage amicus participation, while proponents thought it was an important step to identify parties with influence over the amicus. Judge Eid also noted disagreement over the appropriate threshold for disclosure, with some proponents of the disclosure suggesting a contribution or pledge threshold of 10% rather than 25%. The Advisory Committee ultimately voted 5-4 to remove proposed Rule 29(b)(4) from the set of amendments that it sent forward for final approval. Those who voted to remove proposed Rule 29(b)(4) pointed to the burden of compliance, lack of significant problems, considerable opposition, and the fact that other parts of the proposed rule change (such as proposed Rule 29(a)(4)(E)-(F)) address the problem of entities being created for the sole purpose of an amicus filing. The committee members who voted against removing proposed Rule 29(b)(4) were not swayed by arguments against disclosure by people who would have to make disclosures; those members emphasized that the point of getting this information is to benefit the public and the judges and to support public trust in the judicial system.

Judge Eid reported that the other proposed disclosure requirement that received considerable attention during the comment period was proposed Rule 29(e), dealing with earmarked contributions by nonparties. Much of the critical public comment, however, did not reflect awareness that existing Rule 29(a)(4)(E)(iii) currently requires the disclosure of earmarked contributions by nonparties. Perhaps that is because the current provision is buried deep in an item under a subparagraph, or perhaps it is because it treats both earmarked contributions by a party and earmarked contributions by a nonparty in a single item even though the rest of Rule 29(a)(4)(E) deals only with parties and their counsel. Judge Eid pointed out that one virtue of the proposed amended Rule 29 is that it separates and therefore clarifies the disclosure obligations regarding parties and nonparties. Judge Eid also stated that proposed Rule 29(e) is not a major expansion of the disclosure requirements. In one respect, it reduces the current disclosure requirements for nonparties. Specifically, by setting a $100.00 de minimis threshold, it eliminates the need to disclose modest earmarked contributions that currently must be disclosed. The proposed amendment does, however, expand the disclosure requirements in one respect. The current rule does not require the disclosure of earmarked contributions by members of the amicus, even if they joined the same day they made the contribution to avoid disclosure. The proposed amendment blocks this easy evasion. One commenter noted that requiring that a person be a member "for the prior 12 months" (as the published proposal did) ran the risk that a longtime member who had recently allowed his membership to lapse would lose the protection of the membership exception. To deal with this possibility, the Advisory Committee rephrased this provision to extend the

member protection to a member of the amicus who "first became a member at least 12 months earlier."

The final text of proposed Rule 29(e) can be found on page 119 of the agenda book beginning at line 129. Judge Eid reported that one opponent of proposed Rule 29(b)(4) had noted that the change reflected in Rule 29(e) is a modest tweak to an existing rule that reduces the burden on crowd funding an amicus brief and does not allow evasion of an existing requirement.

Judge Eid noted that the Advisory Committee also wanted to avoid having the expanded disclosure requirements count against a party's word limit. To achieve this, it changed proposed Rule 29(a)(4) to refer to the "disclosure statement," thereby triggering Rule 32(f)'s exclusion of "disclosure statement[s]" from the word count.

Judge Eid observed that although the Advisory Committee had been closely divided regarding the removal of proposed Rule 29(b)(4), it voted unanimously to recommend for final approval the proposed Rule 29 amendments, as amended at its spring meeting, along with conforming amendments to Rule 32(g) and the Appendix of Length Limits. Accordingly, the Advisory Committee recommended that the Standing Committee give final approval to the proposed amendments to Rule 29, Rule 32(g), and the Appendix of Length Limits.

Professor Hartnett then noted a few clerical corrections and a style change to the committee note as set forth in the agenda materials. On page 123, line 234, "Rule 29(a)(4)(D)" was changed to "Rule 29(a)(4)." On page 124, line 238, "curiae" was deleted. "Rule 29(a)(4)(E)" was changed to "Rule 29(a)(4)(F)" on page 124, line 245 and on page 127, line 347. And references to Rule 29(a)(4)(D) on page 125, lines 292-93 and on page 127, line 350 were changed to refer to Rule 29(a)(4)(E).

The members then discussed the proposed amendments.

A judge member expressed concern about the proposed amendment to Rule 29(a)(7), which would replace the existing "Except by the court's permission, an amicus curiae may not file a reply brief" with "An amicus may file a reply brief only with the court's permission." The member observed that the proposed amended language would parallel the language in existing Rule 29(a)(8) relating to oral arguments, and he observed that his court gets many requests by amici to participate in oral argument. The member worried that the proposed new phrasing for Rule 29(a)(7) would encourage even more requests by amici to file reply briefs, and he also worried that reply filings by amici would cause logistical problems for the briefing schedule (for instance, the opposing party would want to file a sur-reply to respond to the amicus's reply). Professor Hartnett explained that he had deferred to the style consultants on this proposed change, on the ground that it was purely stylistic. Professor Garner observed that the two phrasings ("Except by permission, may not file" and "may file only with permission") mean the same thing, but he agreed with the judge member that the negative phrasing ("Except by permission, may not file") had more of an admonitory tone ("You may not do it unless"), which might do more to discourage requests. Professor Kimble objected, arguing that the choice was stylistic and that the style guidelines mandate converting double negatives to positives. Professor Beale offered that changing the provision would attract the attention of amici, though she conceded that it would alleviate her concerns if the committee note were to state that the change was purely stylistic. Professor Bartell suggested saying "An amicus

may not file a reply brief except with the court's permission." Professor Hartnett said that he and Judge Eid would be happy with that phrasing. Judge Bates observed that Rules 29(a)(7) and (8) have different language and are viewed differently and treated differently by the bar.

A practitioner member expressed concern with the expansion of the disclosure requirement to include earmarked contributions by new members of organizations, which could require disclosure of a legitimate associational activity, without a showing that the change addresses an existing problem. This member argued that if a person decides to join an organization concurrently with a contribution for an amicus brief by that organization, the explanation could be that they want to become a member of the organization because they see that the organization's work is relevant to them. If the concern behind the disclosure requirement is that the amicus would just say anything the funder told it to say, this member was skeptical that the kinds of amici that judges would lend credence to would actually let a donor tell them what to say. Professor Hartnett responded that the existing disclosure requirement for certain earmarked contributions (in current Rule 29(a)(4)(E)(iii)) is designed to protect against situations where the funder's donation allows it to influence what the amicus says in the brief. He explained that the proposed disclosure requirement for earmarked contributions by new members of an amicus helps make sure that the current disclosure rules cannot be evaded, while the exemption of newly-created amici from that disclosure requirement addresses the concern that new organizations would always have to disclose earmarked contributions by any of their members.

Another practitioner member explained how the proposal had evolved: There was some support at first for requiring disclosure of all earmarked contributions, even by longstanding members of the amicus. But the Advisory Committee gave weight to the concern that such a requirement would disparately impact different kinds of amici, because some amici have large general funds that can support amicus briefs, while smaller amici need to "pass the hat" (solicit donations from their members) any time they want to fund a brief. So the goal was to take a middle road. This member suggested that, in his experience, it is rare for a funder to become a member of the amicus at the eleventh hour unless that funder has a very focused interest in the case.

The members had no comments or suggestions regarding the proposed conforming amendments to Rule 32 and the Appendix of Length Limits.

Professor Hartnett reviewed the changes to Rule 29 – namely, that proposed Rule 29(a)(7) was revised to read "An amicus may not file a reply brief except with the court's permission," and that clerical corrections and a style change were made to the committee note as he had detailed earlier.

Following the discussion, upon motion and a second, with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Rule 29, along with the conforming amendments to Rule 32 and the Appendix of Length Limits, with the minor revisions to Rule 29 discussed above and indicated in the Appendix.

b. Amendments to Form 4

Judge Eid next presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Form 4 relating to affidavits accompanying motions to appeal *in forma pauperis*. The goal of the changes is to make

the form simpler and less intrusive. The text of the proposed amendment appears on page 180 of the agenda book, and the written report begins on page 107. Judge Eid reported that the public comments and testimony on the preliminary draft were generally positive, and the Advisory Committee thereafter adopted some suggestions to improve ease of use of the form. Judge Eid also noted that the Advisory Committee unanimously recommended the amendments to Form 4 for final approval.

After an opportunity for discussion, and with no comments from the members, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Form 4.

2. ***Preliminary Drafts for Publication and Public Comment***

a. Preliminary Draft of Proposed Amendments to Rule 15

Judge Eid next presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 15 relating to appellate review or enforcement of an agency order. The text of the proposed amendment begins on page 186 of the agenda book, and the written report begins on page 108.

Judge Eid provided background to the proposed amendment and explained that it was intended to remove a potential trap for the unwary in Rule 15. The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider. Rule 4, dealing with appeals from district court judgments, used to work in a similar way regarding various post-judgment motions. But in 1993, Rule 4 was amended to provide that such a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposal would make a similar fix to Rule 15 as was previously done for Rule 4. Judge Eid noted that a similar suggestion was considered about twenty-five years ago but was dropped due to strong opposition by judges on the Court of Appeals for the D.C. Circuit. The Advisory Committee has been informed that there is no large opposition from D.C. Circuit judges at this point, though that does not mean there might not be concerns with a particular aspect of the proposal. The proposed amendment to Rule 15 is like the existing Rule 4, but it reflects the party-specific nature of appellate review of administrative decisions, in contrast to the usually case-specific nature of civil appeals. As with civil appeals, the proposed amendment to Rule 15 would require a party that wants to challenge the result of agency reconsideration to file a new or amended petition. Judge Eid reported that the Advisory Committee unanimously recommended publishing the proposed amendment for public comment.

The members then discussed the proposed amendments.

A practitioner member suggested that there was tension between the second and third sentences in draft Rule 15(d): The second sentence says that the prematurely-filed petition for review springs to life when the agency disposes of the last reconsideration request, but the third sentence says that a party intending to challenge an agency's disposition of the reconsideration request must file a new petition for review. Professor Hartnett said that this feature of the proposed rule is parallel to how Rule 4 works – that is, once the motion for reconsideration is decided, the premature notice

becomes effective to review the prior decision, but if the party seeks to also challenge the decision on reconsideration, the party must file a new petition. That is, the difference between the second and third sentences of proposed Rule 15(d) relates to the type of ruling being appealed. Another practitioner member also found the second and third sentences confusing. He suggested that the third sentence read "a party intending to challenge the disposition of the petition for rehearing, reopening, or reconsideration must file a new petition." Professor Hartnett said that the Advisory Committee proposed similar language, but it was changed for style reasons. After further discussion, Professor Kimble suggested saying "If a party intends to challenge the disposition of the petition for rehearing, reopening, or reconsideration, the party must …." Professor Hartnett and Judge Eid agreed, but "the petition" was changed to "a petition."

Following this discussion, upon motion and a second, with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 15, with the revisions discussed above.

C. Advisory Committee on Bankruptcy Rules – Judge Rebecca B. Connelly, Chair

Judge Connelly, who attended the meeting remotely, presented the action items on behalf of the Advisory Committee on Bankruptcy Rules, which last met on April 3, 2025, in Atlanta, Georgia. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 209.

1. *Amendments for Final Approval*

Judge Connelly first presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of proposed new Rule 7043 and proposed amendments to Rules 3018, 9014, 9017, 1007(c), 5009, and 9006.

a. Amendments to Rule 3018

Judge Connelly presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rule 3018, which relates to accepting or rejecting a Chapter 9 or Chapter 11 plan. The text of the proposed amendment appears on page 233 of the agenda book and the written report begins on page 211.

Judge Connelly explained that the proposed amendment would authorize a court in a Chapter 9 or 11 case to treat as an acceptance of a plan a stipulation or oral statement on the record. This change would recognize and encourage the process that occurs in most Chapter 11 cases, whereby the negotiations continue right up to the court date.

Judge Connelly also explained that based upon public comment, the Advisory Committee revised the proposal to clarify that the statement on the record would be by the creditor or equity security holder or its authorized agent or attorney. Nothing in the rule indicates that a creditor is compelled to vote, nor does the amendment address filing objections to confirmation or solicitation of voting; it simply provides an additional means for plan acceptance. Judge Connelly reported that there were no public comments in opposition to the amendment.

After an opportunity for discussion and no comments from the members, and upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Rule 3018.

b. Amendments to Rules 9014 and 9017 and New Rule 7043

Judge Connelly presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rules 9014 and 9017 and a new Rule 7043, which pertain to the procedure for a bankruptcy judge to approve remote testimony in certain matters. The text of the proposed amendments appears on pages 242, 246, and 251 of the agenda book and the written report begins on page 211.

Judge Connelly explained that proposed new Rule 7043 would make Civil Rule 43, which governs taking remote testimony in civil trials, applicable in adversary proceedings (which are akin to a civil action in the district court). The amendments to Rules 9014 and 9017 would permit remote testimony in contested matters when there are appropriate safeguards and cause to allow it. Judge Connelly said that "cause" incorporates the concept of good cause. Judge Connelly also reported that in drafting these changes, the Advisory Committee consulted with the Committee on Court Administration and Case Management and the Bankruptcy Committee.

Judge Connelly noted that the public comment period produced few comments, and the comments received were generally supportive and helpful. Based on the comments, the proposed amendments to Rule 9014 were slightly revised to clarify that Rule 9014 is not limited to motions. Professor Bartell explained that "new" Rule 7043 is not in substance a new rule; current Rule 9017 already provides that Civil Rule 43 applies to adversary proceedings.

The members then discussed the proposed new rule and amendments.

With respect to the second sentence of the committee note to Rule 9014, Judge Bates asked whether it was accurate to state that Civil Rule 43 "is no longer generally applicable in a bankruptcy case." He noted that Civil Rule 43 would continue to be applicable in adversary proceedings, and aspects of Rule 43 would also apply in contested matters by virtue of the use of parallel language in Rule 9014. Judge Connelly agreed that much of Civil Rule 43 is adopted into Rule 9014. Professor Bartell explained the goal was to make the point that whereas current Rule 9017 includes Civil Rule 43 on its list of rules that "apply in a bankruptcy case," after the amendments, Civil Rule 43 would no longer be on that list. Rule 43 would be applicable only to adversary proceedings and there would be a different standard for contested matters. Judge Connelly suggested removing the phrase "That rule is no longer generally applicable in a bankruptcy case, and." Professor Gibson supported Judge Connelly's suggestion, and this language was deleted from Rule 9014's committee note.

Following the discussion, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Rules 9014 and 9017 and proposed new Rule 7043, with the minor revision to Rule 9014's committee note discussed above and indicated in the Appendix.

c. Amendments to Rules 1007(c), 5009, and 9006

Judge Connelly next presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rules 1007(c), 5009, and 9006. The proposed amendments address the problem faced by individual debtors who go through bankruptcy but whose cases are closed without a discharge because they either failed to take the required course on personal financial management or merely failed to file the needed documentation of their completion of the course. The text of the proposed amendments appears on pages 218, 238, and 243 of the agenda book and the written report begins on page 212.

Judge Connelly explained that the proposed amendments would eliminate Rule 1007(c)'s deadline for filing the certificate of course completion (though not the requirement that it be filed). In addition, the amendment to Rule 5009 would add another reminder notice (about the course-completion-certificate requirement) to improve compliance. Judge Connelly noted that the public comments after publication were generally supportive, and no comments opposed the amendments. Professor Gibson said that this project was spurred by Professor Bartell's research, which showed that a significant number of debtors do not receive a discharge only because they failed to take the course or file the appropriate paperwork.

After an opportunity for discussion and with no comments from the members, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Rules 1007, 5009, and 9006.

d. Amendments to Official Form 410S1

Judge Connelly next presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Official Form 410S1. The purpose of the amendments is to reflect an amendment to Rule 3002.1(b) regarding payment changes in home equity lines of credit (HELOCs). The text of the proposed amendment appears on page 252 of the agenda book and the written report begins on page 213. Judge Connelly also noted that no comments were submitted regarding the proposed amendment during the public comment period.

The members then discussed the amendments.

A judge member asked whether HELOC payments would be included in the upper-right-hand box for "New total payment," or whether HELOC amounts would be reflected in Part 3 only. Professor Gibson explained that the "New total payment" section would not be used for the HELOC amount.

With no further discussion, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the amendments to Official Form 410S1.

e. Amendments to Rule 2007.1(b)(3)(B)

Judge Connelly next presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of a technical amendment to Rule 2007.1(b)(3)(B) to correct a cross-reference. The text of the proposed amendment appears on page

221 of the agenda book and the written report begins on page 213. Judge Connelly explained that Rule 2007.1(b)(3)(B) refers to the previous subsection of the rule as "(A)(i) – (vi)." During the restyling of the Bankruptcy Rules, however, the romanettes in (A) were replaced with bullet points. The technical amendment to Rule 2007.1(b)(3)(B) corrects the reference to the romanettes and replaces them with bullet points. Judge Connelly explained that this is a technical amendment that would not benefit from public comment.

The members then discussed the proposed amendments.

A judge member asked if similar changes are required in Rule 2007.1(c)(1) and (3). Professor Bartell agreed that similar changes are needed in those paragraphs and agreed to make the additional changes. Later in the meeting, a practitioner member observed that conforming changes would be needed to the committee note, and Professor Gibson indicated that the committee note would be revised accordingly.

Following the discussion, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the technical amendments to Rule 2007.1(b)(3)(B), along with the conforming amendments to Rule 2007.1(c)(1), and (c)(3) and the committee note as discussed above.

f. Amendments to Rule 3001(c)

Judge Connelly then presented the Advisory Committee's request for the Standing Committee to recommend final approval by the Judicial Conference of a technical amendment to Rule 3001(c) to reflect a change to the numbering of the rule. The text of the proposed amendment appears on page 225 of the agenda book and the written report begins on page 214.

Judge Connelly and Professor Bartell explained that Rule 3001(c) addresses the supporting information required for a proof of claim. Prior to the restyling, Rule 3001(c)(2)(D) provided for sanctions if the claim holder "fails to provide any information required by this subdivision (c)." The restyling of Rule 3001 redesignated former subdivision (c)(2)(D)—the sanction provision—as (c)(3) and provided for sanctions for the failure "to provide information required by [(c)](1) or (2)." The restyled Rule's new cross-reference inadvertently failed to encompass former Rule 3001(c)(3), which became Rule 3001(c)(4). The Advisory Committee approved a technical amendment that corrects the error by changing "information required by [(c)](1) or (2)" to read "information required by (c)." At the same time, it accepted a suggestion to reorder the numbered paragraphs in Rule 3001(c) so that the sanctions provision would come after all the provisions that it serves to enforce. Thus, the proposed technical amendments flip the order of what are currently Rules 3001(c)(3) and (4) and also amend what becomes Rule 3001(c)(4) to refer to "information required by (c)." Judge Connelly explained that this technical change is simply carrying out the intent of the rule, and that public comment would be superfluous.

The members then discussed the proposed amendments.

A judge member asked why Rule 3001(c)(3)(B) was not being moved up to become part of (c)(1). What the proposal would renumber as Rule 3001(c)(3)(B) provides that "On a party in interest's written request, the creditor must send a copy of the writing described in (1) to that party within 30 days after the request is sent." Professor Bartell said that the rule had always been that way.

Judge Bates asked whether this suggestion was independent from the proposed change to Rule 3001(c). Judge Connelly said that it was. Professor Struve suggested that the reason that the provision is located in what will become Rule 3001(c)(3)(B), and not in Rule 3001(c)(1), is that the provision is relevant *only* to the type of claim treated in Rule 3001(c)(3)(B) – that is, a claim based on an open-end or revolving consumer-credit agreement; as to other types of claims, Rule 3001(c)(1) already requires the creditor to file a copy of the writing described in Rule 3001(c)(1) with the proof of claim, so there would be no reason to separately require that the creditor send a copy of that writing upon request. Judge Bates said that while the Advisory Committee could separately consider the member's suggestion, it seemed independent from the current proposal, which could move forward in the meantime.

With no further discussion, upon motion and a second, and with no opposition, the Standing Committee approved recommending to the Judicial Conference final approval of the technical amendment to Rule 3001(c).

2. *Preliminary Drafts for Publication and Public Comment*

a. Preliminary Draft of Proposed Amendments to Official Form 106C

Judge Connelly next presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Official Form 106C, which relates to property that can be claimed as exempt. The text of the proposed amendment begins on page 255 of the agenda book and the written report begins on page 214.

Judge Connelly reported that the proposed amendment to the form includes a total amount of assets being claimed as exempt. This would help bankruptcy trustees comply with their statutory obligation to report assets exempted. Judge Connelly said that this reporting figure is not taking a position on what property is exempted but strikes a balance between the public's need for information and not being overly burdensome on the parties.

After an opportunity for discussion with no comments from the members, upon motion and a second, and with no opposition, the Standing Committee approved publication for public comment on the proposed amendment to Official Form 106C.

D. Advisory Committee on Civil Rules – Judge Robin L. Rosenberg, Chair

Judge Robin Rosenberg presented action items on behalf of the Advisory Committee on Civil Rules, which last met on April 1, 2025, in Atlanta, Georgia. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 287.

1. *Amendments for Final Approval*

The Advisory Committee had no requests for final approval.

2. *Preliminary Drafts for Publication and Public Comment*

a. Preliminary Draft of Proposed Amendments to Rule 41(a)

Judge Rosenberg began her report with the Advisory Committee's request that the Standing Committee approve publication for public comment on proposed amendments to Rule 41(a) relating to voluntary dismissal of actions. The text of the proposed amendment begins on page 328 of the agenda book and the written report begins on page 290.

Judge Rosenberg explained that the Advisory Committee was proposing two amendments to Rule 41(a). The first proposed amendment clarifies that the rule permits the dismissal of one or more claims in an action rather than only allowing dismissal of the entire action. She noted that many courts already allow such flexibility without problems arising, and permitting partial dismissal is consistent with the policy reflected throughout the rules of narrowing the issues pretrial. The second proposed amendment is necessitated by the first and clarifies that only the signatures of active parties who remain in a case are required to sign a stipulation of dismissal. Judge Rosenberg said that requiring the signatures of nonactive parties creates opportunities for such parties to stymie settlements if they either oppose the stipulation or cannot be found to provide their signature.

Judge Rosenberg reminded the Standing Committee that it had considered the proposed amendments to Rule 41 at its January 2025 meeting. Based on the Standing Committee's feedback at that meeting, the Advisory Committee made several changes. First, the Advisory Committee decided not to propose amending Rule 41(d) to permit a judge to award costs when the plaintiff had previously dismissed and refiled "one or more claims." (Currently, Rule 41(d) provides that the judge may award costs to the defendant "[i]f a plaintiff who previously dismissed an action files an action based on or including the same claim against the same defendant.") Second, the Advisory Committee clarified that the cutoff for unilateral dismissal of a claim is the filing of an answer or a motion for summary judgment by the party opposing the claim. Third, the Advisory Committee decided to retain the proposed language in Rule 41(a)(1)(A)(ii) that would require that a stipulation of dismissal be signed by all parties who have appeared and remain in the action. Although a participant in the January 2025 Standing Committee meeting had raised concerns about the proposed amendment's interaction with Rule 54(b), the Advisory Committee found the language in the text was sufficiently clear but added to the committee note information to clarify the amendment's purpose.

The members then discussed the proposed amendments.

A judge member asked why, under Rule 41(a)(1)(A)(i), a motion for summary judgment cuts off the plaintiff's opportunity to unilaterally dismiss its claims but a Rule 12(b) motion does not. Professor Bradt explained that the existing cutoffs have been part of the rule since 1946. In addition, adding Rule 12(b) motions to the list of events that cut off a plaintiff's right to unilaterally dismiss might create an inconsistency with Rule 15(a), which allows amendment of a complaint after receipt of a motion to dismiss under Rule 12.

Professor Bartell noted that the amendment to Rule 41(a)(1)(A) (page 328, line 6) would change "the plaintiff" to "a plaintiff," and asked whether the amendment would allow a single plaintiff to

dismiss an action unilaterally even if there are other plaintiffs that oppose dismissal. Professor Bradt responded that under the current rule with "the plaintiff," a plaintiff in a multi-plaintiff case can dismiss their own action, so that problem was in the rule before. Judge Bates agreed that the problem would have existed, but the language change makes the problem different. A judge member said that "the plaintiff" could be read as the plaintiff with respect to a particular claim, but "a plaintiff" could be read as broader. Judge Bates suggested the sentence could read "a plaintiff may dismiss *its* action," and a member agreed with the idea of saying "a plaintiff may dismiss its action or one or more of its claims." Professor Bradt commented that this would not require a change to the proposed amendment to Rule 41(a)(2) but would require conforming changes to the first paragraph of the committee note.

Professor Cooper expressed concern about making the text "a plaintiff may dismiss an action." He questioned if it is one plaintiff's action if there are multiple plaintiffs, proposing a better rule could be "a plaintiff may dismiss its part of an action or one or more claims." Professor Bradt said that he was not sure that "part of an action" is a familiar term and that he would be reluctant to add it. Professor Cooper suggested, alternatively, "a plaintiff may dismiss one or more or all of its claims." Professor Bradt said that the Advisory Committee wanted to keep the word "action" in the rule to avoid concerns that the rule no longer permits the dismissal of an entire action.

Professor Struve suggested that the Standing Committee could decide to use "a plaintiff may dismiss its action or one or more of its claims" in the text and clarify about Professor Cooper's point in the committee note. For example, the committee note at line 37 could read: "A plaintiff may accomplish dismissal of either its action—if it is the sole plaintiff—or one or more of its claims in an action that includes additional plaintiffs." Professor Bradt said that a concern with this text is that a sole plaintiff may also dismiss one or more of its claims. Professor Struve responded that one could revise the second part of that note sentence to say, "one or more of its claims, whether it is the only plaintiff or not." Professor Bradt, however, wondered whether this issue would cause real-world confusion and said that the Advisory Committee could learn more in the public comment period.

Judge Rosenberg then asked whether the beginning of the committee note's first paragraph as modified was clear. It read: "Rule 41 is amended in two ways. First, Rule 41(a) has been amended to add language clarifying that a plaintiff may voluntarily dismiss 'one or more of its claims' in a multi-claim case. A plaintiff may accomplish dismissal of either its action or one or more of its claims unilaterally …." A practitioner member suggested changing the rule text to "a plaintiff may dismiss one, some, or all of its claims in an action without a court order…." Professor Bradt said he did not object, but that the term "one or more claims" was the result of style revision; a previous draft had said "a claim or claims." Thus, Professor Bradt said he would want advice from the style consultants first.

Another practitioner member asked if there would still be a risk – under the other practitioner member's proposed language – of a court interpreting the reference to "one, some, or all" of a plaintiff's "claims" to mean that a plaintiff could dismiss one or more claims but not the action. Professor Bradt suggested changing the phrase to "a plaintiff may dismiss its action or one, some, or all of its claims." Judge Rosenberg asked if "some" was unnecessary. The practitioner member who had proposed the "one, some, or all" phrasing explained that the goal was to make clear that if it's a multi-plaintiff action, the action itself is not dismissed if one of the plaintiffs dismisses all

of its claims. Judge Rosenberg said that Rule 41's title, Dismissal of Actions, suggests that the rule allows a plaintiff to dismiss its action. Professor Bradt questioned whether the Committee could imagine a judge holding that the proposed "one, some, or all of its claims in an action" phrasing does not allow a plaintiff to dismiss its action. Professor Garner indicated that he could not imagine a textualist judge reading the rule that way.

Professor Struve thought that preserving the idea of dismissal of an action as its own concept could be valuable, since the interpretation of whether an order has triggered the start of the time to appeal might depend on whether the claims have been dismissed or the action has been dismissed. Professor Bradt then proposed that the rule could read: "a plaintiff may dismiss its action or one, some, or all of its claims in the action…." Professor Kimble, however, said he supported "may dismiss its action or one or more of its claims."

Judge Bates reminded the committee that the proposal was going out for public comment and that the goal should be to send out for public comment language that seems acceptable, if the committee cannot think of better language. Professor Coquillette said it was time for public comment and generally supported addressing the issue in the text of the rule. Judge Rosenberg suggested that the text of Rule 41(a)(1)(A) could read in relevant part "a plaintiff may dismiss its action or one or more of its claims without a court order…." The accompanying change to the first paragraph of the committee note would read "a plaintiff may voluntarily dismiss 'one or more of its claims' in a multi-claim case. A plaintiff may accomplish dismissal of either its action or one or more of its claims unilaterally…."

Following the discussion, upon motion and a second, and with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 41, with the revisions to the text and note summarized by Judge Rosenberg in the preceding paragraph.

b. Preliminary Draft of Proposed Amendments to Rules 45(c) and 26(a)(3)(A)(i)

Judge Rosenberg next presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 45(c) and Rule 26(a)(3)(A)(i). The goal of the proposed amendment to Rule 45 is to permit a court to command a distant witness to provide remote trial testimony. The proposed amendment to Rule 26 provides that the parties' pretrial disclosures must state whether the party expects to present witness testimony by remote means. The text of the proposed amendment to Rule 26 begins on page 325 of the agenda book, the text of the proposed amendment to Rule 45(c) begins on page 337, and the written report for the proposed amendments begins on page 292.

Judge Rosenberg explained that the amendments address *In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023), which held that the court's authority to issue a subpoena for trial testimony extends only within the "subpoena power" of the court. The *Kirkland* court reached this conclusion despite the 2013 committee note to Rule 45, which had noted the court's authority to command a distant witness to provide remote trial testimony. This decision has even affected cases involving subpoenas issued during discovery rather than subpoenas for trial testimony. She noted that the Standing Committee previously raised a question about whether changing Rule 45(c) would affect the unavailability criterion under Civil Rule 32(a)(4) (addressing use of the deposition of a witness who is unavailable) and Evidence Rule 804(a) (addressing criteria for considering a witness

unavailable for purposes of Rule 804(b)'s hearsay exceptions). The Advisory Committee determined that clarifying the subpoena power does not affect these other rules. Judge Rosenberg said that the proposed changes to Rule 45(c)(2) address remote testimony and set the "place of attendance" as "the location where the person is commanded to appear in person."

Professor Marcus stated that the subcommittee continues to look at questions on remote testimony generally and that this change simply recognizes that – once a court decides that remote testimony is warranted – the court should be able to command the witness to provide that testimony. Rule 45(c) is designed to protect the witness against burdens, but it should not impede the court's ability to order remote testimony when remote testimony is appropriate. Judge Rosenberg added that district courts have disagreed about whether they have the power to command distant trial witnesses to appear by remote testimony. The proposed amendment to Rule 26 complements the proposed amendment to Rule 45(c) by requiring pretrial witness lists to disclose "whether the testimony will be in person or remote." This requirement will lead the parties to discuss remote testimony during the pretrial conference to avoid a surprise closer to trial.

Professor Bartell noted that Rule 45(c)(1) does not use the term "place of attendance," and she suggested that the term was thus not an apt choice for proposed new Rule 45(c)(2). Professor Marcus responded that Rule 45(c)(1) permits a subpoena to "command a person to attend a trial, hearing, or deposition" and proposed Rule 45(c)(2) then defines the place of attendance and this should not be hard to follow. Professor Bartell argued that proposed Rule 45(c)(2) should be rewritten to say something like, "A subpoena may command a person to attend remotely under Rule 45(c)(1) at the location where the person is." Professor Marcus said he did not see a problem with the proposal as drafted, but that public comment would show whether others see a problem. Professor Struve agreed with Professor Marcus and argued that—though Rule 45(c)(1) does not use the specific phrase "place of attendance"—it uses the *concept* of a place of attendance because Rule 45(c)(1)(A) talks about that place being within 100 miles of the person's residence and Rule 45(c)(1)(B) talks about that place being within the state where the person resides.

Judge Bates pointed out that the text of proposed Rule 45(c)(2) uses "the place of attendance for remote testimony is the location where the person is commanded to appear in person," while the committee note's third paragraph instead refers to the "place where the person must appear to provide the remote testimony." He asked if the Advisory Committee intended any difference in these formulations. Professor Marcus thought that the committee note explains the rule clearly.

Professor Marcus noted that the Advisory Committee also recommended a corresponding amendment to Rule 26(a)(3)(A)(i) to add "and whether the testimony will be in person or remote." This would alert everyone in the case to the prospect of remote testimony. In the second sentence of the committee note to Rule 26 – which began "Because the rule presently requires" – Judge Bates suggested changing "the rule" to "this rule" to make clear that the reference is not to Rule 43 (mentioned in the preceding sentence). But after concerns were expressed that "this rule" might also be ambiguous, "the rule" was changed to "Rule 26." After Professor Garner stated that "presently" traditionally meant "in a moment," consensus also favored deleting "presently." At the end of the same sentence, Judge Bates suggested adding "upon court approval." Though a judge member later suggested deleting the note's second sentence, no consensus developed in favor of such a deletion.

Pointing to the last sentence of the Rule 26 committee note – which states that the amendment "alerts the parties and the court that a party expects to present one or more witnesses remotely" – Professor Bartell asked if the court would already be aware of a party's intention to call a remote witness, given that the court's approval would be required in order for remote testimony to occur. Professor Marcus responded that the Rule 26(a) disclosure would alert the court to the fact that somebody proposes to have a witness testify remotely, which would also require court approval. Judge Bates said that he did not think this pretrial disclosure requirement anticipates that there has already been a decision on whether to allow remote testimony. A practitioner member suggested changing "expects" to "proposes." Judge Rosenberg and Professor Marcus agreed. A judge member objected that using "proposes" would cause the committee note to diverge from the text of Rule 26(a)(3)(A)(i), which uses the phrase "expects to present." But the practitioner member pointed out that there is a distinction between the witnesses the party expects to present and the separate issue whether the testimony of those witnesses will be remote: a party can *expect* to present witnesses (because the party gets to choose its witnesses) while only *proposing* to do so remotely. Judge Rosenberg agreed with the distinction drawn by the practitioner member, as did another practitioner member.

Following this discussion, Judge Rosenberg summarized the changes to the committee note. The second sentence of the committee note would read "Because Rule 26 requires disclosure of witnesses a party 'expects to present,' it should be understood to include witnesses who will testify remotely upon court approval." In the third sentence of the committee note, "a party expects" was changed to "a party proposes."

Upon motion and a second, and with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 45(c) and Rule 26(a), with the changes to Rule 26's committee note that were summarized in the preceding paragraph.

c. Preliminary Draft of Proposed Amendment to Rule 45(b)

Judge Rosenberg next presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 45(b)(1). The proposed amendments specify that the methods for service of a subpoena are personal delivery, leaving it at the person's abode with someone of suitable age and discretion who resides there, sending it by mail or commercial carrier if it includes confirmation of receipt, or another method authorized by the court for good cause. The amendment would also add a default 14-day notice period and provide that the tender of witness fees is not required to effect service of the subpoena so long as the fees are tendered upon the witness's appearance. The text of the proposed amendment begins on page 332 of the agenda book and the written report begins on page 296. The members were also provided with a handout highlighting style changes made subsequent to the publication of the agenda book (the handout was incorporated into the agenda book at page 487).

Judge Rosenberg explained that the proposed amendments address comments received by the Advisory Committee over the years about the ambiguity of the requirement in Rule 45(b)(1) of "serving" the witness with a subpoena and also tendering the witness fee to the witness. Specifically, Rule 45(b)(1)'s use of "delivering a copy to the named person" without more created confusion and practical problems.

Focusing on delivery to the named person by "delivering it to the individual personally" under proposed Rule 45(b)(1)(A)(i), Professor Bartell asked if a named person would always be an individual. Professor Marcus responded that a subpoena could initiate a Rule 30(b)(6) examination of an entity. Professor Bartell expressed concern that proposed Rule 45(b)(1)(A)(i)'s use of "individual" suggests that the named person must be an individual.

Judge Bates suggested that, in light of the amendment's goal of clarifying the meaning of *service*, the portion of the rule that precedes the romanette-numbered paragraphs should conclude "Serving a subpoena requires:" rather than "Serving a subpoena requires delivering a copy to the named person by:", as the focus should not be on defining "delivery." Professor Marcus observed that the proposed language shown in the agenda book was borrowed from Rule 4(e)(2). Professor Garner supported Judge Bates's suggestion that the rule say "Serving a subpoena requires: (i) personally delivering a copy to the named person …." Judge Rosenberg agreed and confirmed that romanette (i) would read "personally delivering a copy to the named person," but that the other romanettes would not change. Professor Marcus said that this would address Professor Bartell's concern.

Professor Struve questioned the proposed placement of "personally" before "delivering": the placement created ambiguity because it could be read to require the *server* to deliver the document personally (i.e., to mandate that the lawyer whose subpoena it is cannot delegate the task of service). Rule 4(e)(2(A), she noted, places the "personally" at the end ("to the individual personally"). Judge Bates responded that saying "to the named person personally" would be awkward. After a discussion of whether "personally" could be deleted, the participants concluded that it should not. A judge member said that the meaning of Rule 45(b)(1)(A)(i) depends on the word personal. Professor Garner suggested using the term hand-delivering. Judge Bates agreed that hand delivery was likely what the provision means by "personally." Professor Cooper said that the advantage of "personally" is that it helps provide context for "delivering," which courts have interpreted to have different meanings (e.g., mail), and that "hand-delivering" could create new interpretive problems.

An academic member observed that the proposed amended rule imports language from Rule 4, and he would be nervous about adding language that deviates from Rule 4. Judge Rosenberg confirmed that the idea was to mimic the language in Rule 4. Judge Bates asked whether "personally delivering a copy to the named person" is any different from "delivering a copy to the named person personally." Professor Garner supported using "person personally," even though it may strike some readers as awkward. Professor Hartnett suggested "delivering it personally to the named person" to retain the meaning but move the words slightly away from each other. A judge member supported using "named person personally" to stay consistent with whatever caselaw that has developed. Professor Kimble advocated using the language shown in the agenda book, but Professor Bartell reiterated that Rule 4 applies only to individuals, whereas Rule 45(b) applies to all persons (including business entities), so the term "individual" (used in proposed romanette (i) in the agenda book) would be inappropriate for Rule 45(b). Judge Bates supported using "named person" in order to avoid suggesting there was a substantive change; the remaining question, he noted, was where to put the word "personally."

Judge Bates asked if the Advisory Committee would support revising the second sentence of Rule 45(b)(1)(A) to read: "Serving a subpoena requires: (i) delivering a copy to the named person personally …." Professor Marcus agreed. A judge member asked why "named person" is not

needed in the other romanettes. Professor Garner responded that romanette (i) identifies the target as "the named person" and the subsequent romanettes inherit that meaning (such that repeating "named person" is unnecessary). The judge member asked if a reader would understand that the modifier carries through to the other romanettes just as it would if the modifier were in the introduction. Professor Garner said the Committee had employed this usage frequently.

A practitioner member asked whether a subpoena directed to a business organization could be left at its place of business, and if not, whether "place of business" should be added to romanette (ii). Judge Bates noted that the rule should not permit a party to serve a subpoena to an individual at their place of work. Professor Cooper suggested that "delivering … to the named person personally" under revised romanette (i) should encompass service on a business at its office.

A practitioner member suggested revising the first sentence in the committee note to state that "Rule 45(b)(1) is amended to clarify the means of serving the subpoena." Judge Bates asked whether the reference to "delivery" in the committee note's second paragraph should be changed to refer to service. Professor Marcus suggested the term "effective service," (not in quotation marks), and Judge Bates agreed, as did a judge member.

Judge Rosenberg summarized the changes around which consensus had developed (apart from the style changes highlighted on the handout, which were also adopted by consensus). Rule 45(b)(1)(A)'s second sentence was revised so that it commenced: "Serving a subpoena requires: (i) delivering a copy to the named person personally; …." The first sentence of the committee note was changed to read: "Rule 45(b)(1) is amended to clarify the means of serving a subpoena." In the first sentence of the second paragraph of the committee note, "'delivery'" was changed to "effective service."

Following the discussion, upon motion and a second, and with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 45(b), with the changes summarized in the preceding paragraph, as well as the style changes shown in the handout.

d. Preliminary Draft of Proposed Amendment to Rule 7.1(a)

Judge Rosenberg next presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 7.1(a). The amendments would mandate disclosure of corporate "grandparents" and "great-grandparents" in which a judge may hold a financial interest that requires recusal. The text of the proposed amendment begins on page 322 of the agenda book and the written report begins on page 298.

Judge Rosenberg explained that the Advisory Committee proposed the amendment not because of concerns that judges have acted in a biased manner, but because a judge presiding over a case in which she has an arguable financial interest can threaten perceptions of the court's legitimacy. To address the perception-of-bias issue and allow judges to make more informed decisions about recusal, there are two proposed changes. First, the proposed amendment replaces references to a "corporate party" with the broader term "business organization." The Advisory Committee viewed "corporations" as too narrow because there are many entities that are not corporations, and "business organizations" is the most common and generally understood term. Second, the

proposed amendment requires disclosure of "a parent business organization" and "any publicly held business organization that directly or indirectly owns 10% or more of" a party. The term "parent" has been part of the various federal disclosure rules since their inception and has not caused significant problems.

Judge Rosenberg also stated that the Rules Law Clerk and Reporters canvassed a wide swath of disclosure requirements, and the two dominant approaches were to use either a broad catch-all term (such as "affiliates") or a lengthy list of various specific business relationships. However, the former approach is overinclusive and results in important information being buried in a vast disclosure. The latter approach can be over- and under-inclusive and requires constant maintenance to account for evolving relationships. The Advisory Committee was also informed by the February 2024 guidance by the Codes of Conduct Committee that directs a judge to focus on whether a parent corporation that does not wholly own a party has control of a party, advising that 10% ownership creates a rebuttable presumption of control. Professor Bradt said that the effort has been to expand the scope of the rule to better comply with the Codes of Conduct Committee guidance and be consistent with the approach taken in the 1998 committee note to Appellate Rule 26.1.

After an opportunity for discussion and no comments from the members, upon motion and a second, and without opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 7.1.

E. Advisory Committee on Criminal Rules – Judge James Dever, Chair

Judge Dever presented one action item on behalf of the Advisory Committee on Criminal Rules, which last met on April 24, 2025, in Washington, D.C. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning at page 357.

1. *Amendments for Final Approval*

The Advisory Committee presented no requests for final approval.

2. *Preliminary Drafts for Publication and Public Comment*

a. Preliminary Draft of Proposed Amendments to Rule 17

Judge Dever presented the Advisory Committee's request for the Standing Committee to approve publication for public comment on proposed amendments to Rule 17 relating to subpoenas in criminal cases. The text of the proposed amendment begins on page 373 of the agenda book and the written report begins on page 358.

Judge Dever explained that this item stems from a 2022 proposal by the New York City Bar Association and letters from the National Association of Criminal Defense Lawyers. Judge Dever also noted that the development of the proposed amendments had taken significant effort, but that the Advisory Committee voted unanimously to recommend publication of the proposed amendment to Rule 17.

Judge Dever reported that the core of the issue raised by the proposals was that Rule 17 had been largely unchanged since 1944 (apart from some style changes and changes relating to the Crime

Victims Rights Act). The proposals focused on the problems, from a defense perspective, entailed in obtaining information from third parties. The Advisory Committee's subcommittee – chaired by Judge Jacqueline Nguyen – had begun by assessing whether there was a problem. The subcommittee held many meetings on the project, and the Advisory Committee had discussed it over the course of six meetings and had consulted widely.

The Advisory Committee, Judge Dever noted, had learned that Rule 17 practice varies widely across the country, and in some districts, there is essentially no third-party subpoena practice under Rule 17. One reason for the disparities in Rule 17's application, Judge Dever suggested, was that there were only two U.S. Supreme Court cases on point (*Bowman Dairy v. United States*, 341 U.S. 214 (1951), and *United States v. Nixon*, 418 U.S. 683 (1974)), and those cases contain language that some lower courts have interpreted restrictively. After testing a more expansive proposed rule with defense lawyers and prosecutors, the Advisory Committee determined that it should take a more incremental approach to addressing third-party discovery.

Judge Dever then explained the proposed changes to Rule 17, which were also summarized starting at page 363 of the agenda book. Features of the proposed rule included specifying what proceedings other than trial Rule 17 applies to, codifying a loosened *Nixon* standard, clarifying when a motion and order are required, providing when a party may make its request ex parte, addressing the place of production, preserving Rule 16's disclosure policies, and clarifying which subparts of Rule 17 apply to different proceedings. Judge Dever reiterated that the proposal is for public comment and anticipated that the proposed amendment, if published, would receive helpful comments. He thanked the DOJ and Subcommittee Chair and members for their work.

Professor Beale added that the input from defense and prosecution practitioners was very divergent at first: defense lawyers wanted major changes while the DOJ saw no current problem with Rule 17. It was remarkable that the ultimate proposal attained unanimous support from the Advisory Committee members. It would "raise the floor" of practice in those districts where currently there is no way for the defense to gain information from third parties.

The members then discussed the proposed amendment.

In Rule 17(c)(2)(A) (concerning non-grand-jury subpoenas), Judge Bates suggested inserting "evidentiary" between "additional" and "hearing." Professor Beale agreed. Also in Rule 17(c)(2)(A), Judge Bates pointed out that the placement of the phrase "that the court permits" created ambiguity as to whether it referred to the subpoena or the hearing. Professor Beale stated that the phrase should refer to the subpoena. Consensus formed in favor of revising the last clause of proposed Rule 17(c)(2)(A) to read "or—with the court's permission in an individual case—for any additional evidentiary hearing." A judge member asked whether it was really necessary to require the court's permission in an individual case once the word "evidentiary" was added to the rule. Professors Beale and King said yes, explaining that the Advisory Committee did not want this amendment to lead to a proliferation of third-party subpoenas in a whole range of evidentiary hearings.

Judge Bates also suggested saying "to produce the designated items to the court" rather than "to produce to the court the designated items" in Rule 17(c)(5). Professor Beale agreed. Judge Bates also suggested deleting "stage" from line 441 of the committee note.

Judge Bates observed that an objective of the proposal is to address the variance in subpoena practice. However, he noted, the proposal retains flexibility for individual judges to continue that variance – for example in proposed Rules 17(c)(2)(C) and (F). Judge Dever agreed and explained that the proposal reflects an incremental approach to changing the rule. Professor Beale noted that Judge Bates's comment relates to the ability of judges or districts to opt out. The other side of that is that the proposed rule states a new default rule with substantial leeway to deal with problems in an individual case or certain kinds of cases. Professor King said that the new default is not a strong one: it is a response to decisions that made assumptions about what the language in the current rule means. Just saying what the rule means will reduce some variance, and variance was left where the Advisory Committee heard it was important. Judge Bates thanked Ms. Shapiro and the DOJ for their work during the process and suggested getting comments from the Magistrate Judges Association.

A practitioner member expressed support for the proposed rule but highlighted the phrase "non-grand-jury subpoena" as a new term that is not in the existing rules. He asked whether a grand jury subpoena is a Rule 17 subpoena. The member had not thought that the government needed to follow a particular process when issuing a grand jury subpoena. Professor Beale responded that the Supreme Court had suggested in *Nixon* that Rule 17 applied to grand jury subpoenas, but she stressed that the Advisory Committee did not want to draft a rule regulating grand jury subpoenas for all purposes. The member suggested explaining the term "non-grand-jury subpoena" in the committee note.

A judge member pointed out language in the committee note (on page 387) providing that a "court has discretion to require that those subpoenas be authorized by motion and court order" and said that a subpoena cannot technically be authorized by motion. Rather, the motion would be filed and then the court would enter an order, as indicated by references to filing a motion and obtaining a court order in Rule 17(c)(3) and (4). To make the references consistent, the member suggested changing the committee note to read "the court has discretion to require that those subpoenas be authorized only after filing a motion and obtaining a court order." The member suggested that the language in Rule 17(c)(3)(A) be similarly changed. The judge member also suggested, for clarity, positive phrasing for Rule 17(c)(2)(C), which would read "a motion and order are required before service of a non-grand-jury subpoena in (3) or (4) or if a local rule or court order requires them."

To respond to these suggestions, Professor Beale referenced the earlier discussion about how to phrase Appellate Rule 29(a)(7). She said that this language was drafted to respond to concerns that the rule was requiring too many motions and would cause a burden. Thus, Professor Beale preferred stating that motions "are not required, except…." To help emphasize the point, Professor Capra suggested revising the heading of Rule 17(c)(2)(C) to read "Motion and Order Not Ordinarily Required." Professor Garner suggested "only by court order on motion," which indicates a court cannot do it sua sponte. The judge member agreed. Judge Dever said this would change Rule 17(c)(3)(A) to read "only by court order upon motion" rather than "only on motion and by court order."

A judge member asked about Professor Capra's idea to change the title of Rule 17(c)(2)(C) to "Motion and Order Not Ordinarily Required." Judge Bates questioned whether the heading could say "Ordinarily" when that word does not appear in the text of Rule 17(c)(2)(C). Professor Garner responded that "Not Ordinarily Required" was an accurate summary of the provision, which states

that the motion and order "are not required … unless." Another judge member suggested titling the provision "Requirement For Motion and Order." Judge Dever, however, expressed a preference for Professor Capra's proposed title, explaining that the Advisory Committee wanted to emphasize that a motion and order is not ordinarily required.

A judge member expressed support for the proposed amendment but had a few questions about the text. First, should Rule 17 emulate Rules 16 and 16.1, which explicitly provide authority for the district court to regulate discovery? To this end, in proposed Rule 17(c)(7), he suggested inserting "or on its own" after "On motion made promptly" to indicate that the court can act sua sponte to quash or modify a subpoena. Professor Beale said the Advisory Committee could discuss the idea after public comment. Judge Dever commented that the only way that the subpoena would come to the court's attention would be if there were a motion to quash. Second, the judge member suggested deleting "under these rules" from Rule 17(c)(6) because a right to discovery can have a statutory or constitutional basis. Professor Beale and Judge Dever agreed. Third, the judge member suggested revising Rule 17(h) to refer to "a statement of a trial witness or of a prospective trial witness" because Rule 32(i) provides discretion to deny a witness at sentencing. The member pointed out that Rule 17 was granting the authority to subpoena witnesses for sentencing. Professor King responded that Rule 17(h) refers only to subpoenaing the witness's *statement*, not the witness. Professor King and Judge Dever said that Rule 17(h) is essentially a rules version of the Jencks Act (that is, Rule 17(h) closes off what would otherwise look like a discovery pathway for early discovery of witness statements) but that public comment will be helpful. Professor King clarified that including sentencing in Rule 17 means only that getting a subpoena for sentencing is not prohibited – not that a subpoena will necessarily issue. Another judge member noted that Rule 26.2(g)(2) (applying Rule 26.2 to sentencing) governs production of the witness's prior statement but not the witness themselves. Professor Beale agreed, and summed up that where Rule 17 would allow a subpoena, it does not allow a subpoena to be used as an end-run around the Jencks principle codified in Rule 26.2.

Professor Beale summarized the modifications to the proposed amendment. The modifications changed Rule 17(c)(2)(A) to read "When Available. A non-grand-jury subpoena is available for a trial; for a hearing on detention, suppression, sentencing, or revocation; or—with the court's permission in an individual case—for any additional evidentiary hearing." The caption of Rule 17(c)(2)(C) was changed to "Motion and Order Not Ordinarily Required." In Rule 17(c)(3)(A), "only on motion and by court order" was changed to "only by court order upon motion." In Rule 17(c)(5), "require the recipient to produce to the court the designated items" was changed to "require the recipient to produce the designated items to the court." In Rule 17(c)(6), "under these rules" was deleted. In the committee note at page 387, line 323, "authorized by motion and court order" was changed to "authorized by court order upon motion." On page 391, line 441, "stage" was deleted.

Following the discussion, upon motion and a second, and with no opposition, the Standing Committee approved publication for public comment on the proposed amendments to Rule 17, with the changes discussed in the preceding paragraph.

3. INFORMATION ITEMS – REPORTS OF THE ADVISORY COMMITTEES

Following the Standing Committee's conclusion of the action items, Judge Bates announced that he would have to leave, and asked Judge Dever to preside over the remainder of the meeting. Prior to this transition, Judge Bates clarified for the record that the Standing Committee had approved publication for public comment on proposed Civil Rule 45(c).

Prior to departing, noting that it was his last Standing Committee meeting, Judge Bates also extended his thanks to everyone and appreciation for being on the Standing Committee and offered to be of assistance when needed.

Judge Dever then turned to the information items, noting that the Standing Committee members had read the Advisory Committee reports and that those presenting the information items should defer to those reports and use their time to highlight issues for any comments from the members.

A. Advisory Committee on Evidence Rules – Judge Jesse M. Furman, Chair

Professor Capra, who presented on behalf of the Advisory Committee in light of Judge Furman's departure from the meeting, highlighted several information items. The written report on information items begins on page 59 of the agenda book.

1. *Artificial Intelligence (AI) and Deepfakes*

Professor Capra reported that the Advisory Committee decided to hold off on proposing any rule amendments regarding the issue of deepfakes and that there had not been many identified deepfakes going through the federal courts. The Advisory Committee will continue to monitor whether deepfakes are challenging the courts. In the meantime, it has a working draft set out on page 60 of the agenda book of a proposed Rule 901(c) addressing deepfakes. The draft rule would create a two-step process where the opponent of the evidence must make a showing that the offered evidence is a possible deepfake. The burden then shifts to the proponent to show by a preponderance of the evidence that it is not a deepfake.

2. *Rule 902(1) and Indian Tribes*

Professor Capra reported on the Advisory Committee's consideration of whether Rule 902(1) regarding self-authenticating government records should be amended to include records of federally recognized Indian tribes. The inability to have self-authenticating records from tribes has created certain problems in cases involving proof of Indian status. Professor Capra noted that the DOJ supports the suggestion to add Indian tribes to Rule 902(1), but it was opposed by the public defender representative. Professor Capra said that the Advisory Committee is conducting outreach to learn the views of tribes on the issue.

3. *Supreme Court Fellow Project on Rule 706*

Professor Capra noted that Samantha Smith, a Supreme Court Fellow, made a presentation to the Advisory Committee on research relating to Rule 706, which the Advisory Committee has taken under advisement.

B. Advisory Committee on Appellate Rules – Judge Allison Eid, Chair

Judge Eid reported briefly on three information items. The written report on information items begins on page 109 of the agenda book. First, the issue regarding intervention on appeal is awaiting further research. Second, the Advisory Committee is staying its consideration of the issue regarding reopening the time to appeal under Rule 4(a)(6), pending the Supreme Court's decision in *Parrish v. United States*.[5] Third, the Advisory Committee is looking at limits on administrative stays. A judge member suggested that the Advisory Committee study appeal waivers as well.

C. Advisory Committee on Bankruptcy Rules – Judge Rebecca Connelly, Chair

Judge Connelly referred the Standing Committee to the written materials, beginning on page 215 of the agenda book, for a report on two information items.[6]

D. Advisory Committee on Civil Rules – Judge Robin Rosenberg, Chair

Judge Rosenberg and Professor Marcus reported on six information items.

1. *Filing under Seal*

Judge Rosenberg noted that the report for this item begins on page 304 of the agenda book and directed the Committee's attention to the questions appearing on page 308. The Advisory Committee would welcome the Standing Committee's feedback on three questions: (1) should the Advisory Committee try to develop nationally uniform procedures for handling motions to seal? (2) if so, how could it obtain information to inform a decision about what procedures to set in the rule? and (3) if the Advisory Committee decides not to recommend adoption of a national rule that prescribes procedures, is there value nonetheless in amending the rules to state that the standard for sealing court files differs from that for protective orders?

A judge member suggested that former Judge Gregg Costa would be a good resource on the issue of the prevalence and abuse of sealing.

2. *Remote Testimony*

Judge Rosenberg said that the report for this item begins on page 308 of the agenda book. She reported that this relates to Rules 43(a) and 43(c) and that the Advisory Committee would be gathering more information about whether Rule 43(a) should be changed. The Advisory Committee is considering whether to make Rule 43(a) less restrictive.

A judge member observed that former Texas Supreme Court Chief Justice Nathan Hecht has become a spokesman for the importance of remote testimony and participation.

[5]For purposes of these minutes, it is noted that two days after the Standing Committee meeting, the Supreme Court decided *Parrish.* The citation to the decision is *Parrish v. United States*, 145 S. Ct. 1664 (2025).

[6] As referenced on the meeting agenda, the information items pertain to the withdrawal of a proposed amendment to Rule 1007(h) and two suggestions to allow special masters to be used in bankruptcy cases and proceedings.

3. *Third-Party Litigation Funding*

Judge Rosenberg reported that the Advisory Committee is studying the issue of third-party funding of litigation and has found that there is sharp disagreement over what is meant by "third-party litigation funding." She said that a series of nine questions appears on page 315 of the agenda book and requested the Standing Committee's feedback on them. The threshold question is how to describe the arrangements that might trigger a disclosure obligation.

4. *Cross-Border Discovery Subcommittee*

Judge Rosenberg reported that the Advisory Committee is retaining its cross-border discovery subcommittee, but the subcommittee has exhausted its research and has not found a need for a rule.

5. *Rule 55 Default and Default Judgment Rule*

Professor Marcus reported that a FJC study showed that in practice, Clerks of Court rarely enter default judgments in cases where the rule text seems to direct them to do so. Professor Marcus invited thoughts on the matter.

6. *Random Case Assignment*

Judge Rosenberg reported that the Advisory Committee will continue to monitor implementation of the Judicial Conference's March 2024 guidance on random case assignment. A judge member pointed out Professor Samuel Issacharoff's work on this topic.

E. Advisory Committee on Criminal Rules – Judge James Dever, Chair

Judge Dever reported on information items contained in the Committee Report beginning on page 367 of the agenda book. After Judge Dever reported on these items, a judge member suggested that the Advisory Committee should also look into deferred prosecution agreements, and Judge Dever undertook to mention that suggestion to Judge Mosman (the incoming Chair of the Criminal Rules Committee). The judge member also highlighted the circuit split (grounded in Criminal Rule 32) over whether a mismatch between oral and written sentencing conditions requires resentencing; Judge Dever agreed that there is a circuit split on that issue.

1. *Rule 49.1 - References to Minors by Pseudonyms and Full Redaction of Social Security Numbers*

Judge Dever reported that the Rule 49.1 subcommittee has unanimously agreed to propose an amendment to Rule 49.1 to require references to minors by pseudonyms, and the Standing Committee will likely receive such a proposal at its next meeting. He also reported that a proposal for the complete redaction of social security numbers in public filings will likely be considered by the Advisory Committee at its fall 2025 meeting.

2. *Rule 40 - Clarifying Procedures for Previously Released Defendant Arrested in Different District*

Judge Dever reported that the Advisory Committee received two proposals to clarify the procedures in Rule 40. Rule 40 relates to procedure on arrest of a person on a warrant issued in another district for failure to appear or violation of conditions of release. Judge Dever stated that the consensus of the Rule 40 subcommittee is that the rule can be clarified, and the Advisory Committee will likely take up a proposal on rule amendments at its fall 2025 meeting.

4. JOINT COMMITTEE BUSINESS

A. Report on Electronic Filing by Self-Represented Litigants

Professor Struve referred to her memorandum in the agenda book beginning on page 456 relating to the project on electronic filing and service by self-represented litigants.

B. Report of Subcommittee on Attorney Admission

Professor Struve reported that the subcommittee on attorney admission is also at work on further research.

C. Report on Privacy Issues

Ms. Dubay provided a brief report on the joint project to develop uniform rules on complete redaction of social security numbers and use of pseudonyms in cases involving minors, noting that she would be continuing this project.

5. OTHER COMMITTEE BUSINESS

A. Tribute to Judge Bates

Earlier in the meeting, Professor Struve and Ms. Dubay took a moment to offer thanks to Judge Bates on behalf of the Rules Committees, the Rules Committee Staff, and the Reporters, past and present, for his service as Chair of the Standing Committee, which concludes on September 30, 2025. Professor Coquillette also offered a thoughtful tribute to Judge Bates. Professor Struve read letters of appreciation to Judge Bates from Judge Jeffrey Sutton, Judge David Campbell, and Judge Robert Dow, all former Chairs of Rules Committees. Professor Struve also presented a token of appreciation from the Rules Committee community to Judge Bates in the form of a personalized baseball card noting statistics of the rule amendments undertaken in his tenure.

Following these thanks and tributes, Judge Bates offered brief remarks, noting that it was his privilege to work with everyone and their predecessors as part of the team that makes the rules process work extremely well.

B. Status of Rule Amendments

Ms. Dubay reported that the latest set of proposed rule amendments was transmitted to Congress on April 23, 2025. A list of the rule amendments is included in the agenda book beginning on page 461.

C. Legislative Update

Mr. Brinker, the Rules Law Clerk, provided a legislative update. The legislation tracking chart begins on page 477 of the agenda book. Mr. Brinker noted that no bills identified in the agenda book had received legislative action since being introduced. Ms. Dubay also noted in response to a judge member's question that the Rules Committee Staff monitors only those bills that would directly or effectively amend the rules of practice and procedure.

D. FJC Update

Dr. Reagan indicated that he would rely on the FJC report in the agenda book. Judge Dever remarked that it would be helpful for the FJC to continue educating judges that when rules change, they should not rely on case law interpreting the former rule.

6. CONCLUDING REMARKS AND ADJOURNMENT

Judge Dever noted the upcoming departure of Mr. Brinker as his term as Rules Law Clerk comes to an end, thanked him for his excellent work, and wished him well in his new employment. Judge Dever also recognized Judge Rosenberg for her upcoming role as FJC Director and wished her well.

Judge Dever concluded by thanking the Standing Committee members for their hard work and adjourned the meeting.

APPENDIX

Summary of Standing Committee Revisions to Final Amendments

The following list identifies revisions made at the Standing Committee meeting to amendments presented for final approval, as set forth in the agenda book available on the uscourts.gov website.

Evidence Rule 801(d)(1)(A)

The proposed amendments to Evidence Rule 801(d)(1)(A) begin on page 64 of the agenda book. There were no revisions to the rule text. Prior to discussion by the Standing Committee, the Chair noted one correction to the committee note:

1. Page 65, line 32, "exception" was changed to "objection."

The Standing Committee discussed and approved one additional change:

1. Page 66, line 52, "proving" was changed to "assessing."

Appellate Rule 29

The proposed amendments to Appellate Rule 29 begin on page 112 of the agenda book. The Reporter noted the following corrections to the committee note:

1. Page 123, line 234, "Rule 29(a)(4)(D)" was changed to "Rule 29(a)(4)."
2. Page 124, line 238, "curiae" was deleted.
3. Page 124, line 245, "Rule 29(a)(4)(E)" was changed to "Rule 29(a)(4)(F)."
4. Page 125, line 293, "Rule 29(a)(4)(D)(iii)" was changed to "Rule 29(a)(4)(E)(iii)."
5. Page 127, line 347, "Rule 29(a)(4)(E)" was changed to "Rule 29(a)(4)(F)."
6. Page 127, line 350, "Rule 29(a)(4)(D)" was changed to "Rule 29(a)(4)(E)."

The Standing Committee then discussed and approved one change to the rule text in proposed Rule 29(a)(7):

1. Page 118, lines 105-106, "An amicus may file a reply brief only with the court's permission" was changed to "An amicus may not file a reply brief except with the court's permission."

Bankruptcy Rule 9014

The proposed amendments to Bankruptcy Rule 9014 begin on page 246 of the agenda book. There were no revisions to the rule text. The Standing Committee discussed and approved one change to the committee note:

1. Page 247, lines 26-27, "That rule is no longer generally applicable in a bankruptcy case, and" was deleted so that the second sentence reads "The reference to that rule has been removed from Rule 9017."

Bankruptcy Rule 2007.1(b)(3)(B)

The proposed technical amendments to Bankruptcy Rule 2007.1(b)(3)(B) begin on page 221 of the agenda book. There were no revisions to the rule text. The Standing Committee indicated that conforming technical changes also needed to be made to Rule 2007.1(c)(1) and (3) and the committee note. Those sections of Rule 2007.1 and the committee note were not contained in the agenda book, but the conforming technical amendments to delete the romanettes were approved.

TAB 2B

Agenda E-19 (Summary)
Rules
September 2025

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Approve the proposed amendments to Appellate Rules 29 and 32, the Appendix on Length Limits, and Form 4, as set forth in Appendix A, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 2-5

2. a. Approve the proposed amendments to Bankruptcy Rules 1007, 2007.1, 3001, 3018, 5009, 9006, 9014, 9017, and new Rule 7043, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;

   b. Approve, effective December 1, 2025, the proposed amendment to Official Form 410S1, as set forth in Appendix B, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date ..... pp. 5-9

3. Approve the proposed amendments to Evidence Rule 801 as set forth in Appendix C and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 14-16

The remainder of the report is submitted for the record and includes the following items for the information of the Judicial Conference:

- Federal Rules of Civil Procedure ..... pp. 9-11
- Federal Rules of Criminal Procedure ..... pp. 11-13
- Judiciary Strategic Planning ..... p. 16

NOTICE
NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

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:

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 10, 2025. All members participated. Representing the advisory committees were Judge Allison H. Eid (10th Cir.), chair; and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly (Bankr. W.D. Va.), chair; Professor S. Elizabeth Gibson, Reporter; and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robin L. Rosenberg (S.D. Fla.), chair; Professor Richard L. Marcus, Reporter Professor Andrew Bradt, Associate Reporter; and Professor Edward Cooper, consultant, Advisory Committee on Civil Rules; Judge James C. Dever III (E.D.N.C.), chair; Professor Sara Sun Beale, Reporter; and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Jesse M. Furman (S.D.N.Y), chair; and Professor Daniel Capra, Reporter, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Catherine T. Struve, Reporter to the Standing Committee; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee, and; Carolyn A. Dubay, Secretary to the Standing Committee; Bridget M. Healy and Scott Myers, Rules Committee Staff Counsel; Kyle Brinker, Law Clerk to the Standing Committee; John S. Cooke, Director, and Dr. Tim Reagan,

Senior Research Associate, Federal Judicial Center; and Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of the Deputy Attorney General.

In addition to its general business, including a review of pending rule amendments in different stages of the Rules Enabling Act[1] process and an update on pending legislation potentially affecting the rules, the Standing Committee received and responded to reports from its five advisory committees. The Committee also received brief updates on the work of the Standing Committee's subcommittee concerning attorney admissions and on two joint projects among the Bankruptcy, Civil, Criminal, and Appellate Rules Committees—one on electronic filing and service by self-represented litigants and one on privacy issues relating to Social Security numbers (SSNs) and the use of a minor's initials in public court filings. The Committee members were also advised to submit any comments on the draft updated *Strategic Plan for the Federal Judiciary* (*Strategic Plan*) to the Judiciary Planning Coordinator, Chief Judge Michael A. Chagares (3d. Cir.), who also attended the relevant portion of the meeting.

FEDERAL RULES OF APPELLATE PROCEDURE

Amended Rules and Form Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rule 29 relating to amicus briefs, along with conforming amendments to Rule 32(g) and the Appendix on Length Limits. The Advisory Committee also recommended for final approval amendments to Form 4, the form used by applicants for *in forma pauperis* (IFP) status in appellate proceedings. The Standing Committee unanimously approved the Advisory Committee's recommendations after rephrasing proposed changes to

[1]Please refer to Laws and Procedures Governing Work of the Rules Committees for more information.

Rule 29(a)(7) ("Reply brief") to shift the provision's emphasis (without changing its substance) to more closely resemble the current language in Rule 29(a)(7), as well as approving technical corrections in the committee note to Rule 29.

Rule 29 (Brief of an Amicus Curiae)

The proposed amendments to Rule 29 address several issues with respect to the contents of amicus briefs, particularly as to required disclosures of relationships between the amicus and parties or nonparties. In particular, the amendments require disclosure of whether a party and/or its counsel have a majority ownership interest in or majority control of an amicus. In addition, whereas the current rule requires disclosure of whether any nonparty (other than the amicus, its members, or its counsel) contributed money intended to fund preparation or submission of the brief, the proposed amendments limit this disclosure requirement to instances in which the amount contributed or pledged to be contributed is greater than $100. The proposed amendments also add a broader disclosure concerning the background of the amicus—to include the identity, history, experience, and interest of the amicus, as well as the date of its creation if it has existed for less than 12 months. Finally, the proposed amendments impose an express word limit of 6,500 words on amicus briefs at the initial stage rather than reference to "one-half the maximum length authorized . . . for a party's principal brief."

The approved amendments to Rule 29 reflect several changes to the preliminary draft after public comment and a public hearing on the proposed amendments. Among other changes, the Advisory Committee at its spring meeting removed proposed language that would have eliminated the option for filing an amicus brief based on the parties' consent (and would therefore have required a motion for leave to file a brief) and removed proposed language that would have required disclosure of whether parties and/or their counsel had contributed 25 percent or more of the amicus's revenue for the prior fiscal year. The Advisory Committee

also revised the statement concerning the purpose of amicus briefs to more closely track the similar statement in Supreme Court Rule 37.

Rule 32 (Form of Briefs, Appendices, and Other Papers) and Appendix of Length Limits

The proposed amendment to Rule 32 conforms Rule 32(g)'s cross-references to the updated sections of amended Rule 29. Similarly, the proposed amendments to the Appendix of Length Limits conform the length limits for amicus briefs identified in the Appendix to the proposed amendment to Rule 29.

Form 4 (Affidavit Accompanying Motion for Permission to Appeal IFP)

The proposed amendments to Form 4 are intended to reduce the burden on individuals seeking IFP status by (among other things) reducing the amount of personal financial detail required to be provided, while retaining information that a court of appeals needs when deciding whether to grant IFP status.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Appellate Rules 29 and 32, the Appendix on Length Limits, and Form 4, as set forth in Appendix A, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Proposed Rule Amendment Approved for Publication and Public Comment

The Advisory Committee on Appellate Rules also recommended that a proposed amendment to Rule 15 be published for public comment in August 2025. After minor revisions to the proposed amendment to explain a term in greater detail, the Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention)

The proposed amendment to Rule 15 addresses issues that may arise when a petition for review or enforcement of an agency decision is filed prematurely—i.e., before the agency has disposed of a motion for reconsideration that renders the agency decision nonreviewable as to the

petitioner. In circuits that apply the "incurably premature" doctrine, if a pending motion to reconsider an agency decision makes the decision unreviewable in the court of appeals, then a new petition to review that agency decision must be filed in the court of appeals once the agency decision becomes final. The proposed amendments to Rule 15 would eliminate the need to refile the petition and provides that the original petition for review becomes effective upon the agency's disposition of the last reconsideration request. This change would align Rule 15 with Rule 4(a)(4)(B)(i), which relates to the effectiveness of a notice of appeal filed after a judgment is entered or announced in the district court, but before the district court disposes of certain post-judgment motions authorized under the Federal Rules of Civil Procedure.

Information Items

The Advisory Committee on Appellate Rules at its April 2, 2025, meeting also discussed a possible new rule regarding intervention on appeal, as well as possible amendments to Rule 8 (Stay or Injunction Pending Appeal) regarding administrative stays. It preliminarily discussed a suggestion regarding reopening the time to appeal under Rule 4 (Appeal as of Right —When Taken), but decided to hold that item until the decision of a case then pending in the Supreme Court.[2] The Advisory Committee also removed from consideration a suggestion that Rule 26 (Computing and Extending Time) be amended to not count weekends in computing time periods.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Amended Rules and Form and New Rule Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval one new rule, amendments to eight rules, and amendments to one official form: (1) amendments to Rule 3018; (2) amendments to Rules 9014 and 9017, and new Rule 7043; (3) amendments to

[2] *See Parrish v. United States*, No. 24-275, 2025 WL 1657416, at *2 (U.S. June 12, 2025).

Rules 1007, 5009, and 9006; (4) amendments to Official Form 410S1; and (5) technical corrections to Rules 2007.1 and 3001. After a technical correction to Rule 2007.1(c) to conform to the technical correction to Rule 2007.1(b), and a minor revision to the committee note for Rule 9014 shortening the discussion of the amendment to Rule 9017, the Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 3018 (Chapter 9 or 11—Accepting or Rejecting a Plan)

Whereas current Rule 3018(c) requires that acceptance or rejection of a plan in a chapter 9 or 11 case be in writing, the proposed amendment to the rule authorizes a court to additionally treat as an acceptance of a plan a statement on the record by a creditor or the creditor's attorney or authorized agent. A conforming amendment is also made to subdivision (a). In response to a public comment, the Advisory Committee made minor changes at its spring meeting to clarify that Rule 3018(c)'s statement-on-the-record provision applies to individual creditors (who may be self-represented) as well as to a creditor's attorney or agent.

Rules 9014 (Contested Matters) and 9017 (Evidence) and new Rule 7043 (Taking Testimony)

The proposed amendments (1) amend Rule 9017 to eliminate the general applicability of Fed. R. Civ. P. 43 (Taking Testimony) to all bankruptcy cases; (2) add new Rule 7043 (Taking Testimony), which will retain the applicability of Fed. R. Civ. P. 43 to adversary proceedings (thereby continuing to authorize remote witness testimony in adversary proceedings "for good cause in compelling circumstances and with appropriate safeguards"); and (3) amend Rule 9014 to allow a court in a contested matter to permit remote witness testimony "for cause and with appropriate safeguards" (i.e., eliminating the requirement of "compelling circumstances"). The changes are intended to provide bankruptcy courts greater flexibility to authorize remote testimony in contested matters (vs. adversary proceedings), which usually can be resolved less formally and more expeditiously by means of a hearing, often on the basis of uncontested

testimony. After public comment, the Advisory Committee revised the proposed amendment to Rule 9014 to clarify that all testimony in a contested matter would be governed by the rule, not just testimony provided on motions.

Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 5009 (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), and 9006 (Computing and Extending Time; Motions)

Proposed amendments to Rules 1007(c), 5009(b), and 9006(b) and (c) are intended to reduce the number of individual debtors whose cases are closed without a discharge because they either failed to take the required course on personal financial management or merely failed to file the needed documentation upon completion of the course. The proposed amendments to Rule 1007 eliminate the deadlines for filing the certificate of course completion, while conforming changes to Rule 9006 eliminate provisions concerning court alteration of those deadlines. The proposed amendment to Rule 5009 provides for two notices (instead of just one) reminding the debtor of the need to take the course and to file the certificate of completion.

Official Form 410S1 (Notice of Mortgage Payment Change)

The proposed amendment to Official Form 410S1 reflects the pending December 1, 2025 changes to Rule 3002.1(b) regarding ongoing payment adjustments to a home equity line of credit (HELOC) over the course of a bankruptcy case. The amended form accommodates amended Rule 3002.1(b)'s new option allowing the holder of a claim under a HELOC agreement to provide an annual notice of payment change (with a reconciliation amount) instead of notices throughout the year each time there is a change.

Rules 2007.1 (Appointing a Trustee or Examiner in a Chapter 11 Case) and 3001 (Proof of Claim)

Technical corrections are required to fix erroneous references in two rules inadvertently made during the restyling of the Bankruptcy Rules. First, the proposed technical amendments to Rule 2007.1(b) and (c) revise references to a numbered list that was restyled as a bulleted list.

Second, the proposed technical amendment to Rule 3001 provides that subdivision (c)'s provision concerning sanctions in an individual-debtor case applies if "a claim holder fails to provide any information required by (c)" (rather than "by (1) or (2)") so as to ensure that the sanctions provision applies to all information required by subdivision (c) (consistent with the pre-restyling version of the rule). Additionally, the proposed technical amendments to Rule 3001(c) reverse the order of what had been paragraphs (c)(3) and (c)(4) so that the sanctions provision (which will become (c)(4)) follows all of the substantive provisions that it enforces. The amendments also make a conforming change to a cross-reference in subdivision (c)(1).

Recommendation: That the Judicial Conference:

a. Approve the proposed amendments to Bankruptcy Rules 1007, 2007.1, 3001, 3018, 5009, 9006, 9014, 9017, and new Rule 7043, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and

b. Approve, effective December 1, 2025, the proposed amendment to Official Form 410S1, as set forth in Appendix B, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

Proposed Amendments to Form Approved for Publication and Public Comment

The Advisory Committee on Bankruptcy Rules also recommended that proposed amendments to Official Form 106C be published for public comment in August 2025. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Official Form 106C (Schedule C: The Property You Claim as Exempt)

The proposed amendments to Form 106C would provide totals for two columns: (1) the specific dollar amounts for each exemption and (2) the value of the debtor's interest in property for which the debtor claims exemptions.

Information Items

The Advisory Committee on Bankruptcy Rules at its April 3, 2025, meeting also discussed suggestions to allow special masters to be used in bankruptcy matters and decided to withdraw a proposed amendment to Rule 1007(h) (Interests in Property Acquired or Arising After the Petition is Filed) that was published for public comment in August 2024. The proposed amendment to Rule 1007(h) would have given a court authority to require the debtor to file a supplemental schedule listing certain property or income that becomes estate property after the case is filed. After considering public comments on the proposal, the Advisory Committee decided not to proceed with it.

FEDERAL RULES OF CIVIL PROCEDURE

Proposed Rule Amendments Approved for Publication and Public Comment

The Advisory Committee on Civil Rules recommended that proposed amendments to Rules 7.1, 26, 41, and 45 be published for public comment in August 2025. After minor revisions to the proposed amendment to Rules 45(b) and 41(a), and minor revisions to the amended committee notes for Rules 45(c), 26, and 41(a), the Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 7.1 (Disclosure Statement)

The proposed amendment to the disclosures required under Rule 7.1(a)(1) requires any party or would-be intervenor that is a private business organization to disclose any publicly held business organization that "directly or indirectly" owns 10 percent or more of the party or intervenor. The proposal responds to concerns raised that the current rule, which requires disclosure only of "any parent corporation and any publicly held corporation owning 10 percent or more of its stock," may result in nondisclosure of a "grandparent" corporation. This change is intended to assist judges in evaluating if recusal is appropriate consistent with updated guidance

in Committee on Codes of Conduct Advisory Opinion No. 57, which explains that corporate ownership of at least 10 percent of a party creates a rebuttable presumption of parental control and that a judge must recuse if they "conclude that a party is controlled by a corporation in which the judge owns stock." Another change substitutes the term "business organization" for the word "corporation" to clarify that the disclosure requirement applies to different forms of business entities.

Rule 41 (Dismissal of Actions)

The proposed amendments to Rule 41 clarify that a plaintiff may obtain a voluntary dismissal of one or more claims raised in a complaint without dismissing the entire action. This change responds to decisions in some courts interpreting the current language to mean that only an entire case, i.e., all claims against all defendants, or only all claims against one or more defendants, could be dismissed under the rule. The proposed amendments also provide that a stipulation of dismissal need be signed only by parties who remain in the action at the time of the dismissal.

Rule 45(b) (Subpoena – Service)

The proposed amendment to Rule 45(b) clarifies how a subpoena for testimony may be served and whether the witness fee must be tendered simultaneously with service. The proposed amendment borrows two methods of service from Rule 4(e)(2)'s methods for serving a complaint on an individual—personal service or leaving a copy at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there. The proposed amendment also adds an additional method of service through the mail or commercial carrier if confirmation of actual receipt can be provided, and further authorizes the court to approve another means of service for good cause. The proposed amendment also includes two other changes: (1) relaxing the current requirement that witness fees be tendered at the time of service, and (2) providing a

14-day notice period (subject to shortening by the court for good cause) when the subpoena requires attendance at a trial, hearing, or deposition.

Rule 45(c) (Subpoena – Remote Testimony)

The proposed amendment to Rule 45(c) adds a new subsection (c)(2) to address subpoenas for remote trial testimony. The proposed new subsection clarifies that the "place of attendance for remote testimony is the location where the person is commanded to appear in person." Under new Rule 45(c)(2), the court's subpoena power for in-court remote testimony extends nationwide so long as the subpoena does not command the witness to travel farther than the distance authorized under Rule 45(c)(1). The proposed amendment does not affect the standards governing whether to permit in-court remote testimony.

Rule 26 (Duty to Disclose; General Provisions Governing Discovery)

The proposed amendment to Rule 26(a) relating to pretrial disclosures requires disclosure of the party's expectation as to whether each of its witnesses' testimony will be in-person or remote.

Information Items

The Advisory Committee on Civil Rules at its April 1, 2025 meeting discussed various information items, including potential rule amendments regarding sealed filings and default judgments. The Advisory Committee also heard updates relating to items concerning third-party litigation funding, cross-border discovery, remote testimony, and random case assignment.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proposed Rule Amendment Approved for Publication and Public Comment

The Advisory Committee on Criminal Rules recommended that proposed amendments to Rule 17 (Subpoena) be published for public comment in August 2025. After minor revisions to

the proposed amendment, the Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 17 (Subpoena)

The proposed amendments focus primarily on Rule 17(c), which governs subpoenas for production. The proposed amendments clarify that third-party subpoenas for production may be issued for proceedings in addition to trial. This includes proceedings where such subpoenas are most likely to be needed or are already used regularly in many districts, as well as proceedings for which there is statutory or rule authority for parties to present evidence (i.e., detention, revocation, suppression, and sentencing). With the court's permission, the rule also authorizes such subpoenas for other evidentiary hearings.

The proposed amendments also set forth a modified version of the test announced in *Nixon v. United States*, 418 U.S. 683 (1974), as the standard for the issuance of third-party subpoenas for production. The modified test as proposed is intended to provide both prosecution and defense with an adequate and more uniform opportunity across jurisdictions to obtain needed evidence from third parties.

Other proposed amendments to Rule 17 clarify when a party must file a motion to serve a subpoena for production of documents—when the subpoena requests personal or confidential information about a victim, when the subpoena is requested by a self-represented party, or when a local rule or court order requires a motion. When no motion is required, a party may serve a subpoena for production on an ex parte basis. When a motion is required, the proposed amendments provide that the court "must" allow a party to file it ex parte if good cause is shown. The proposed amendments further address ex parte subpoena practice—setting a default rule that a party need not disclose its subpoena to another party if no motion is required.

The proposed amendments also clarify the circumstances under which the recipient of the subpoena must produce the designated items to the court rather than directly to the requesting party.

In addition, the amendments address the disclosure of material produced directly to the requesting party, disapproving the practice in some courts in which all subpoenaed items must be provided to the opposing party, regardless of whether the items would be subject to discovery under Rule 16. By providing that a party must disclose to its opponent only items the party obtains by subpoena if the item is otherwise discoverable, the proposed amendments seek to ensure that Rule 17 is not interpreted to disturb policies codified in Rule 16 and other discovery rules regulating disclosure between the parties.

Finally, the proposed amendments clarify, as to each subdivision of Rule 17, whether it applies to subpoenas for testimony, subpoenas for production, or both.

Information Items

The Advisory Committee on Criminal Rules at its meeting on April 24, 2025, also discussed several information items. The Advisory Committee was updated on a subcommittee's work on a possible amendment to Rule 49.1 (Privacy Protection for Filings Made with the Court) to require the use of pseudonyms for minors and the complete redaction of SSNs. The Advisory Committee also heard an update on a potential amendment to Rule 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District) that would address instances when a previously released defendant is arrested in one district under a warrant issued in another.

FEDERAL RULES OF EVIDENCE

Amended Rule Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules recommended for final approval amendments to Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay). The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay)

Current Rule 801(d)(1)(A) excludes from the definition of hearsay a declarant-witness's prior inconsistent statements only if the witness gave the prior statement under penalty of perjury in a prior proceeding or deposition. The proposed amendment to Rule 801 eliminates the requirement that the prior inconsistent statement be offered under penalty of perjury and allows any prior inconsistent statement by a declarant-witness to be admissible as substantive evidence, subject to exclusion under Rule 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons). This proposed amendment conforms Rule 801(d)(1)(A)'s approach to that taken in Rule 801(d)(1)(B) for prior consistent statements and eliminates potential confusion from limiting instructions.

The committee note was revised after publication and public comment to underscore the amended rule's parallel treatment of prior consistent and inconsistent statements and to emphasize that the rule governs admissibility rather than sufficiency of the evidence.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Evidence Rule 801 as set forth in Appendix C and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Proposed Rule Amendment and New Rule Approved for Publication and Public Comment

The Advisory Committee on Evidence Rules recommended that a proposed amendment to Rule 609 (Impeachment by Evidence of a Criminal Conviction) and a new Rule 707 (Machine-Generated Evidence) be published for public comment in August 2025.

After minor revisions to the text and committee note of each rule, the Standing Committee unanimously approved the Advisory Committee's recommendation concerning Rule 609 and approved (with one member objecting) the recommendation concerning Rule 707.

Rule 609 (Impeachment by Evidence of a Criminal Conviction)

The proposed amendment to Rule 609(a)(1)(B) addresses the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant's character for truthfulness. Under the proposed amendment, evidence of a non-falsity based prior conviction is not admissible to impeach a criminal defendant unless its probative value "substantially" outweighs the risk of unfair prejudice to the defendant. Under current Rule 609, such evidence must be admitted against a testifying criminal defendant if the probative value merely outweighs its prejudicial effect. With this amendment, the Advisory Committee aims to reduce the risk that Rule 609 will unduly deter criminal defendants from exercising their right to testify. An additional proposed amendment to Rule 609(b) clarifies the time period for older convictions that are subject to a more exclusionary standard. Under the amendment, the 10-year time period for the rule's applicability is measured from the date of conviction or end of confinement, whichever is later, until the date of trial.

New Rule 707 (Machine-Generated Evidence)

The Advisory Committee spent three years considering whether the Evidence Rules sufficiently regulate the reliability and authenticity of evidence created by artificial intelligence (AI). Proposed new Rule 707 sets standards for the admissibility of machine-generated evidence that would be subject to Rule 702's expert-testimony requirements if testified to by a witness.

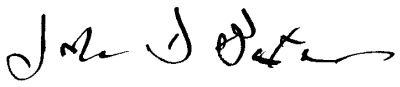
Information Items

The Advisory Committee on Evidence Rules also discussed at its meeting on May 2, 2025, several other issues. This included discussion of a possible new subdivision for Rule 901 (Authenticating or Identifying Evidence) that would set a framework for evaluating contentions that an item of evidence has been fabricated using generative AI (deepfakes). The Advisory Committee also continues its consideration of a suggestion that Rule 902(1) (Evidence That Is Self-Authenticating; Domestic Public Documents That Are Sealed and Signed) be amended to add federally-recognized Indian tribes to the list of entities whose sealed and signed documents are self-authenticating.

JUDICIARY STRATEGIC PLANNING

As noted above, the Committee was asked to provide input on the draft 2025 *Strategic Plan*. The Committee indicated that it had no suggested edits in a letter to Chief Judge Chagares dated June 30, 2025.

Respectfully submitted,



John D. Bates, Chair

Paul J. Barbadoro	Troy A. McKenzie
Todd Blanche	Patricia Ann Millett
Elizabeth J. Cabraser	Andrew J. Pincus
Louis A. Chaiten	D. Brooks Smith
Joan N. Ericksen	Kosta Stojilkovic
Stephen A. Higginson	Jennifer G. Zipps
Edward M. Mansfield	

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TAB 3

Minutes of the Spring Meeting of the

Advisory Committee on the Appellate Rules

April 2, 2025

Atlanta, GA

Judge Allison Eid, Chair, Advisory Committee on the Appellate Rules, called the meeting of the Advisory Committee on the Appellate Rules to order on Wednesday, April 2, 2025, at approximately 8:00 a.m. EDT.

In addition to Judge Eid, the following members of the Advisory Committee on the Appellate Rules were present in person: Linda Coberley, Professor Bert Huang, Judge Carl J. Nichols, and Lisa Wright. The Solicitor General was represented by Mark Freeman, Director of Appellate Staff, Civil Division, Department of Justice. Judge Richard C. Wesley, Judge Sidney Thomas, Justice Leondra Kruger, and George Hicks attended via Teams.

Also present in person were: Judge John D. Bates, Chair, Standing Committee on the Rules of Practice and Procedure; Judge Daniel Bress, Member, Advisory Committee on the Bankruptcy Rules and Liaison to the Advisory Committee on the Appellate Rules; Andrew Pincus, Member, Standing Committee on the Rules of Practice and Procedure, and Liaison to the Advisory Committee on the Appellate Rules; Christopher Wolpert, Clerk of Court Representative; Carolyn Dubary, Secretary to the Standing Committee, Rules Committee Staff (RCS); Bridget M. Healy, Counsel, RCS;; Kyle Brinker, Rules Law Clerk, RCS; Rakita Johnson, Administrative Assistant, RCS; Maria Leary, Federal Judicial Center; Professor Catherine T. Struve, Reporter, Standing Committee on the Rules of Practice and Procedure; and Professor Edward A. Hartnett, Reporter, Advisory Committee on the Appellate Rules.

Professor Daniel R. Coquillette, Consultant, Standing Committee on the Rules of Practice and Procedure, Tim Reagan, Federal Judicial Center, Shelly Cox, Management Analyst, RCS, attended via Teams.

I. Introduction and Preliminary Matters

Judge Eid opened the meeting and welcomed everyone, including the members attending remotely. She noted that Lisa Wright's term was ending and thanked her for her work on the committee's projects. She also congratulated Scott Meyers on his retirement and welcomed Carolyn Dubay. She thanked the Court of Appeals for the Eleventh Circuit for hosting.

No one had questions about the report from the Federal Judicial Center. (Agenda book 29).

Mr. Brinker referred to the pending legislation chart and noted that there is no recent Congressional action regarding the Federal Rules of Appellate Procedure. (Agenda book page 26).

Ms. Healy called attention to the rules tracking chart and noted that the amendments to Rules 6 and 39 are in the hands of the Supreme Court. (Agenda book page 19). They are scheduled to take effect December 1 of this year.

Judge Eid noted the draft minutes of the meeting of the Standing Committee and the Report to the Judicial Conference. (Agenda book page 41). We will discuss the matters addressed at the Standing Committee later on the agenda.

II. Approval of the Minutes

The reporter noted a typographical correction to the minutes of the October 9, 2024, Advisory Committee meeting. (Agenda book page 83). There should be a period rather than a comma on the last time of page 90. With this correction, the minutes were approved without dissent.

III. Discussion of Joint Committee Matters

Professor Struve provided an update regarding electronic filing and service for self-represented parties. (Agenda book page 103). The working group has made progress but is not yet seeking publication. The hope is to request publication in the next round. The Bankruptcy Rules Committee has concerns; the Standing Committee is ok with other committees going forward without Bankruptcy. The agenda book sketches a possible amendment to FRAP 25.

The working group is pursuing two major ideas. The first is that since filings made by non-electronic filers are uploaded by the clerk's office, triggering a notice to electronic filers, there does not seem to be a need to require the non-electronic filer to make paper copies and mail them to other parties. The second involves making electronic filing more available to self-represented parties. Future drafts will use the term "unrepresented parties" because of the number of placed in the rules where that phrase is already used.

At the time the sketch was drafted, it was thought that there might not be any situations in the courts of appeals—unlike the district courts—where litigants would have to serve documents on the parties but not file them with the court. But others have since pointed out that there are some, so that aspect of the sketch will have to be changed.

The sketch of FRAP 25 largely follows that sketched for Civil Rule 5, switching the presumption to filing electronically, but allowing local rules that electronic filing so long as they have reasonable exceptions or alternatives. It is also permissible to impose conditions, particularly limiting an unrepresented party's access to that party's case. Word choices follow the existing Rule. There are ongoing discussions with the style consultants seeking to balance concision with ease of use for unrepresented parties.

Revised FRAP 25 would begin with the idea that notice of electronic filing constitutes service, placing other means of service after that. Service is complete as of the date of the notice. There is no provision, as there is in the current rule, to situations where one learns that a document has not been received; that doesn't seem to be a problem with court-generated notices of electronic filing.

Two issues need to be addressed. The first, already mentioned, is to draft something like the provision for Civil Rule 5(b)(4) for situations where a document is served but not filed. The second is to deal with bankruptcy specific concerns.

It is likely that Bankruptcy will not be on board. That raises the question of what to do on appeal in a bankruptcy case. The Civil Rules Committee is not inclined to have different service rules for bankruptcy appeals. The sketch for FRAP 25 similarly does not include different service and e-filing rules for bankruptcy appeals.

The Reporter voiced support for the idea described on page 172-73 of the agenda book, surmising that the committees would prefer to keep the practice in the courts of appeals uniform across types of appeal rather than exempting bankruptcy appeals. He invited any member of the Committee to tell us if we are wrong about that surmise. None did.

Mr. Wolpert expressed support for more detail in the rule, urging the inclusion of both sets of bracketed language. Specific provisions make it easier for the Clerk's Office to explain things to self-represented litigants.

Mr. Freeman asked about the structure of the proposed rule and the relationship among the various parts. What is paragraph (3) doing that isn't covered by the others? Professor Struve explained that (3) is addressed to types of cases, while (4) is address to particular litigants. Then what is the difference between (2) and (3)? The point of (2) is to overcome existing rules that bar unrepresented litigants from e-filing, requiring that they be permitted in at least some situations, while (3) is designed to allay concerns that there are cases where electronic filing would be inappropriate, such as prisoner cases. Professor Struve expressed openness to better ways to make these points clear. Mr. Freeman suggested the possibility of combing (2) and (3) in a single paragraph. Professor Struve stated that she would try to clarify, including the interaction with local rules.

Mr. Wolpert cautioned against requiring that conditions be in a local rule rather than an order. Mr. Freeman yielded to the view of the Clerks. Professor Struve see value in (3), allowing the issuance of an order with conditions.

Professor Struve then turned to privacy issues. (Agenda book page 175). FRAP 25 adopts what applied below; currently this allows for the last 4 digits of a social security number to included. Senator Wyden has suggested the redaction of the complete number. Civil, Criminal, and Appellate seem on board, but Bankruptcy needs a truncated number in some situations. Bankruptcy has done a lot to address the concern, including a published rule that would call for social security numbers on fewer occasions. In addition, there are suggestions to better protect the privacy of minors. There is an interesting twist: how to deal with bankruptcy appeals? There is also a question about whether the same protection is needed for taxpayer identification numbers, but there may be less of a security problem in that area. Criminal is taking the lead regarding pseudonyms for minors, which would also be relevant in some civil habeas actions.

The Reporter pointed to his memo. (Agenda book page 184). He had drafted a possible amendment to FRAP 25 in the expectation that other committees would be proposing amendments to be published this summer. Now it seems that isn't going to happen. The Committee might decide that there is no need to do anything to FRAP 25, on the theory that whatever is done with other rule sets will flow through to the Appellate Rules. Alternatively, it might form a subcommittee to look into the possibility of having a rule along the lines sketched in the agenda book: barring any part of a social security number in an appellate filing by a party not under seal. Most aggressively, it could seek publication this summer, on the theory that, whatever the need for social security numbers in other circumstances, there is no need for them in a public appellate filing by the parties, and getting out ahead of other committees could generate useful public response that those committees could use.

A couple of committee members initially expressed support for the more aggressive approach, but after Judge Bates stated that the Standing Committee would prefer to get proposals from all of the advisory committees at the same time, the Committee decided to wait. But no one saw any need for a subcommittee.

IV. Discussion of Matters Published for Public Comment

A. Amicus Briefs—Rule 29 (21-AP-C; 21-AP-G; 21-AP-H; 22-AP-A; 23-AP-B; 23-AP-I; 23-AP-K)

The Reporter presented the report of the amicus subcommittee. (Agenda book page 189). Proposed amendments to Rule 29 were published for public comment. (Agenda book page 237). We have received hundreds of written comments and about two dozen witnesses testified at a hearing.

There are two major areas that led to comments. First, published FRAP 29(b)(4) would require some limited disclosure regarding the financial relationship between a party and an amicus. Second, published FRAP 29(a)(3) would require nongovernmental amici to move for leave to file.

Taking the latter first: Based on the public comment, there is no support in the bar for a motion requirement. The major reason for this proposal was to deal with recusal issues. Accordingly, the subcommittee offers two alternatives. One alternative is to allow amicus briefs to be filed freely, with no requirement either of a motion or party consent, but make clear that a court of appeals may assign matters without regard to possible recusal based on amicus briefs and that a judge who might be recused because of an amicus brief could choose to recuse or to strike the brief. The other alternative is to leave this part of the rule as-is, so that party consent is sufficient at the initial consideration stage of a case, but that a motion is required for nongovernmental amici at the rehearing stage.

The Reporter invited Judge Thomas, whose concerns about recusal led to the proposed motion requirement to express his views. Judge Thomas said that he preferred to leave the rule as-is. The major problem is with petitions for rehearing. Back when the national rule was changed, the Ninth Circuit left in place a local rule permitting amicus filings on consent at the rehearing stage. That wasn't a problem back then, but it has become a problem in recent years. Smetimes six judges are recused because of a consent filing. The Ninth Circuit is inclined to follow the national rule and require a motion at the rehearing stage. Let's try that out. The Supreme Court model would harm us significantly. Mr. Wolpert added that at least half of the circuit clerks were concerned about the volume of motions to process if motions were required in all cases. The proposal of the California Appellate Lawyers wouldn't work. With the large number of panel permutations, automated recusal is important.

A different judge member agreed with Judge Thomas. If a decision to recuse or strike is made near the end, by that time the party briefs will have already responded to the amicus brief. Striking the brief at that point is too late; the amicus brief had infected the party briefs on the merits.

The Reporter sought to clarify if there was consensus to leave this aspect of the rule as-is. In response to the possibility of adopting the Supreme Court's approach, a liaison member noted that there are speed bumps in the Supreme Court that we don't have. The Reporter added that the Supreme Court has taken the position that an amicus brief does not create recusals there, but that is not the practice in the courts of appeals and there is reason to question whether a FRAP amendment could so provide in the courts of appeals. A different judge member said leave it alone.

In response to a question from Judge Bates, the Reporter stated his view that he did not think that republication would be necessary if the Committee chose to adopt the Supreme Court's approach, noting that the theme of many comments was

along the lines of "don't change this, but if any change is made, it should be to adopt the Supreme Court's approach." On the other hand, there would certainly be no need for republication if the Committee simply decided not to make the proposed change and leave things as-is.

Mr. Freeman suggested the possibility of adopting the Supreme Court's approach at the panel stage. He rarely sees objections there, and he is not sure what it is doing at the panel stage. Judge Thomas responded that it filters out frivolous amicus briefs, briefs that are more like letters to the editor. Pro se amici don't get consent. It serves as a useful filter to keep all sorts of things out of the public record that do not belong there.

An academic member noted that the comments reflected satisfaction with the culture of consent that seemed to be working. As long as that culture is holding, we are fine where we are.

A judge member moved to leave well enough alone in this area. A different judge member clarified that this included no republication. The proposal was adopted unanimously.

The Committee took a break for approximately twenty minutes and resumed at approximately 10:50.

With that decision regarding the motion requirement, the Committee focused its attention on the alternative contained in the agenda book beginning at page 199. The Reporter noted that there were two areas of concern.

First, some commenters were concerned that the proposed rule's description of the purpose of an amicus brief was too restrictive. (Agenda book page 199, line 7.) In particular, most things that an amicus might want to say would have been "mentioned" by a party, and a rule against redundancy among amicus briefs would be difficult to apply: there is little time between the filing of a party's brief and the filing of an amicus brief, and an amicus might not even know who else is filing.

Many of these concerns were tied to the motion requirement. The decision to continue to allow filing on consent at the initial hearing stage takes care of most of these concerns. But the subcommittee took the point that "mentioned" can be too broad and recognized the difficulty in some cases of checking for redundancy among amicus briefs. It therefore moved the statement regarding redundancy among amicus briefs to the Committee Note and rephrased it as something that is helpful when feasible. (Agenda book page 208, line 227). And it revised the statement of purpose to more closely follow Supreme Court Rule 37.1.

Second, many commentators were concerned about the requirement in proposed FRAP 29(b)(4) for an amicus to disclose whether a party is a major

contributor—that is, one who contributes 25% or more of the annual revenue of an amicus. While there was considerable opposition to this proposal, there was also some significant support. Some argued that the 25% threshold was too high, and that a 10% threshold would be more appropriate.

It is important to be clear about what this proposal would and would not require. It would not require the disclosure of all contributors to an amicus. It would not require the disclosure of all major contributors to an amicus. It would not require the disclosure of all contributions by parties to an amicus. It would require the disclosure only of major contributions by parties to an amicus. The Committee previously settled on the 25% level as sufficiently high that the party would be in a position to influence the amicus. And there is reason to think that an amicus with that level of funding from a party would be biased toward that party. As Professor Allision Orr Larsen put it, "As any new researcher is taught and any cross-examiner knows well, a source's motivation is intrinsically tied to its credibility." (Agenda book page 190).

A majority of the subcommittee recommends approval of this aspect of the proposed rule as published. A minority of the subcommittee believes that there is not a sufficient problem to warrant moving forward over such broad opposition and that it would be evaded anyway.

By way of comparison, FRAP 26.1, dealing with corporate disclosures, assumes that if a judge owns stock in a publicly held corporation that in turn owns 10% or more of stock in the party, the judge may have sufficient interest to require recusal. And the Corporate Transparency Act defines a beneficial owner as someone who owns or controls not less than 25% of the ownership interests of the entity.

As for earmarked contributions, current FRAP 29(a)(4)(E)(iii) requires the disclosure of all earmarked contributions by anyone other than the amicus, counsel to the amicus, and a member of the amicus. A prior member of the Committee referred to this as the sock-puppet rule, dealing with situations where someone is speaking through an amicus. The proposed amendment would make two changes: First, it would create a de minimis exception for earmarked contributions of less than $100. Second it would retain the member exception, but not apply that member exception unless the person had been a member for the prior 12 months.

The subcommittee is unanimous in recommending final approval of this amendment, with one slight tweak. In order to deal with the possibility that a long-time member has lets its membership lapse, the member exception is rephrased to apply to those who "first became a member more than 12 months ago."

A lawyer member stated that she was the minority on the subcommittee. She noted that there will be proposals that should be adopted despite widespread opposition. For example, if there was a real need for judges to require a motion for

amicus briefs, that might be appropriate to require despite opposition from lawyers. But here, there is a high level of opposition, but no significant problem to be solved. Judges will assume, for example, that a trade association will support a party engaged in that trade. Sometimes an amicus filing by a trade association comes as a surprise, but most of the time it is solicited by a party. It is unwise to try to solve something that we don't know is a problem in the face of this level of opposition.

A liaison member stated that he agrees. Many of the commenters disagree about many things, but agreed in their opposition to this proposal. The burden is significant and may deter people from participating. The premises underlying the proposal overstate the dangers. The courts of appeals don't get that many amicus briefs. The First Amendment concerns are sincere and worthy of caution. The proposal reflects a more cynical or jaundiced view of the process than is accurate.

The Reporter noted that a witness testified that anyone running a nonprofit would know off the top of their heads anyone who contributed 25% of the revenue; those are the people they go to when they need money.

Judge Bates asked if the commenters were concerned about the 25% percent threshold. The Reporter stated that he asked witnesses whether their objection was that the percentage was too low or whether their objection to disclosure of the financial relationship between a party and an amicus was categorical. He did not think that any witness had a satisfying answer to that question. It appears that they are concerned that this is the camel's nose under the tent and fear any such disclosures now will lead to more extensive disclosures later.

Mr. Freeman stated that the Department of Justice has lots of concerns. An organization might know that someone is a significant contributor, but is it 23% or 26%? Lawyers need to certify and there can be complexity here. That uncertainty can deter amicus filings. The DOJ does not engage in amicus wrangling, but people do. The Reporter noted that a witness stated that if a lot of organizations join an amicus brief it could be burdensome to get all of the necessary information for all of them.

A lawyer member added that amicus wrangling is not necessarily a bad thing. It can prevent duplication. A liaison member asked what's the problem to be addressed. To the extent the concern is that an entity was created for the purpose of an amicus filing, other parts of the proposed rule deal with that. While amici who get lots of funding from a party surely exist, the liaison member doesn't know of any. There is a discrepancy between the 50% threshold in (b)(3) and the 25% threshold in (b)(4). Revenue is harder to determine than legal control; there may be multiple streams of income, and the internal accounting may or may not aggregate those separate streams. Perhaps the threshold in (b)(4) should be raised to 50%.

A judge member stated that no judge in this process has ever said that he or she was hoodwinked by not knowing the information that this provision would

require to be disclosed. The Reporter noted that one judge previously on the Committee had said that if a party made this level of contribution to an amicus, he would want to know about it. The judge agreed but noted that there is a difference between wanting to know and being hoodwinked by not knowing.

A lawyer member noted that she was not terribly impressed by arguments against disclosure by people who would have to make disclosures. It is not surprising that they would oppose disclosure. The point of getting this information is to benefit the public and the judges. It's not about whether the judges have been actually influenced; it is about public trust, that is hurt when such ties are later revealed.

A different lawyer member agreed with prior members that this is a solution in search of a problem. The issue came to the Committee's attention because of elected officials. An academic member noted that amicus practice has evolved enough in the last ten to twenty years and that responding to problems is not the only reason for a rule.

Judge Bates asked if 50% is appropriate for (b)(3), why not for (b)(4)? Mr. Freeman responded that control will always be probative, but contributing a majority of the money in a given year might not be. Attorneys would have to certify; the costs could be high.

The Reporter suggested that the Committee might want to entertain one of three motions; to approve (b)(4) with the 25% threshold, change the threshold to 50%, or eliminate (b)(4). Mr. Freeman moved to strike (b)(4). The motion carried by a vote of five to four, with the chair declining to vote.

The Reporter then directed attention to subdivision (e) on page 205 of the agenda book. The subcommittee recommends a slight revision of the member exception to deal with the situation of a lapsed member. As rephrased, it would continue the member exception but limit that exception to those members who first became a member more than 12 months earlier. The corresponding passage of the Committee Note is on page 211 of the agenda book. It was suggested that the phrase should be "at least" 12 months instead of "more than" 12 months.

A liaison member noted that there was a lot of confusion in the comments about this provision and people misread it. A different liaison member asked what the problem is that needs to be addressed. The Reporter stated that there are two changes in the proposed amendment. One is to limit the member exception; otherwise, the requirement that earmarked contributions be disclosed can be evaded by becoming a member upon making the earmarked contribution. Under the existing rule, if a nonmember wants to fund an amicus brief by an organization and do so anonymously, he can do so as long as he becomes a member. Under the proposed rule, he would be told that if he wants to make a contribution earmarked for the brief that would have to be disclosed, but if he wanted to make a contribution to the general funds, that

would not have to be disclosed. The second is to allow for de minimis earmarked contributions by setting a disclosure threshold of more than a $100. It seems that many of the critics of the proposed rule did not know that the existing rule requires the disclosure of earmarked contributions of any amount (other than by the amicus, its counsel, or its members).

A judge member stated that this is a modest tweak to an existing rule. It reduces the burden on crowd funding an amicus brief, and it does not allow evasion of an existing requirement. It's a good change.

A lawyer member agreed, but thought that the phrasing makes the rule harder to understand. The Reporter noted that the current phrasing emerged from style. And academic member suggested that subdivision (e) be drafted in a more reticulated way. Rather than do so from the floor, the Reporter agreed to come up with a suggested revision over lunch.

A liaison member asked whether the word "helpful" was needed in line 25 on page 200. He also raised the issue of what has to be in the brief, suggesting that the Committee Note state how the disclosure requirements can be satisfied if there is nothing to be disclosed. The Reporter stated that a prior committee member had made a point of wanting the rule to require the brief to include a statement tracking the disclosure requirement. A lawyer member observed that, as phrased in the agenda book (page 204-05), subdivision (b) requires a brief to "disclose whether"—thus requiring an affirmative statement—while (c), (d), and (e), are phrase so that nothing need be said unless they apply.

Professor Struve, invoking the ghost of Appellate Rules Committee past, stated that this would be a change from the existing rule and that the Committee had previously made a point of requiring a brief to "state whether." The reason is the lawyer must make an affirmative statement and is not simply overlooking the requirement. An academic member suggested changing subdivision (e) to make this clear.

The Committee took a lunch break from approximately 12:05 until approximately 1:05.

Upon resuming, the Reporter presented what he had drafted over lunch in accordance with the Committee's guidance.

In subdivision (a)(3)(B), the provision was simplified to read, "the reason the brief serves the purpose set forth in Rule 29(a)(2)."

The Committee Note to subdivision (e) on page 211 of the agenda book was revised to refer to "those who first became members of the amicus at least 12 months earlier."

Subdivision (e), dealing with earmarked contributions, was rephrased to read as follows:

> (e) Disclosing a Relationship Between an Amicus and a Nonparty.
>
> (1) An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must identify each such person. But disclosure is not required if the person is
>
> - the amicus,
> - its counsel, or
> - a member of the amicus who first became a member at least 12 months earlier.
>
> (2) If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members, but must disclose the date the amicus was created.

With subdivision (e), like subdivision (b) phrased as "disclose whether," discussion turned to the length of such disclosures and excluding them from the word count of the brief. One suggestion was that the disclosure itself could be short, the response was that the practice is to use the full language. The key is not to make the disclosure short; it is to not have it count against the word limit. There is some uncertainty whether the existing disclosure counts or not.

Working with the proposed text projected on a screen, the Committee worked to revise the text to make clear that the disclosures would not be counted. It decided to refer to "the disclosure statement" required by the Rule rather than the "disclosures" required by the rule. This was designed to trigger Rule 32(f)'s exclusion of "disclosure statement" from the length limit.

Judge Bates asked a different question, whether "intended to pay" was necessary. Professor Struve noted that the phrase is in the current rule, and some readers might view the change as substantive.

The Committee then discussed the proper order of the required contents of an amicus brief under FRAP 29(a)(4). As published, the amicus disclosure requirements were listed after the description of the amicus. But this location in a brief is after the pages included in the length count begin. To facilitate word counts, proposed FRAP 29(a)(4)(F) was moved earlier in the text to be FRAP 29(a)(4)(B), immediately after any corporate disclosure statement required by FRAP 29(a)(4)(A).

These changes were adopted by consensus, except for the last one, which was adopted by a vote of seven to one.

The Committee then voted unanimously to give its final approval to the proposed amendments to FRAP 29, as amended at this meeting, along with conforming amendments to FRAP 32(g) and the appendix of length limits.

B. Form 4 (19-AP-C; 20-AP-D; 21-AP-B)

Lisa Wright presented the report of the Form 4 subcommittee. (Agenda book page 812). The review Form 4 that the subcommittee recommends for final approval is greatly simplified. It is designed to provide courts with the information they need while omitting what is not needed. The witnesses and written comments were generally supportive. Sai pressed for more fundamental changes, but the subcommittee thought some of them were addressed to the IFP statute itself.

Professor Judith Resnick and students at Yale Law School viewed it as a great leap forward. They suggested some changes, some of which have been adopted. Plus there have been tweaks by the style consultants. The National Association of Criminal Defense Lawyers suggested some changes to deal with CJA counsel, but the subcommittee concluded that if a party has appointed counsel, that appointed counsel can deal with it; it is better to keep this form simpler for those without counsel.

After correcting one typo on page 816 (an extra "are" in the first paragraph after the table), the Committee unanimously gave its final approval to Form 4.

V. Discussion of Matters Before Subcommittees

A. Intervention on Appeal (22-AP-G; 23-AP-C)

The Reporter presented the report of the intervention on appeal subcommittee. (Agenda book page 829). The Federal Judicial Center is conducting extensive research into motions to intervene in the courts of appeals. The subcommittee decided to await the results of that research before further proceeding. Best practices call for not providing an interim report at this stage of the research. More information is expected at the fall meeting.

B. Reopening Time to Appeal (24-AP-M)

The Reporter presented the report of the reopening time to appeal subcommittee. (Agenda book page 831). At the last meeting, a subcommittee was appointed to consider a suggestion from Chief Judge Sutton regarding Rule 4, echoed by Judge Gregory, that the Committee look into reopening the time to appeal under Rule 4(a)(6).

Since then, the Supreme Court granted cert in *Parrish*, the case in which Judge Gregory voiced his suggestion. In opposing cert, the Solicitor General noted the appointment of this subcommittee. Particularly because the Supreme Court granted cert, fully aware that this Committee was looking into the question, the subcommittee decided to await the decision in *Parrish* before proceeding further.

C. Administrative Stays (24-AP-L)

Mr. Freeman presented the report of the administrative stays subcommittee. Under FRAP 8, a court of appeals can stay a district court order pending appeal. First, one asks the district court, then the court of appeals. This process is fairly well understood and determines the status of a district court order while the appeal plays out, which can be a year or more.

An administrative stay addresses what happens denying the briefing on a motion to stay. That takes some time, sometimes two weeks or more just to brief the stay motion. What is the status of the district court's injunction during that period? The issue does not arise often, but it does with some frequency in his cases, especially when there is a change in administration. The subcommittee, following common usage, uses the "stay," but the issue also includes injunctions pending appeal and vacatur of prior orders.

Will Havemann of Hogan Levells, and previously in Mr. Freeman's office, suggested that rulemaking address administrative stays. In the case that prompted the suggestion, the Court of Appeals for the Fifth Circuit granted an administrative stay and referred the motion for a stay pending appeal to the merits panel. That administrative stay remained in effect without a finding of likelihood of success on the merits, or irreparable harm, etc. The Supreme Court declined to rule because the Court of Appeals had not yet rule on the stay application. Justice Barret and Justice Kavanaugh said that an administrative stay should last no longer than necessary to make an intelligent decision on the motion for a stay pending appeal.

The subcommittee does not suggest codifying the standards for granting an administrative stay, but it does suggest making clear what an administrative stay is for and its duration. The proposed text with Committee Note begins on page 839 of the agenda book. How it would fit with the rest of FRAP 8 is shown on page 839. The proposed rule describes an administrative order as one temporarily providing the relied mentioned in FRAP 8(a)(1), calls for it to last no longer than necessary for the court to make an informed decision, and provides that can last no longer than 14 days. It largely tracks Will Havemann's proposal.

A big question is whether 14 days is right. It is sort of modeled on Civil Rule 65, which allows for a TRO to be in place for 14 days, subject to 14 day extension. The subcommittee considered 7 plus 7, and 14 plus 14; it could use some feedback on this. At the time of the subcommittee meeting, 14 days seemed perfectly fair; now it seems

like a long time. The expectation is that a time limit would be treated the way TROs are now: if a TRO runs over, it is treated as an appealable preliminary injunction; if an administrative stay runs over, it would be treated as a grant of a stay pending appeal, enabling SCOTUS review. The idea is to avoid the situation where one can't get a ruling from the Supreme Court because there is no ruling from the court of appeals.

Judge Bates wondered whether 14 days is a little long, compared with the rigid standards applicable to TROs. He also asked about empowering a single circuit judge to grant relief.

Mr. Freeman responded that the power of a single judge is in the existing rule, just as a single justice of the Supreme Court can grant a stay. In his twenty years, he has never seen it and doesn't feel strongly. But if there is an instantaneous need, it could be useful. Or the matter can just be left to internal procedure of the courts of appeals.

Judge Bates asked about the opinion of Justice Sotomayor and Justice Jackson, which emphasized maintaining the status quo. Mr. Freeman explained that their focus on the status quo in that case might have been an artifact of what the United States was saying in that case. There are all kinds of fights about what counts as the status quo. If the district court grants a preliminary injunction, and the court of appeals grants a stay, what is the status quo? It is sometimes said that an injunction requires a higher standard, but this doesn't hold true across all cases.

Judge Bates asked about requiring reasoning. Mr. Freeman responded that most courts do not issue written opinions, at least beyond 1 sentence. Requiring reasoning pushes an administrative stay to look more like a stay pending appeal.

Judge Bates asked about whether there is a need to go to the district court for an administrative stay, as there is for a stay pending appeal; what about jurisdiction? Mr. Freeman responded that he didn't think there was any effect on jurisdiction; *Griggs* doesn't apply to stay motions. The proposed amendment would not affect at all the obligation in FRAP 8(a)(1) to seek relief in the district court first.

A judge member said that 14 days is not realistic as an absolute cap in all cases and all circuits. Sometimes a court of appeals has to wait for the record, or the briefing; sometimes it takes 6 months to get the record. Leave it to each court whether to allow one judge to grant a stay or whether to require three. A 14 day limit causes more trouble than it is worth. It would be okay to require that the order itself state a timeline. Sometimes the parties don't care if the stay is in effect 1 month or 4 months.

A liaison member stated that not having a time limit defeats the purpose of the rule. It's okay to allow an administrative stay without reasoning. And if the

parties agree to a longer stay, that's fine. We could simply add "unless parties agree otherwise." Or we set a timeframe of 7 or 14 days and allow for 7 or 14 more for good cause.

The judge responded that there is often no urgency. Less than 1% of cases go to the Supreme Court; we should manage our docket.

Mr. Freeman responded that this is very helpful. If the record is not available, that's on the appellant. If the appellant can't put on its case for a stay, then deny the stay. It doesn't matter in a lot cases, but matters a lot in some cases. Not all courts are as good about this as in the Ninth Circuit.

Judge Bates suggested that without a time limit, we play into the same problem that the Supreme Court was troubled about. The other judge responded that the order can set its own time limit; we try not to be cute about it.

In response to a point raised by an academic member, Mr. Freeman suggested that the rule, like Civil Rule 65, shouldn't say that an administrative stay that lasts too long is a grant of a stay pending appeal, but rather leave it to the higher court to find appellate jurisdiction at that point.

A judge asked, if the parties don't object, what's the problem? Mr. Freeman agreed in that situation, but there are others where the parties are in a bind creating a classic rules problem: A party is aggrieved but can't do anything. The TRO parallel enables the party to seek further review.

A liaison member suggested that ordinary cases be decoupled from high profile cases. The Supreme Court has put everyone on notice. Is a rule needed, or just await developments?

Judge Bates asked if it was contemplated that an administrative order would issue only after the filing of a notice of appeal? Generally, yes, although an administrative order pending mandamus is possible. How about without a request from a party? Yes, courts can do it, not trying to stop them. But there has to be some stay motion in order for there to be an administrative stay granted. Mr. Wolpert added that the Court of Appeals for the Tenth Circuit uses administrative stays sparingly and never without a stay motion.

A judge member raised the example of a criminal defendant granted immediate release by the district court. The government seeks a stay pending appeal, but there is no transcript available. It seeks an administrative stay pending the receipt of the transcript. It will probably be more than 14 days to get the transcript. At least there must be a good cause ability to extend past 14 days. Mr. Freeman again noted that this is helpful and thanked the judge. We need to think about immigration cases and

criminal cases. An academic member suggested that the time period begin upon receipt of the record.

Professor Struve suggested that the impact of the proposed rule in criminal cases should be explored, including the interaction with Criminal Rule 38. A judge member raised agency cases. Mr. Freeman responded that there is a separate rule, FRAP 18, for agency cases, and the issue doesn't seem to come there (although maybe in immigration). The judge stated that there are lots of requests for a stay of removal. Judge Bates noted that if the proposed rule is ultimately in place, the implication might be that it couldn't be done in agency cases. Mr. Freeman responded that no such negative inference was intended.

It became clear that the Committee was not prepared to recommend publication at this stage. The subcommittee will continue its work.

D. Rule 15 (24-AP-G)

Professor Huang presented the report of the Rule 15 subcommittee. (Agenda book page 841). The subcommittee is considering a suggestion to fix a potential trap for the unwary in Rule 15. The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then the original petition to review that agency decision effectively disappears and a new one is necessary.

The basic idea of the suggestion is to align Rule 15 with Rule 4. At the last meeting, two tasks were left to be done. First, Judge Eid was going to check in with the D.C. Circuit to see if the judges remained opposed to the idea. Second, the subcommittee would continue drafting.

Judge Eid stated that she had raised this issue at the Standing Committee meeting and that Judge Millett said that she would check with her colleagues. Judge Millett reports that there is no large opposition at this point. Technological innovations have alleviated the concerns that were raised when the issue was raised in the past. Judges may wind up with some concerns about particulars of the proposal.

Professor Huang explained that the subcommittee's proposal builds on the prior proposal from 2000, plus the feedback from the D.C. Circuit judges back then. It is designed to reflect the party-specific nature of administrative review, in contrast to the usually case-specific nature of civil appeals. It aligns with FRAP 4, and clarifies that, as with civil appeals, if a party wants to challenge the result of agency reconsideration, a new or amended petition is required. The subcommittee chose not to attempt to align with the multicircuit review statute.

In accordance with a suggestion from Professor Struve, the phrase "to review or seek enforcement" on page 843, line 9, should be changed to "to seek review or enforcement".

Professor Struve added that ellipses are needed at the end to avoid accidental deletion of the rest of the rule. The Reporter agreed and added that existing (d) and (e) would be re-lettered.

The question arose whether the phrase "or application to enforce" was need in the last sentence. The Reporter couldn't think of a situation where it would be needed, but Judge Bates noted that it was safer at this stage to keep it in.

The Reporter asked if it was sufficiently clear that the use of the word "such" in line 10 on page 843 refers to a petition that "renders that order nonreviewable as to that party." Committee members responded yes, with one noting that it needs to be read twice, but then it is clear.

The Committee decided to move the discussion of what the amendment is designed to do from the third paragraph to the first paragraph of the Committee Note. means that the is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Instead, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider.

Mr. Freeman suggested that the word "timely" be added to line 5, so that only a timely petition would be entitled to the benefit of the amended rule. Several members of the Committee were troubled by the idea of describing a petition as both premature (too early) and untimely (too late) particularly since the proposed rule operates in a party-specific way. Mr. Freeman's motion to require that a petition be otherwise timely failed for want of a second.

The Committee unanimously decided to ask the Standing Committee to publish the proposed amendment (as amended at this meeting) for public comment.

VI. Discussion of Recent Suggestion

The Reporter presented a recent suggestion from Jack Metzler regarding the calculation of time. (Agenda book page 849). He suggests that FRAP 26(a)(1)(B) be amended to not count weekends. He is concerned about gamesmanship: counsel can deliberately file a motion on Friday so that the ten-day period for responses covers two weekends, reducing the number of workdays available.

A central feature of the massive time computation project was to count days as days. The Reporter would be loath to undo that. The time project usually chose multiples of 7, but for motions it went from 8 days to 10 days. If the Committee does

anything here, it could consider shortening the time to 7 days or lengthening the time to 14 days. Or it could leave well enough alone.

A motion to remove the item from the agenda was approved unanimously.

VII. Review of Impact and Effectiveness of Recent Rule Changes

The Reporter directed the Committee's attention to a table of recent amendments to the Appellate Rules. (Agenda book page 855). This matter is placed on the agenda to provide an opportunity to discuss whether anybody has noticed things that have gone well or gone poorly with our amendments. No one raised any concerns.

VIII. New Business

No member of the Committee raised new business.

X. Adjournment

Judge Bates announced that this was his last meeting of the Appellate Rules Committee because his term as chair of the Standing Committee is expiring. Everyone congratulated and thanked Judge Bates for his leadership.

Judge Eid announced that the next meeting will be held on October 15, 2025, in Washington, D.C.

The Committee adjourned at approximately 4:00 p.m.

TAB 4

TAB 4A

MEMORANDUM

DATE: September 21, 2025

TO: Advisory Committee on Appellate Rules

FROM: Catherine T. Struve

RE: Project on self-represented litigants' filing and service

I write to report on the project on service and electronic filing by self-represented litigants, which has two basic goals. As to service, the project's goal is to eliminate the requirement of separate (paper) service (of documents after the case's initial filing) on a litigant who receives a notice of case activity[1] through the court's electronic-filing system or a court-based electronic-noticing program. As to filing, the idea is to make two changes compared with current practice: (1) to presumptively permit self-represented litigants to file electronically (unless a court order or local rule bars them from doing so) and (2) to provide that a local rule or general court order that bars self-represented litigants from using the court's electronic-filing system must include reasonable exceptions or must permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

Part I of this memo summarizes developments to date this year. Part II discusses specific drafting and policy questions on which we would like to get the advisory committees' views. Part III analyzes an issue that newly arose over the summer – namely, what the Rules currently say, and what they ought to say, about the rejection of a proposed filing because it is not submitted in conformity with rules governing electronic filing.

This memo is somewhat lengthy, so I am including a table of contents:

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1 Also known as a notice of electronic filing.

I. Project developments during 2025

At the time of the Standing Committee's January 2025 meeting, the Appellate, Civil, and Criminal Rules Committees appeared open to working in tandem to move forward with proposed amendments, but the Bankruptcy Rules Committee had expressed concerns specific to the bankruptcy context. Based on the Standing Committee's January 2025 discussion, I reported to the advisory committees in spring 2025 that the path seemed clear to proceed with consideration of proposed amendments to the Civil, Appellate, and Criminal Rules even if corresponding amendments to the Bankruptcy Rules were not to be proposed. Accordingly, in memoranda to the advisory committees, I sketched possible amendments to the Civil, Criminal, and Appellate Rules that would achieve the twin goals of the project. I also discussed two different packages of amendments to the Bankruptcy Rules – one that would parallel the proposed amendments that were to be considered by the Civil, Appellate, and Criminal Rules Committees, and an alternative that could be adopted if the Bankruptcy Rules Committee instead were to adhere to its

decision not to implement the proposed filing and service changes.

At its spring 2025 meeting, the Bankruptcy Rules Committee further discussed the project and decided that – in light of the fact that the Civil, Criminal, and Appellate Rules Committees were willing to proceed with proposed amendments – the Bankruptcy Rules Committee should attempt to participate as well. The Bankruptcy Rules Committee referred the project to a subcommittee and tasked the subcommittee with attempting to find ways to address the concerns that originally prompted the Bankruptcy Rules Committee to decide that the Bankruptcy Rules should not be included in the project's package of proposed amendments.

In June 2025, I circulated to the project's working group (composed of the Advisory Committee reporters, court clerk liaisons, Rules Office staff, FJC staff, and consultants) a memo reporting on the spring 2025 developments, and I appended an updated draft of the proposed rule sketches. The memo set out a set of questions for consideration by the working group. Part II of this memo incorporates feedback provided over the summer by the working group and by the Criminal Rules Committee's Pro Se Filing Subcommittee. I am greatly indebted to the many participants who carefully and thoughtfully engaged with these questions. Also, Part III of this memo grows out of a question raised during the summer deliberations.

The Bankruptcy Rules Committee's Technology and Privacy Subcommittee considered the project at a meeting in late August 2025. In the fall 2025 agenda book for the Bankruptcy Rules Committee, the Technology and Privacy Subcommittee reports as follows:

> After a full discussion of the options, the Subcommittee voted to recommend that the Advisory Committee opt into both aspects of the SRL project and consider at the spring 2026 meeting amendments to Rules 5005, 8011, and 9036 paralleling those to be proposed by the other advisory committees.
>
> The Subcommittee made this decision for several reasons. First, this approach would keep the Bankruptcy Rules on filing and service consistent with the rules applicable in the district courts and courts of appeal. Doing so might reduce confusion and would eliminate the need to resolve which rules should apply to bankruptcy appeals. Second, having consistent rules would also avoid any questions about why SRLs are treated differently in the bankruptcy courts…. Finally, because at this stage the advisory committees are only proposing publication of the amendments for comment, going all in might allow the Advisory Committee to gauge from the comments how broadly shared are the concerns that have been expressed by committee members. Following publication, the Advisory Committee would be able to decide whether to proceed with the amendments or to opt out of the project in whole or in part based on the comments received.

At the time of this writing, the Bankruptcy Rules Committee has not yet met. But it is the

first advisory committee to meet this fall, so at the Appellate Rules Committee's meeting we will be able to report on the Bankruptcy Rules Committee's decision.

II. Drafting and policy questions for the fall Appellate Rules Committee meeting

This part of the memo collects feedback received during spring and summer 2025. To illustrate the ideas discussed in this memo, I'm enclosing two versions of an updated set of the sketches of the potential draft rules that were included in the spring 2025 advisory committee agenda books; one set is clean, and the other set is redlined to show how the draft rules differ from the versions that were in the spring agenda books. I'm including only the drafts of the Civil, Criminal, and Appellate Rule amendments; the Bankruptcy Rules aspect of the project is currently sufficiently fluid that updating the possible Bankruptcy Rules amendments seems premature. In this memo, I am highlighting only the issues that seem pertinent to the Appellate Rules, and I pass lightly over (or omit) issues that pertain only to another set of rules.

Part II.A seeks the Appellate Rules Committee's input on issues relating to reasonable exceptions, conditions, and restrictions concerning e-filing access for self-represented litigants. Part II.B turns to the service provision and asks whether we should retain the caveat concerning non-receipt. Part II.C asks whether the draft should continue to include the proposed new provision concerning service of unfiled papers. Part II.D notes that consensus has formed in support of the term "notice of case activity" in place of other terms such as "notice of electronic filing." Part II.E notes the question whether the proposed rules should use the term "unrepresented" or "self-represented" and observes that the answer might vary across the rules sets. Part II.F, in turn, observes that consensus developed over the summer in support of referring to self-represented (or unrepresented) "parties" rather than "persons." Part II.G notes broad support among the working-group participants for using longer, more explicit wording where it seems likely to assist self-represented litigants. Part II.H reports that working-group participants have decided not to attempt to include in the current project a revamp of the prison-mailbox rule. Part II.I discusses the likely need for Appellate Rule 25 to specially address case-initiating petitions. And Part II.J very briefly reviews a few considerations that may arise depending on whether the Bankruptcy Rules Committee decides to participate in the current project.

A. E-filing: Reasonable exceptions, conditions, and restrictions

During the spring 2025 Civil Rules Committee meeting, a member asked what the phrase "reasonable exceptions" means in the draft e-filing rule. During the Appellate Rules Committee meeting, a member asked how "reasonable exceptions" (in subpart (ii) of the draft e-filing rule) relates to "reasonable conditions and restrictions" (in subpart (iii) of that rule).

The current e-filing rules (other than the Criminal Rule) already employ the concept of "reasonable exceptions." That is, the rules provide that a self-represented litigant "may be required to file electronically only by court order or by a local rule that includes reasonable

exceptions." The proposed draft carries this phrase forward in that provision.

The proposed draft rule additionally uses the "reasonable exceptions" phrase in its new provision setting limits on local provisions that prohibit self-represented litigants from using CM/ECF. Proposed Civil Rule 5(d)(2)(B)(ii), as shown in the spring 2025 agenda books, stated: "If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented persons from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the case]."

The draft rule also uses the idea of "reasonable conditions and restrictions." Proposed Civil Rule 5(d)(2)(B)(iii) states: "A court may set reasonable conditions and restrictions on unrepresented parties' access to the court's electronic-filing system."[2]

The proposed draft Committee Note to Civil Rule 5, as it appeared in the spring 2025 agenda books, explained:

> Under Rule 5(d)(2)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 5(d)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.
>
> A court can comply with Rules 5(d)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented litigants to the court's electronic-filing system, or (2) providing self-represented litigants with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program).
>
> For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing

2 In quoting the current draft, I incorporate changes discussed later in this memo. See, e.g., infra Parts II.E and II.F (discussing use of "unrepresented" and "party").

system. Rule 5(d)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 5(d)(2)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

Reflecting on the Civil Rules Committee member's question, I think it would be helpful to clarify in the Committee Note that the "reasonable exceptions" referred to in the Rule text means exceptions that provide the "reasonable access" discussed in the Committee Note. I think we could do this by adding this sentence at the end of the second quoted Note paragraph above: "That is, a local rule generally prohibiting access to the court's electronic-filing system would include 'reasonable exceptions' (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system." This addition is shown in the enclosed updated sketches.

As to the Appellate Rules Committee member's question, I think the answer is that "reasonable exceptions" (in subpart (ii)) and "reasonable conditions and restrictions" (in subpart (iii)) are intended to work in tandem, but (iii) is broken out separately to stress the courts' flexibility under the rule (including their ability to impose conditions and restrictions by court order rather than only in a local rule). It may be useful to add language to the Committee Note to explain this at greater length. Something like this might help:

> Rules 5(d)(2)(B)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits unrepresented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow unrepresented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).
>
> Conversely, item (iii)'s authorization for courts to impose reasonable conditions on unrepresented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits unrepresented parties from e-filing might nonetheless provide an exception where the unrepresented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

I've added this concept to the sketch of the Committee Note. Suggestions of better ways to clarify these points are welcome.

The Committee Note's discussion of incarcerated litigants came up during the

Bankruptcy Rules Committee's conversation – in particular, the Note's statement that denying access to incarcerated litigants would not violate the Rule's concept of "reasonable access." A participant read this to mean that the Note was suggesting that it would be reasonable to deny access to a particular type of self-represented litigant if there were a lot of them – and suggested that by analogy it would be reasonable to deny access to self-represented debtors in bankruptcy because there are a lot of them. That is definitely not what I had in mind when drafting the reference to incarcerated self-represented litigants; it's not their numerosity, but rather the fact that they are incarcerated and lack consistent access to electronic devices and the internet, that justifies treating them differently for purposes of the idea of "reasonable access." The misunderstanding that surfaced in the Bankruptcy Rules Committee discussion suggests that this should be spelled out in the Note. I've done so by adding a parenthetical to the relevant sentence in the Note: "(in light of the distinctive logistical considerations that apply in carceral settings)."

Also, during the Bankruptcy Rules Committee's discussion, a member asked whether a court would comply with the rule if it adopted a local rule stating that self-represented litigants can use the court's e-filing system only with leave of court. This seems to me to present a policy question that the Advisory Committees should consider. On one hand, if a district that currently says that no self-represented litigants are ever allowed to use the court's e-filing system switches to saying they can only use it with court permission, one could say that is a step in the right direction. But on the other hand, if a district's local rule *says* court permission is required but *in practice* the court never grants such permission, that would not actually help the self-represented litigants; and arguably, such a local rule, as applied by a court that never grants permission even to well-qualified self-represented litigants, might not count as a rule that "includes reasonable exceptions." Over the summer, a member of the Criminal Rules Committee suggested that language could be added to the Committee Note to address this topic. I have added such language to the enclosed draft, shown in brackets, in order to facilitate discussion: "[Some courts have adopted local rules that permit unrepresented parties to use the court's electronic filing system only if they obtain permission from the judge to whom the case is assigned; such a local rule would meet the Rule's requirement of 'reasonable access' so long as such permission is not unreasonably withheld in practice.]"

B. Service: Whether to retain caveat regarding learning of non-receipt

Under the current service rules, the provision on service by means of CM/ECF has this caveat: "[S]ervice [by CM/ECF] is complete upon filing … , but is not effective if the filer or … learns that it did not reach the person to be served." In the sketches for the spring agenda books, I did not include this caveat in the service-by-CM/ECF provision. The draft Committee Note explained:

> Although [the draft Rule] carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in [the new service-via-CM/ECF provision]. This is because experience has demonstrated the general reliability of notice and service through the court's

electronic-filing system on those registered to receive notices of electronic filing from that system.

During the spring 2025 discussions, a member of the Criminal Rules Committee expressed wariness about omitting this caveat, so over the summer I flagged this issue for discussion by the working group. Participants voiced varying perspectives on this issue. One participant suggested omitting the caveat from the service-via-CM/ECF provision's text but adding an admonition to the Committee Note that practitioners should alert their opponent if they become aware of a snafu with that service.[3] One of the clerk representatives felt that the caveat should be retained in the provision concerning service by other electronic means – because more could go wrong with service via email, for example – but seemed less convinced that the caveat was necessary for the service-via-CM/ECF provision – because "it is the court that would get the 'bounceback' notice if a NEF/NDA was not received by a party or counsel to whom it was sent, and we would always do something about it (even in the absence of a caveat in the rule)." On the other hand, another clerk representative suggested that system outages could occasionally disrupt normal electronic service via CM/ECF, and that the caveat could be useful in such instances. Accordingly, I have added bracketed language to the rule sketch illustrating how the caveat could be included in the service-via-CM/ECF provision.[4]

C. Service of un-filed papers

The Civil Rule 5 sketch shown in the spring agenda books included a proposed Civil Rule 5(b)(4) on service of documents not filed with the court: "Rule 5(b)(3) governs service of a paper that is not filed." The Committee Note explains: "New Rule 5(b)(4) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 5(b)(2): If a paper is not filed with the court, then the court's electronic system will never generate a notice of filing, so the sender cannot use Rule 5(b)(2) for service and thus must use Rule 5(b)(3)."

In revising the rule sketches for comment by the working group in summer 2025, I retained the service-of-papers-not-filed provision as proposed Civil Rule 5(b)(4) and proposed Criminal Rule 49(a)(5), and I also added that provision as proposed Appellate Rule 25(c)(5), because Ed Hartnett had pointed out an example of an item that could be served without being

3 The suggested note language would read: "The omission of this provision from this rule does not mean that a filer who learns that notice of case activity has not reached someone should do nothing; professionalism and courtesy require at least alerting the party so that they can correct the problem, which might be at their end or at the court's end." This strikes me as useful language to include in the Note, unless others feel that it is the sort of practice advice that we are discouraged from including in Committee Notes.

4 See proposed Civil Rule 5(b)(2)(A), proposed Criminal Rule 49(a)(3)(A), and proposed Appellate Rule 25(c)(1)(A).

filed in connection with an appeal.[5] I sought the working group's comments on whether these provisions are worth including in the proposed rules.

As background for my inquiry, I noted that the Civil and Criminal Rules take different approaches as to papers that are served but not filed. The Civil Rules take the view that, for example, discovery responses are papers that are served, and so when Civil Rule 5(d)(1) directs that papers after the complaint that must be served must also be filed, it includes an additional sentence listing out items (disclosures, discovery requests, and discovery responses) that mustn't be filed as an initial matter.

Criminal Rule 49, for its part, does not discuss in explicit terms service of, for example, disclosures under Criminal Rule 16 or production of witness statements under Criminal Rule 26.2. It may be that Criminal Rule 49, unlike Civil Rule 5, simply regards such papers as falling outside its ambit. Rule 49(a)(1)'s list of papers that must be served is: "any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper." By contrast, Civil Rule 5(a)(1)'s list of papers that must be served explicitly includes "discovery paper[s] required to be served on a party, unless the court orders otherwise," Civil Rule 5(a)(1)(C).

This difference might lead to a difference concerning proposed Criminal Rule 49(a)(5). Even in Civil Rule 5, it's not clear to me that we really need the served-but-not-filed provision; it simply makes explicit what is already implicit, namely, that if a document is not filed, then it won't be served on anyone via the court's electronic-filing system. Given the different treatment of the topic of served-but-not-filed documents in the Criminal Rules, I wondered whether this provision might be even less useful in the context of the Criminal Rules.

In discussions over the summer, working-group participants from the Appellate Rules Committee supported including the service-of-papers-not-filed provision, observing that the explicit statement of how to handle such service could be useful guidance for self-represented litigants. (Some participants from the Criminal Rules Committee, by contrast, questioned whether the provision should be included in the Criminal Rule.)

D. Using "notice of case activity" instead of "notice of filing"

The sketches included in the spring agenda books used the term "notice of filing" to denote the notice of electronic filing, and the draft rules defined that term to "include[] a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket."

5 The example was the designation of material for the appendix pursuant to Appellate Rule 30(b)(1).

Since then, we received feedback from CACM advisory groups that suggested that we should instead use the term "notice of case activity." The groups explained "that 'filing' fails to reflect the full spectrum of entries and that the word 'docket' is not in common usage among the public."

In the rule sketches that I circulated to the working group in summer 2025, I updated the terminology to use "notice of case activity," and solicited input on the change. Comment on this from the working group participants (and the Criminal Rules Committee subcommittee) was uniformly positive.

E. "Unrepresented" versus "self-represented"

The current rules use "unrepresented" to refer to a litigant who does not have a lawyer. With the concurrence of the style consultants, I proposed, in the spring 2025 agenda book materials, that we could instead use "self-represented." However, by the time of the spring meetings I was reconsidering that suggestion, because it turned out to be more complicated than I had anticipated. In the updated draft rule amendments circulated to the working group in summer 2025, I maintained the "self-represented" usage that was shown in the spring 2025 agenda books, but I solicited the working group's feedback on this usage.

I noted that for context, it may help to consider the possible range of terms. In summer 2025, participants in the Access to Justice Network[6] listserv discussed at some length the pro's and con's of various possible terms to replace "pro se." One of the few points of consensus was that "pro se" should not be used. Other candidates that were mentioned included "self-represented," "unrepresented," "court user," "litigant / party," "legal consumer," "customer," "needy civil legal aid citizens," "community member / person," "people navigating legal problems," and (from Britain and Canada) "litigants in person." Participants pointed out both advantages and disadvantages of various of these terms, and there was no general consensus as to which term was best – perhaps in part because the choice of term depends on context and audience. In writing to the working group, I suggested that most of these terms would not work in the context of the filing and service rules (where the term must flag that this is a person who is not represented by a lawyer); for those rules, the viable options on this list seem to be "self-represented" and "unrepresented."[7]

I suggested that, if we were writing on a blank slate, I thought "self-represented" would be preferable to "unrepresented." "Self-represented" recognizes that the litigant is advocating on the litigant's own behalf. The Latin term "pro se" means "for oneself," which is closer to

6 "The Access to Justice Network is a community of judges, court managers, attorneys, librarians, researchers, technologists, and community leaders dedicated to closing the justice gap. It is the successor organization to the Self-Represented Litigation Network (SRLN)." https://a2jnetwork.org/.

7 "Litigant in person" is intriguing, but probably would be too unfamiliar in the United States.

"self-represented" than "unrepresented." Courts and legal organizations increasingly use "self-represented" to describe pro se litigants. See, e.g., https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/self-represented-litigants. And the entry in Black's Law Dictionary for "pro se litigant" includes "self-represented" but not "unrepresented": "pro se litigant (1857) One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket involving a pro se>. — Often shortened to pro se, n. — Also termed pro per; self-represented litigant; litigant in propria persona; litigant pro persona; litigant pro per; litigant in person; (rarely) pro se-er." Black's Law Dictionary (12th ed. 2024) (Bryan A. Garner, Ed. in Chief). The style consultants have indicated that – in the abstract – they do not see a problem with "self-represented."

But, I observed, a complication arises because multiple existing rules already use the term "unrepresented." If we were to update our terminology to use "self-represented," then at least within a given rule set we probably should simultaneously amend other rules that use "unrepresented." Additionally, some rules use the term "represented" to denote having a lawyer – a usage that arguably does not fit well with the idea that a litigant without a lawyer is self-*represented*. (But note that in at least one other context it is normal to state such contrast: we don't think of it as incoherent to say "insured" and "self-insured."[8]) If we view the represented / self-represented contrast as potentially confusing, then we would need to consider replacing those "represented" references.

I provided to the working group (and am including here as an appendix) a chart that collects the rules that seem to me to be potentially relevant to this analysis.[9] The discussion that followed suggests to me that the Criminal Rules Committee may decide to use "self-represented" and that the other three Advisory Committees are more likely to use "unrepresented":

1. Criminal Rules

I had suggested to the working group that it makes sense for the Criminal Rule 49 draft to use the term "self-represented" (and, where necessary, "represented by counsel"). The Criminal

8 I am indebted to Bryan Garner for this point.

9 In compiling this chart, I first searched the rule text for "represented" and "unrepresented." Then, to make sure I wasn't missing a potentially relevant rule, I also searched separately for "attorney," "counsel," or "lawyer." The chart shown in the text includes rules discussing a person's representation by a lawyer as well as rules discussing a person's representation by other representatives such as guardians. I did not include rules discussing the representation of a litigant's interest by one or more other litigants (as with some Bankruptcy Rules concerning creditors). Nor did I include rules that refer to an attorney but are not characterizing a litigant as represented or not represented, which is the distinction that interests us here. (Examples of omitted rules would be rules referring to, e.g., "the debtor's attorney" or – as in Bankruptcy Rule 2006(b) – communications "from an attorney to a claim owner who is a regular client or who has requested the attorney's representation."

Rules currently use the terms "represented" and "unrepresented" only in Criminal Rule 49,[10] which of course is the rule for which we are already considering revisions, so it would not be at all cumbersome to update the terminology to "self-represented." Moreover, the Criminal Rules Committee discussed this particular usage question this spring as it prepared its Rule 17 proposal, and purposely used the term "self-represented." And the Standing Committee approved the Rule 17 proposal for publication without changing that term.

Both working-group participants from the Criminal Rules Committee and also the Criminal Rules Committee's subcommittee expressed agreement with this approach.

2. Appellate Rules

I had suggested to the working group that it could also make sense to use the term "self-represented" (and, where necessary, "represented by counsel") in Appellate Rule 25.

But I noted that the cost of doing so would be that – for consistency within the Appellate Rules – we would then also need to update terminology in Appellate Rules 28.1, 30, 31, and 32:[11] "Unrepresented" in Rules 28.1, 30, and 32 would become "self-represented." In Rule 32(d), "represented" would become "represented by counsel." Also, Rules 30 and Rule 31 contain language that could be rephrased to require service of a copy "on each self-represented party and on counsel for each party separately represented by counsel."[12]

Working-group participants from the Appellate Rules Committee expressed a preference for using "unrepresented," in part because of the multiple conforming changes that would be required if we were to switch to using "self-represented."

3. Bankruptcy and Civil Rules

Discussion among the working-group participants did not focus on the terminology to be used in the Bankruptcy and Civil Rules provisions. But in both the Bankruptcy Rules[13] and the

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10 In saying this, I do not count Criminal Rules that say things like "represented by counsel," because such phrases (unlike the unadorned single word "represented") are completely compatible with saying "self-represented" in other places.

11 In my view, no update would be needed for Appellate Rule 45.

12 I noted that the latter amendment would helpfully eliminate what looks to me like an inadvertent discrepancy between current Rule 30 – which refers only to service on counsel for each separately represented party – and current Rule 31 – which refers to service on each unrepresented party and on counsel for each separately represented party. I may be missing something, but it is hard to see a reason why Rule 30 shouldn't require service of the appendix on self-represented litigants as well as represented parties.

13 In the relevant amendments to the Bankruptcy Rules, using the terms "self-represented" (and,

Civil Rules,[14] using the term "self-represented" would require conforming amendments to multiple additional rules. Given the overall tenor of the terminology discussion, my current surmise is that neither of these Advisory Committees will decide to use "self-represented."

For these reasons, the enclosed sketches use "unrepresented" in the Civil and Appellate Rules drafts and "self-represented" in the Criminal Rule draft.

F. Self-represented "person" versus self-represented "party"

In updating the drafts to take account of the spring 2025 discussions, I focused for the first time on whether to update "person" to "party" in the reference to e-filing by self-represented litigants. The current e-filing rules use "unrepresented person," but that has a different valence because they are phrased in the negative – e.g.: "A person not represented by an attorney …

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where necessary, "represented by counsel") in Rules 5005 and 8011 would necessitate conforming changes to Bankruptcy Rules 3015.1, 8013, 8015, and 9011(b), and perhaps also to Bankruptcy Rule 1004.1. "Unrepresented" would become "self-represented" in Bankruptcy Rules 3015.1, 8013, 8015, and 9011(b). "A represented party" in Bankruptcy Rule 9011 would become "a party represented by counsel."

Bankruptcy Rule 1004.1 has headings ("Represented Infant or Incompetent Person" and "Unrepresented Infant or Incompetent Person") that might at first glance seem to warrant adjustment, but arguably, Rule 1004.1 could be left untouched given that it is manifestly not referring to representation by an attorney. (For obvious reasons, it would not work to substitute "self-represented" for "unrepresented" here or in Civil Rule 17.)

14 In order to use the term "self-represented" in Civil Rule 5, it would be necessary to update terminology in Civil Rules 4, 11, 16, 26, and 32, probably also Rule 27, and perhaps also Civil Rule 17. "Unrepresented" would become "self-represented" in Civil Rule 4 plus the accompanying forms and in Civil Rules 11, 16, and 26. "Represented party" would become "party represented by counsel" in Civil Rules 11 and 16.

If these changes were to be implemented, I also think "represented" in Rule 32(a)(1)(A) should become "represented by counsel," given that Rule 32(a)(5)(B) clearly contemplates representation by a lawyer. That also suggests to me that "not otherwise represented" in Rule 27 should probably become "not otherwise represented by counsel." (But I don't know anything about practice under Rule 27, and without the example of Rule 32, I would feel unsure whether "not otherwise represented" actually refers only to representation by counsel or perhaps also to some situations where the unserved party's interests are somehow represented by another litigant.)

Civil Rule 17's "With a Representative," "Without a Representative," and "unrepresented" present issues analogous to those presented by Bankruptcy Rule 1004.1. Though these terms might at first glance seem to warrant adjustment, arguably Civil Rule 17 could be left untouched given that it is evidently referring to representation by the listed sorts of potential representatives for a minor or incompetent person. For similar reasons, I think Civil Rule 55 would not need to be revised.

may file electronically ***only if*** allowed by court order or by local rule." Once we invert the presumption to say that self-represented litigants may e-file ***unless*** barred by order or local rule, I think we need to change "person" to "party" so that lay people who are not parties to the case don't start citing the rule as granting *them* access to e-filing in the case. I made this change in the updated drafts that I circulated to the working group,[15] and I added to the Committee Notes the following statement: "(The rule grants this presumptive authorization to a self-represented 'party,' not a self-represented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system.)"

The input from working-group participants and from the Criminal Rules Committee subcommittee strongly favored changing "person" to "party." Ed Hartnett helpfully flagged that we should consider how this change would affect would-be intervenors. If we change the e-filing portion of the draft to refer to a self-represented "party," then under the proposed rule – as now – a self-represented person seeking to intervene would be able to e-file only if affirmatively authorized by the court through local rule or order or local practice. Of course, once a self-represented person is granted intervenor status in the district court, they would count as a party. Given that self-represented would-be intervenors are likely not numerous, and that referring to "parties or those seeking intervention" would be cumbersome, and that we would not wish to invite members of the public to characterize themselves as would-be intervenors any time they really wanted to put in their two cents on a high-profile case, my own take is that the switch to "party" is the best course despite the question of intervenors, but I am flagging this question here for the Advisory Committees' consideration.

G. Explicit wording

In presenting the sketches to the Advisory Committees, I highlighted the issue of spelling things out explicitly, even when the explicit formulation uses more words. So, for example, proposed Civil Rule 5(d)(2)(B)(i), as shown in the spring 2025 agenda books, stated that a self-represented litigant presumptively "may use the court's electronic-filing system [to file papers and receive notice of activity in the case]." The bracketed language adds length but clarifies. Another example is the draft rule's reference to "conditions and restrictions" on self-represented litigants' access to the court's e-filing system. Perhaps the language is redundant, but it is

15 I have not, however, made this change to the provisions in proposed Civil Rule 5(d)(2)(B)(i) and Appellate Rule 25(a)(2)(C)(i) that state that "A self-represented **person** may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions." It seems appropriate to keep the broader "person" there because it is a provision designed to protect those not represented by counsel from being *required* to file electronically.

I also have not substituted "party" for "person" in proposed Civil Rule 5(d)(2)(B)(iv), which provides that "[a] court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access." That is phrased broadly to avoid any negative implications about the court's ability to deny access to a troublesome would-be user – whether they are a party or not and whether they are a lawyer or a self-represented person.

designed to make clear to self-represented litigants the court's authority to impose reasonable limits whether those limits strike the self-represented litigant as conditions *or* restrictions. In the draft that I circulated to the working group in summer 2025, I continued using the phrase "conditions and restrictions." More generally, I solicited the working group's feedback on whether the longer but more explicit language is worthwhile in provisions directed at self-represented litigants.

Responses received from both working-group participants and the Criminal Rules Committee's subcommittee agreed that more explicit language is helpful in this context.

H. Exclusion of prison-mailbox rules from scope of project

Some participants had noted that it would be useful to consider updating the prison-mailbox rules to address timeliness of documents filed pursuant to an electronic filing program within the institution. This project does not currently encompass such a proposal, but given that this project is extending into another rulemaking cycle, in summer 2025 I asked the working-group participants whether it might be worthwhile to expand the project to include an update to the inmate-filing provisions in Appellate Rules 4(c)(1) and 25(a)(2)(A)(iii), and perhaps also those in the Habeas and Section 2255 Rules 3(d).

All feedback received on this point favored excluding an update of the prison-mailbox rules from the scope of the current project. A participant noted that the issues for filers in institutions are distinct, and that it might be better to wait to address those issues until after we see how the current round of proposed amendments works out.

I. Appellate Rule 25 and service of case-initiating petitions

During the working group's summer 2025 deliberations, Tim Wolpert suggested that the amendments to Appellate Rule 25's service provision should take account of the fact that a court of appeals might wish to permit electronic filing, but not electronic service via CM/ECF, of appellate-case-initiating petitions filed under Appellate Rules 5, 15, or 21. In other words, if a court finds that CM/ECF service of those petitions is impracticable or unreliable, it might allow them to be filed electronically without allowing filers to rely on CM/ECF for service.

This issue is well worth the Advisory Committee's consideration.[16] And, in fact, it is

16 The question of service of case-initiating documents via CM/ECF arises under the Appellate Rules, but not under the Civil or Criminal Rules.

Under the Civil Rules, service of the summons and complaint is governed by Civil Rule 4 rather than Civil Rule 5.

Under the Criminal Rules, it is my impression that often the method employed is arrest upon a warrant. If instead a summons is served on the defendant, Criminal Rule 4(c)(3) specifies

already an issue under current Appellate Rule 25. Current Appellate Rule 25(c)(2) (providing for e-service by filing in CM/ECF) does not make any explicit exception for case-initiating petitions in the courts of appeals. Current Appellate Rule 25(a)(2)(B)(i) authorizes courts of appeals to bar the use of CM/ECF to file such petitions – but if courts wish to permit use of CM/ECF for filing but not service, then the current rule doesn't fit that situation. Under current Rule 25(c)(2)(A), "[e]lectronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system," so in a circuit that doesn't bar the use of CM/ECF to file case-initiating petitions, it appears that the national rules permit the CM/ECF filer to rely on CM/ECF to accomplish service, too.

To address this issue, I've now augmented proposed Appellate Rule 25(c)(1) to read as follows: "A notice of case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But […] a court may provide by local rule that, if a paper is filed under seal **or initiates a proceeding in the court of appeals under Rule 5, 15, or 21**, it must be served by other means."

J. Bankruptcy Rules considerations

As noted, this memo is being finalized before we know what the Bankruptcy Rules Committee will decide about whether to participate in the current project. If the Bankruptcy Rules Committee were to opt to participate in the proposed package of filing and service changes, this would entail amendments to Bankruptcy Rules 5005, 8011, and 9036. If they instead were to opt not to participate, this would require an amendment to Bankruptcy Rule 7005 in order to avoid incorporating into the Bankruptcy Rules the new features of proposed amended Civil Rule 5. If instead the Bankruptcy Rules were to maintain their current approach to service and e-filing by self-represented litigants, it would be necessary to consider which approach – the current one or the one that will be newly adopted for the Civil and Appellate Rules – will govern in bankruptcy appeals.

In summer 2025 I reported to the working group that, at the Appellate Rules Committee's spring 2025 meeting, it had been suggested that it would be better for the courts of appeals to take a uniform approach to both the service issue and the e-filing issue across all case types, including bankruptcy appeals; that the Advisory Committee members were asked if they disagreed with that suggestion; and that none voiced disagreement.

III. Rejection of a filing for noncompliance with rules governing electronic filing

This summer, Ed Hartnett pointed out that we should consider how the proposed e-filing

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the manner of service (and unsurprisingly the list does not include service via CM/ECF). The pending project to revise Criminal Rule 49 does not address service of a case-initiating document.

rules would interact with two sets of rules. One of those sets – Appellate Rule 25(a)(4), Bankruptcy Rule 5005(a)(1), Civil Rule 5(d)(4), and Criminal Rule 49(b)(5) – comprises what I'll call the clerk-refusal rules. These rules provide in substance that "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."[17] The second set of rules – Appellate Rule 47(a)(2), Bankruptcy Rule 9029(b), Civil Rule 83(a)(2), and Criminal Rule 57(a)(2) – comprises what I'll call the local-form rules. The Bankruptcy and Civil (and with minor wording differences, Appellate) Rules put this directive in place: "A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply."[18] The Criminal Rule is similar, but substitutes "unintentional" for "nonwillful."[19]

The question whether the clerk-refusal and local-form rules affect limits on e-filing by self-represented litigants is a question that already arises under the current rules. Some self-represented litigants have invoked these rules to try to get around bars on e-filing by self-represented litigants, and while a number of courts have rebuffed those efforts, at least some judges have given the argument weight. After providing in Part III.A a brief history of the relevant rules, I review relevant caselaw in Part III.B.

Part III.C discusses whether any changes in the clerk-refusal and local-form rules should be considered as part of the self-represented-litigant e-filing project. The main question is how the rules do, and how they should, handle situations where a filer either uses the wrong *method* of filing (such as trying to use CM/ECF when not allowed to do so, or trying to file by emailing

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17 The text quotes Civil Rule 5(d)(4) and Criminal Rule 49(b)(5). Appellate Rule 25(a)(4) similarly provides: "The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice." And Bankruptcy Rule 5005(a)(1) provides: "The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or by any local rule or practice."

On the meaning of "willful" in Civil Rule 83(a)(2), see Folse v. Hoffman, 122 F.4th 80, 84 (4th Cir. 2024) ("'Willful' means '[d]one wittingly or on purpose, as opposed to accidentally or casually.' Willful, Black's Law Dictionary (12th ed. 2024). Folse did not simply fax his complaint to the district court—he also filed a separate motion asking the court 'to allow him to file the Complaint ... by fax.' ... And this, in turn, suggests that Folse knew he could not file the complaint by fax absent permission to do so.").

As to notices of appeal, see also Appellate Rule 3(c)(7): "An appeal must not be dismissed for informality of form or title of the notice of appeal …."

18 The text quotes Bankruptcy Rule 9029(b) and Civil Rule 83(a)(2). Appellate Rule 47(a)(2) states: "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement."

19 Criminal Rule 57(a)(2) provides: "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of an unintentional failure to comply with the requirement."

documents to the court when not allowed to do so) or places their documents in the wrong *electronic form* (such as emailing a Word document to the court when only a PDF submission is permitted). But it also may be useful to take account of how the rules do, and should, handle situations in which a filer who *is* permitted to use the method they're using fails to use it *successfully*.

A. History of the clerk-refusal and local-form rules

The clerk-refusal rules were adopted in 1991, 1993, 1994, and 2018; the local-form rules date from 1995.

1. History of the clerk-refusal rules

The committee notes to the clerk-refusal rules suggest that they were designed to disallow local practices in some courts that had cast the court clerk in the role of enforcer of local form requirements. Only one of those committee notes specifically addressed whether a provision concerning mode of filing would count as a "form" requirement: the 1993 Committee Note to Bankruptcy Rule 5005(a) stressed that the new provision would "not require the clerk to accept for filing papers sent to the clerk's office by facsimile transmission."

The oldest clerk-refusal rule is what is now Civil Rule 5(d)(4), originally adopted into the Civil Rules in 1991 as Civil Rule 5(e).[20] The 1991 Committee Note to then-Civil Rule 5(e) explained:

> Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rules or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court.

The Bankruptcy Rules' clerk-refusal rule was the next to be added, in 1993. Significantly for our purposes, the 1993 Committee Note to Bankruptcy Rule 5005(a) distinguished between enforcing requirements of form – which it assigned to the judge – and refusing papers filed by fax – which it permitted to the clerk:

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20 Then-Rule 5(e) contained the same substance as the subsequently restyled version that we now have. In relevant part, then-Rule 5(e) stated: "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices."

> Subdivision (a) is amended to conform to the 1991 amendment to Rule 5(e) F.R.Civ.P. It is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judge. This amendment does not require the clerk to accept for filing papers sent to the clerk's office by facsimile transmission.

The following year, a similar provision was added to the Appellate Rules. The 1994 Committee Note to Appellate Rule 25(a) explained:

> Several circuits have local rules that authorize the office of the clerk to refuse to accept for filing papers that are not in the form required by these rules or by local rules. This is not a suitable role for the office of the clerk and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this rule. This provision is similar to Fed.R.Civ.P. 5(e) and Fed.R.Bankr.P. 5005.
>
> The Committee wishes to make it clear that the provision prohibiting a clerk from refusing a document does not mean that a clerk's office may no longer screen documents to determine whether they comply with the rules. A court may delegate to the clerk authority to inform a party about any noncompliance with the rules and, if the party is willing to correct the document, to determine a date by which the corrected document must be resubmitted. If a party refuses to take the steps recommended by the clerk or if in the clerk's judgment the party fails to correct the noncompliance, the clerk must refer the matter to the court for a ruling.

When the clerk-refusal provision was added to Criminal Rule 49 in 2018, the Committee Note to Rule 49(b)(5) stated simply: "This new language prohibiting a clerk from refusing a filing for improper form was drawn from Civil Rule 5(d)(4)."

2. History of the local-form rules

The local-form provisions in the Appellate, Bankruptcy, Civil, and Criminal Rules date from 1995.[21] The 1995 committee notes to those rules do not explicitly address whether rules concerning filing *method* would count as "local rule[s] imposing a requirement of form." The 1995 Committee Note to Civil Rule 83(a)(2) is representative;[22] it explains:

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21 As adopted in 1995, Civil Rule 83(a)(2) and Appellate Rule 47(a)(2) read: "A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." Both rules were subsequently restyled.

22 The 1995 Committee Note to Bankruptcy Rule 9029(a) is similar in relevant part. 1995

> Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of – or forgetting – a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The proscription of paragraph (2) is narrowly drawn – covering only violations attributable to nonwillful failure to comply and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney contumaciously or willfully violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form – for example, a local rule requiring parties to identify evidentiary matters relied upon to support or oppose motions for summary judgment.

B. Caselaw concerning the clerk-refusal and/or local-form rules

The overall question is how the clerk-refusal and local-form rules interact with the e-filing aspect of the self-represented-litigant e-filing and e-service project. Here we should probably disaggregate three types of scenarios: (1) attempts to file using a method that the court does not permit (either in general or for the particular filer) under circumstances where the result is that no filing enters either the court's physical building or the court's electronic system, (2) attempts to file using a permitted method (such as mail or, if locally permitted, email) but submitting the filing in a non-permitted format (such as a mailed USB drive or an emailed file in the wrong format), and (3) attempted but unsuccessful use of CM/ECF by a user who is permitted to use CM/ECF.

1. Non-permitted method

The caselaw concerning non-permitted *methods* is divided. The Second, Sixth, Seventh, and Ninth Circuits have applied the rules so as to protect a filer who uses a non-permitted method, but a divided panel of the D.C Circuit has held to the contrary.

One variant of the "non-permitted method" scenario involves a self-represented litigant trying to file using a method not permitted by the local rules and/or the national rules. For example, in In re Novak, 771 F. App'x 680, 681 (7th Cir. 2019) (nonprecedential opinion), the self-represented would-be plaintiff (who lived in Japan and stated he was housebound) tried to

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Committee Note to Appellate Rule 47(a)(2) is similar but of course omits the examples concerning jury-demand and summary-judgment practice. And the 1995 Committee Note to Criminal Rule 57(a)(2) is similar but uses a different example ("Nor does it affect the court's power to enforce local rules that involve more than mere matters of form--for example, a local rule requiring that the defendant waive a jury trial within a specified time.").

file his complaint with the district court via email but ran afoul of the district court's local rules, which didn't permit that method. Novak sought mandamus from the Seventh Circuit, which denied relief on the ground that relief was available from the district court, but noted that – though it wasn't reaching the merits – it saw "a facial conflict between the local electronic filing rules and the Federal Rules of Civil Procedure." *Novak*, 771 F. App'x at 683 n.1 (citing Civil Rule 5(d)(4)).[23] By contrast, in Nelson v. SEC, 138 F.4th 514, 519 (D.C. Cir. 2025), the pro se petitioner had tried and failed to file electronically because the D.C. Circuit requires court permission before a self-represented party can e-file and therefore the PACER system rejected Nelson's attempt to register for e-filing. The panel majority held that Nelson's frustrated attempt at e-filing wasn't a mere problem with "form." It reasoned that the circuit rule requiring court permission "establishes a separate, threshold step at which a party must file a motion and the court must make a determination that electronic filing is appropriate." *Nelson*, 138 F.4th at 521. Accordingly, neither Appellate Rule 25(a)(4) nor Appellate Rule 47 rescued Nelson's attempted filing. Writing separately, Judge Henderson vigorously disagreed, arguing that the ECF system's rejection of Nelson's attempt to e-file his petition violated Appellate Rule 25(a)(4), and that under both that rule and Appellate Rule 47(a)(2), Nelson's petition should be deemed filed as of his attempt to e-file it. *See Nelson*, 138 F.4th at 526-27 (Henderson, J., concurring in the judgment). The local circuit rule, she argued, "imposes a requirement of form—filing 'in paper form'—that the majority enforces in a manner that deprives Nelson of his right to petition for relief because of his nonwillful failure to comply," in violation of Appellate Rule 47(a)(2). Two district court opinions from other circuits agree with the *Nelson* majority.[24]

Another variant of the non-permitted method scenario arises when a represented party files electronically a document that local rules require to be filed in paper form. In the Seventh Circuit, such a filing is effective. See United States v. Harvey, 516 F.3d 553, 556 (7th Cir. 2008) ("Although [Harvey's] submission did not conform to local rules, the difference between a hard copy and an electronic submission is a mere error of form…. Harvey timely filed his notice of appeal when he submitted it electronically to the clerk's office."). The same result holds true in the Second Circuit, at least in cases where the noncompliance with a local rule requiring paper filing was non-willful. See Contino v. United States, 535 F.3d 124, 127 (2d Cir. 2008) (following

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23 In Folse v. Hoffman, 122 F.4th 80, 82, 84 (4th Cir. 2024), the Fourth Circuit stated that a pro se plaintiff's faxing of the complaint to the court sufficed to toll the running of the statute of limitations, even though the district court had rejected the attempted filing because it did not allow complaints to be filed by fax. But the court of appeals affirmed the district court's dismissal without prejudice of the complaint due to its manner of filing, see id. at 82.

24 See, e.g., Becker v. Hurd, No. 8:23CV208, 2023 WL 5105183, at *1 (D. Neb. Aug. 9, 2023) (rejecting a self-represented litigant's argument that Civil Rule 5(d)(4) gave her the right to file documents by email rather than through CM/ECF); Donaldson v. Normand, No. 5:18-CV-7, 2022 WL 6600855, at *2 (S.D. Ga. June 13, 2022) (holding with respect to attempted email filing by self-represented litigant living in Australia that "the Clerk of Court is free to reject Plaintiff's filings based on his method of filing and doing so would not violate Rule 5(d)(4). In doing so, the Clerk of Court makes no determination about the contents of Plaintiff's filings.").

Harvey, citing Rules 5(d)(4) and 83(a)(2), and holding "that Contino should not lose his right to appeal because of an error in the form of the notice of appeal").[25]

Another variant concerns a represented litigant submitting a filing in paper form despite the requirement in a local rule (and, now, the national rules) that represented litigants file electronically. Here, too, courts have disagreed. The Sixth and Ninth Circuits have held that such a filing is effective notwithstanding a local rule requiring electronic filing, see Pierce v. Ocwen Loan Servicing, LLC, 987 F.3d 577, 579–80 (6th Cir. 2021) (paper notice of appeal placed in court-provided drop box constituted filing despite local rule requiring electronic filing; citing Civil Rules 5(d)(4) and 83(a)(2)); Klemm v. Astrue, 543 F.3d 1139, 1143 (9th Cir. 2008) (citing, inter alia, Civil Rule 5(d)(4) with respect to mailed notice of appeal), and in what I take to be an alternative holding,[26] the Third Circuit agreed, see Han Tak Lee v. Houtzdale SCI, 798 F.3d 159, 164 (3d Cir. 2015) (following *Klemm* and citing Civil Rule 5(d)(4) and Appellate Rule 3(c)(4)). By contrast, in Jones v. Family Health Centers of Baltimore, Inc., 307 F.R.D. 457, 459 (D. Md. 2015), the district court reasoned that "[i]n requiring electronic filing … the Court mandates the *method* by which 'papers' must be delivered to and docketed with the Court. Thus, the Clerk may enforce the Court's long-standing electronic filing requirement without contravening [Civil] Rule 5(d)(4)." The court bolstered this reading by arguing that even if Civil Rule 5(d)(4) did conflict with Civil Rule 5(d)(3) (which at the time permitted local rules to "require electronic filing" so long as "reasonable exceptions are allowed"), Rule 5(d)(3) – which dated from 2006 – prevailed as "the more recently adopted provision," Jones, 307 F.R.D. at 459. And as a further rationale, the court observed that Civil Rule 5(d)(4) only limited the *clerk*'s ability to refuse the filing, and that "[i]f the Clerk had been barred from rejecting Plaintiff's improper paper filing by Rule 5(d)(4), then the Court would have stricken Plaintiff's nonconforming document." Jones, 307 F.R.D. at 459 n.1.

2. Non-permitted format + permitted method

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25 I include the caveat "at least in cases where the noncompliance with a local rule requiring paper filing was non-willful" because the Contino court did also say this when applying Civil Rule 83(a)(2): "Here, there is no indication that Contino's failure to submit the notice of appeal on paper was willful and, if the local rule is enforced, Contino would lose the right to appeal." Contino, 535 F.3d at 127. As shown above, the non-willfulness criterion appears in Civil Rule 83(a)(2) but not in Civil Rule 5(d)(4).

26 I view the holding in Han Tak Lee v. Houtzdale SCI, 798 F.3d 159 (3d Cir. 2015), as an alternative holding because, in that case, applying the district court's local rule requiring electronic filing would have made it functionally impossible for the appellant to file the notice of appeal: the appellant's internal financial constraints barred it from any single electronic payment over $ 500 (such as the $ 505 filing fee). Applied in such a case, the court of appeals explained, the local rule requiring electronic filing "would violate the Federal Rules by failing to provide a 'reasonable exception[]' to the local electronic filing requirement, Fed.R.Civ.P. 5(d)(3), and the Commonwealth could not be held responsible for its violation." Han Tak Lee, 798 F.3d at 165.

In a scenario where the litigant uses a permitted method but submits the file in a non-permitted format, the existing rules are not necessarily well-tailored to the situation. Take a situation where a self-represented litigant mails the court a USB drive and asks the court to file the documents that exist as electronic files on the USB. At least arguably, the self-represented litigant in that hypothetical has used the correct filing method (mail) and the only problem is with the "form" of the filing (an electronic file on the USB). But one can see the difficulty: not only would requiring the clerk's office to review and process files on a USB require personnel time, but also USBs are known vectors of viruses and malware, and requiring a court to connect a USB (a piece of hardware) to its computer system would create a clear security risk.

In light of these practical concerns, the Court of Federal Claims in In re Gallogly, No. 19-MC-1644, 2019 WL 6872051, at *1 (Fed. Cl. Dec. 5, 2019), held that the Court of Federal Claims' clerk-refusal rule – Rule of the United States Court of Federal Claims ("RCFC") 5(d)(4)[27] – did not require the clerk to accept a self-represented litigant's document presented on a USB drive.[28] The court stated that "there is no consensus regarding whether FRCP 5(d)(4) applies to the method of filing a document—in other words, filing by electronic means or on paper." Gallogly, 2019 WL 6872051, at *4 (collecting cases).[29] But it reasoned that "even if FRCP 5(d)(4) applied to the method of filing a document, 'the rule would merely limit the *Clerk's* ability to reject filings, not the Court's.'" Gallogly, 2019 WL 6872051, at *4 (quoting Jones v. Fam. Health Centers of Baltimore, Inc., 307 F.R.D. 457, 459 n.1 (D. Md. 2015)).[30]

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27 RCFC 5(d)(4) provides that "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules." The *Gallogly* court's quote of the rule says "by the rules," In re Gallogly, 2019 WL 6872051, at *3, but that appears to be a misquotation.

28 As noted in the text, the litigant in *Gallogly* initially tried to submit her file to the court on a USB; but the Gallogly court's ruling appears to extend to all submissions "in an electronic form—whether on a thumb drive, by electronic mail, or via PACER," see Gallogly, 2019 WL 6872051, at *5.

29 Indeed, at an earlier point in the case, the Federal Circuit had sounded somewhat agnostic on this question when denying Gallogly's request for a writ of mandamus:

> [E]ven if we were to agree that there may be some facial conflict between RCFC 5.5 and Rule 5(d)(4) of the Federal Rules of Civil Procedure and agree that Rule 5(d)(4) is applicable to the Claims Court, we cannot say that Dr. Gallogly has a clear and indisputable right to compel the Clerk to accept submissions via USB drive. Moreover, Dr. Gallogly has an alternative avenue of asking the Claims Court itself to reconsider the action of the Clerk and to offer a more suitable means of electronic filing. We therefore cannot say that mandamus relief is appropriate here.

In re Gallogly, 773 F. App'x 1090, 1091 (Fed. Cir. 2019).

30 The RCFC include a rough analog to Civil Rule 83, but RCFC 83 does not include a provision similar to the national rules' local-form provisions.

3. Unsuccessful or flawed use by permitted electronic filer

I also examined caselaw concerning instances in which one who was permitted to file electronically failed to do so successfully. Here, too, the caselaw is divided.

One possible example of unsuccessful use of CM/ECF is when the filer manages to file something but there are technical errors in the filing. The Second, Sixth, and Seventh Circuits have held that such an act nonetheless can count as a filing.[31] The Seventh Circuit applied the same principle to an electronically filed complaint that was automatically rejected by the e-filing

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31 See Harrison v. Republic of Sudan, 802 F.3d 399, 402 n.4 (2d Cir. 2015) (notice of appeal submitted on last day for appealing was effective even though appellant "neglected to manually select the orders it was appealing on ECF, triggering a 'filing error' in the docket entry," where "the notice of appeal was accessible on the docket, the notice itself stated in plain language the three orders at issue, and [appellant] corrected the electronic error the next day"), *reversed on other grounds*, 587 U.S. 1 (2019); Shuler v. Garrett, 715 F.3d 185, 186-87 (6th Cir. 2013) (adopting the view that "electronically-filed motions received by the clerk of the court within the specified time period should be considered timely, even when they contain the wrong docket number," at least where there was no prejudice to the opposing party); Vince v. Rock Cnty., Wis., 604 F.3d 391, 392-93 (7th Cir. 2010) (citing Civil Rules 83(a)(2) and 5(d)(4) and Appellate Rule 3(c)(4) and holding that electronically-filed notice of appeal that was "transmitted … using the wrong event code" was effective despite its rejection by the clerk's office); id. at 393 ("There may well be cases in which a filing is so riddled with errors that it cannot fairly be considered a notice of appeal, and therefore its filing, electronic or otherwise, will not vest an appellate court with jurisdiction, United States v. Carelock, 459 F.3d 437 (3d Cir.2006) (an electronically filed notice of appeal that bore incorrect name of defendant, wrong docket number, wrong district court judge's name, and wrong judgment date not sufficient), but that is not the case here.").

There are district court decisions to the same effect. See, e.g., Harrigan v. City of New York, No. 19-CV-3489 (LJL), 2020 WL 2555307, at *1 (S.D.N.Y. May 20, 2020) (noting that the original electronic filing, apparently filed by counsel via CM/ECF, was deficient because "the PDF file containing the complaint was not correctly formatted; not all of the parties were entered on the electronic filing system; and the Plaintiff's electronic selections resulted in the docket text accompanying the complaint indicating that the Original Complaint was pleading claims against Jahumi Harrigan, who in fact is the Plaintiff"); id. at *3 (citing Civil Rule 5(d)(4) and concluding that the original electronic filing counted as commencing the lawsuit for statute of limitations purposes).

See also Pettaway v. Nat'l Recovery Sols., LLC, 955 F.3d 299, 302 & n.1 (2d Cir. 2020) (holding that amended complaint was timely filed when filed in compliance with district court's local rules despite counsel's failure to comply with the court's "online directions during the filing process [that] direct the filer not to use the 'All Defendants' button" to denote whom the complaint is against).

system because the filer input the docket number of a prior, closed case.[32]

However, in a scenario where the would-be electronic filer of a notice of appeal got as far as submitting payment through pay.gov but failed to progress to the final screen for CM/ECF submission, the Second, Tenth, and Federal Circuits have held that the attempted filing did not validly submit the notice of appeal.[33] The Fifth Circuit has likewise held that where counsel "encountered technical problems" in attempting to e-file a notice of appeal on the last day and the court's docket reflected e-filing of the notice appeal only on the subsequent day, it was untimely.[34] (Note that if there is an outage of the electronic filing system, the filer should argue for the application of the relevant time-counting rule concerning inaccessibility of the clerk's office.[35]) By contrast, where counsel tried (timely) to e-file the notice of appeal, and

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32 Farzana K. v. Indiana Dep't of Educ., 473 F.3d 703, 707 (7th Cir. 2007) (applying then-Civil Rule 5(e) and reasoning that "[h]ad a paper copy of the complaint been handed over the counter on July 6, a deputy clerk would have crossed out the old docket number, stamped a new one, and filed the document; there is no reason to throw this suit out of court just because the e-filing system did not know how to take an equivalent step").

33 See Franklin v. McHugh, 804 F.3d 627, 631 (2d Cir. 2015) ("[T]he Eastern District's Local Rules provide no basis for construing [Franklin's] payment—made through an external website, and merely an intermediate step in the filing process—as 'delivery' of a notice of appeal to the Clerk's Office."); Klein v. Olson, 728 F. App'x 846, 848 (10th Cir. 2018) (unpublished opinion) (holding that the notice of appeal wasn't delivered to the clerk within the meaning of the rules and reasoning that "[t]o conclude otherwise would turn the district court's clear and unequivocal electronic filing rules into mere suggestions, and would effectively allow a pleading to be 'filed' without the pleading being docketed and, in turn, without the district court's clerk or the opposing party knowing about it"); Gilda Indus., Inc. v. United States, 511 F.3d 1348, 1350-51 (Fed. Cir. 2008); id. at 1352 (suggesting that an Appellate Rule 4(a)(5) extension on grounds of excusable neglect could be warranted under the facts).

A similar fact pattern may have formed the basis for the Sixth Circuit's unpublished order in Amburgey v. Comm'r of Soc. Sec., No. 16-6479, 2016 WL 10100226, at *1 (6th Cir. Dec. 30, 2016) ("Although Amburgey's counsel paid the filing fee, there is no evidence that the district court received the notice of appeal. Amburgey attached a printout from his attempt to file his notice of appeal, but that printout does not confirm that the district court timely received his notice of appeal."). In *Pierce* (cited supra Part III.B.1) the Sixth Circuit distinguished Amburgey. See Pierce v. Ocwen Loan Servicing, LLC, 987 F.3d 577, 580 (6th Cir. 2021) ("Counsel [in Amburgey] represented in briefs that he had unknowingly stopped a screen short of submitting his electronic notice of appeal, perhaps because of a technical problem. Unsworn excuses about attempted filings are afield from sworn excuses about completed filings.").

34 See Sudduth v. Texas Health & Hum. Servs. Comm'n, 830 F.3d 175, 178-79 (5th Cir. 2016) (following *Franklin* and observing that counsel could have, but did not, move for an extension of the time to appeal).

35 See, e.g., Civil Rule 6(a)(3)(A)(" Unless the court orders otherwise, if the clerk's office is

electronically paid the filing fee, but "the clerk (or the clerk's computer system) failed to register the filing on the docket sheet" until after the appeal deadline had passed, the D.C. Circuit – citing Civil Rule 5(d)(4) – held the appeal timely.[36]

Analogous to the uncompleted-last-step e-filing situation is one where the court's local rules directed that plaintiffs email their complaints to the clerk's office[37] and then follow up with a filing in CM/ECF after the clerk's office opened a new case file in CM/ECF. Where the plaintiff duly emailed their complaint to the court but then (apparently due trouble with electronic payment) didn't manage to file in CM/ECF until after the statute of limitations ran, the Seventh Circuit held that the initial email filing counted for statute of limitations purposes; citing Civil Rules 5(d)(4) and 83(a)(2), it reasoned that "[t]he delay in uploading the complaint was merely a defect in form (in the electronic sense) and did not prevent the e-mailed complaint from tolling the statute of limitations." Farley v. Koepp, 788 F.3d 681, 683 (7th Cir. 2015); *see also id*. at 686 (rejecting the argument "that [Civil] Rule 5(d)(3) authorizes clerks to treat noncomplying electronic filings as invalid").

C. Should the clerk-refusal and/or local-form rules be revised?

I suggest that there are multiple reasons why the Advisory Committees should consider possible revisions to the clerk-refusal and local-form rules. One is that (as shown in Part III.B) there are existing circuit splits concerning their application to e-filing issues – even outside the context of filings by self-represented litigants. Another is that changing the default provisions concerning e-filing by self-represented litigants may change the scope of operation of the local-form provisions. And more basically, the project itself is engaging with questions, such as reasonable conditions on e-filing by self-represented litigants, that implicate the question of who enforces those conditions and how – topics already addressed to some extent by both the clerk-refusal and local-form rules.

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inaccessible: (A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday …."); 2009 Committee Note to Civil Rule 6(a)(3) ("The text of the rule no longer refers to 'weather or other conditions' as the reason for the inaccessibility of the clerk's office. The reference to 'weather' was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system.").

36 See Royall v. Nat'l Ass'n of Letter Carriers, AFL-CIO, 548 F.3d 137, 142-43 (D.C. Cir. 2008).

37 It seemed key in Farley that the email submission occurred pursuant to an instruction from the clerk's office. See Farley, 788 F.3d at 685 ("Farley's attorney did not simply … send an unsolicited e-mail to a court clerk unequipped to handle e-mailed complaints."); compare Brooks v. SAC Wireless, LLC, 835 F. App'x 137, 139 (7th Cir. 2021) (unpublished opinion) (finding that district judge had not "agreed within the meaning of [Civil] Rule 5(d)(2)(B) to accept Brooks's emailed notice of appeal for filing purposes").

As to the scope of operation of the local-form rules, one point to note is that – by shifting the default principle concerning access to e-filing by self-represented litigants – the proposed new e-filing rule may well increase the range of situations that could trigger the application of the local-form provisions. At present, the national rules bar self-represented litigants from e-filing *unless* a court order or local rule permits them to do so, and so if the relevant court lacks any such local rule, one can view this as an *absence* of a local rule. And the local-form rules aren't triggered by the *absence of* a local rule; read literally, they're only triggered if "[a] local rule imposing a requirement of form" is "enforced."[38] Once the presumption is flipped, the court would have to adopt a local rule (or an order in a particular case) in order to bar self-represented litigants from using the court's e-filing system. And if the bar were adopted as a local rule, enforcing that local rule against a self-represented litigant could then trigger application of the applicable local-form rule.

Reflecting on this point also brings into focus the fact that the local-form provisions refer only to local rules, and not to standing orders. One might think that standing orders should have no greater ability to impose a form requirement that could trigger the loss of rights than a local rule could.[39] This raises an additional question: Do the draft rules take the right approach by permitting courts to opt out of the default e-filing rule for self-represented litigants *either* by local rule *or* by standing order?[40] Should this local opt-out instead require either a local rule or an order in a case? Originally I had drafted the provision to permit opt-out via a standing order – because my focus was on preserving options for courts – but as we think about how the proposed e-filing rules would operate in tandem with the local-form rules, this question warrants further consideration.

As to *who* should enforce local conditions on self-represented parties' e-filing access, my own initial take on the matter is that what we have heard from our Clerk liaisons illustrates that the rules should allow for clerks' offices to generally enforce ground rules for the method of filing. That is, clerks' offices should not be required to open and process electronic files in unapproved formats, or to permit e-filing by persons who are reasonably barred from using e-filing (such as self-represented litigants who refuse to take a required e-filing training). Unlike defects in the form of a paper filing – which presumably were the focus of the rules committees when they adopted the clerk-refusal rules – submission of a document in an unapproved format

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38 For an opinion making this point, see Folse v. Hoffman, 122 F.4th 80, 84 (4th Cir. 2024) ("Rule 83(a)(2) is inapplicable. The baseline 'requirement' here—i.e., non-represented litigants may not file documents electronically unless permitted by a local rule or court order—comes from the Federal Rules of Civil Procedure rather than from a local rule. There was thus no 'local rule' that was 'enforced in a way that' caused Folse to lose any right that he otherwise would have had absent that rule.").

39 Cf. Civil Rule 83(b) ("No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.").

40 See, e.g., proposed Appellate Rule 25(a)(2)(C)(1).

or attempted use of the e-filing system by a not-yet-trained user are types of defects as to which the clerk's office probably has greater expertise than the judge does, and as to which it could be disruptive or cause security risks if the clerk's office were required to accept and process the submission.

But as to *how* such conditions should be enforced – and in particular, what the *consequences* of noncompliance should be, that seems to me a different matter. I personally would like for the rules to rescue a person who is facing a dispositive deadline (say, a statute of limitations or the deadline for filing a notice of appeal or a petition for permission to appeal) and who uses a non-compliant filing method. One way to accomplish such a result might be for the clerk-refusal rules to generally permit enforcement of the e-filing ground rules set by the national rules (and by local provisions that comport with the national rules), but for the local-form rules to rescue a litigant who complied with any national rule on e-filing but ran afoul of a local provision on e-filing. The way that this might work in practice would be for the clerk's office to note the attempted filing in the docket (once the clerk's office became aware of it) and to notify the filer that they must re-submit the document using an approved method and format or face sanctions up to and including the striking of the filing. For purposes of meeting a deadline, the original filing date could be employed so long as the filer could demonstrate the contents of the document that they originally (albeit noncompliantly) filed and the date and time of that original filing.

I concede, however, that this is not the way that the rules are currently written; both the clerk-refusal rules and the local-form rules refer to "form," so if one concludes that "form" includes e-filing specifications for purposes of the local-form rules, then that would also suggest "form" includes e-filing specifications for purposes of the clerk-refusal rules. Moreover, I realize that if one interprets or revises the local-form provisions in the way that I suggest, that would have implications not only for filings by self-represented litigants but also for filings by lawyers. And our Clerk liaisons will be quick to point out that there are plenty of lawyers who fail to comply with all the local e-filing requirements.

In sum, clarifying the effect of the clerk-refusal and local-form rules might be a useful thing to do in connection with this project, but we should note at the outset that any such clarification would likely reach well beyond just affecting self-represented litigants. And I expect that not all participants will agree with my above-described policy preferences. So the questions that I'm hoping the Advisory Committees will consider at their fall meetings are (1) whether the project should expand to encompass potential revisions to the clerk-refusal and/or local-form rules,[41] and (2) if so, what policy choices should guide those revisions.

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41 It might also be useful to consider whether the rules should explicitly address the effect of automated rejections (for example, by CM/ECF). Cf. Farley v. Koepp, 788 F.3d 681, 686 n.4 (7th Cir. 2015) (stating that "the protections of Rules 5(d)(4) and 83(a)(2) apply to the new e-filing regime" because "these rules apply with equal force both to e-filing systems and human clerks") (citing Farzana K. v. Ind. Dep't of Educ., 473 F.3d 703, 708 (7th Cir. 2007)).

Appendix: Rules with terminology relevant to a possible switch to "self-represented"

Appellate Rule 25	(a) Filing…. (2) Filing: Method and Timeliness…. (B) Electronic Filing and Signing. (i) **By a Represented Person**--Generally Required; Exceptions. A person **represented by an attorney** must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (ii) **By an Unrepresented Person**--When Allowed or Required. A person **not represented by an attorney**: • may file electronically only if allowed by court order or by local rule; and • may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions…. (b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on **a party represented by counsel** must be made on the party's counsel….
Appellate Rule 28.1	(d) Cover. Except for filings by **unrepresented parties**, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan….
Appellate Rule 30	(a) Appellant's Responsibility…. (3) Time to File; Number of Copies. Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each **party separately represented. An unrepresented party** proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each **separately represented party**…. (e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each **separately represented** party….
Appellate Rule 31	(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on **each unrepresented party** and on counsel for **each separately represented party**. **An unrepresented party** proceeding in forma

	pauperis must file 4 legible copies with the clerk, and one copy must be served on **each unrepresented party** and on counsel for **each separately represented party**….
Appellate Rule 32	(2) Cover. Except for filings by **unrepresented parties**, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan…. (d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, **if the party is represented**, by one of the party's attorneys…. (g) Certificate of Compliance. (1) Briefs and Papers That Require a Certificate. A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)--and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), or 40(d)(3)(A)--must include a certificate by the attorney, **or an unrepresented party**, that the document complies with the type-volume limitation….
Appellate Rule 45	(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on **a party represented by counsel** must be made on counsel….
Bankruptcy Rule 1004.1	(a) **Represented Infant or Incompetent Person**. If **an infant or an incompetent person has a representative**--such as a general guardian, committee, conservator, or similar fiduciary--the representative may file a voluntary petition on behalf of the infant or incompetent person. (b) **Unrepresented Infant or Incompetent Person**. If an infant or an incompetent person **does not have a representative**: (1) a next friend or guardian ad litem may file the petition; and (2) the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the infant debtor or incompetent debtor.
Bankruptcy Rule 3015.1	As an exception to Rule 9029(a)(1), a district may require that a single local form be used for a Chapter 13 plan instead of Form 113 if it: … (e) contains a final paragraph providing a place for: … (2) a certification by the debtor's attorney, **or by an unrepresented debtor**, that the plan does not contain any nonstandard provision except as set out in the final paragraph.
Bankruptcy Rule 5005(a)	(3) Electronic Filing and Signing. (A) **By a Represented Entity**--Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless

	nonelectronic filing is allowed by the court for cause or is allowed or required by local rule. (B) **By an Unrepresented Individual**--When Allowed or Required. **An individual not represented by an attorney:** (i) may file electronically only if allowed by court order or local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.
Bankruptcy Rule 7004	(g) Serving a Debtor's Attorney. If, when served, a debtor is **represented by an attorney**, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b)….
Bankruptcy Rule 8001	(c) Requirement to Send Documents Electronically. Under these Part VIII rules, a document must be sent electronically, unless: (1) it is sent by or to **an individual who is not represented by counsel**;…
Bankruptcy Rule 8011	(a) Filing…. (2) Method and Timeliness…. (B) Electronic Filing. (i) **By a Represented Person**--Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless non-electronic filing is allowed by the court for cause or is allowed or required by local rule. (ii) **By an Unrepresented Individual**--When Allowed or Required. **An individual not represented by an attorney:** • may file electronically only if allowed by court order or by local rule; and • may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions…. (b) Service of All Documents Required. Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on **a party represented by counsel** must be made on the party's counsel…. (e) Signature Always Required. (1) Electronic Filing. Every document filed electronically must include the electronic signature of the person filing it **or, if the person is represented**, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that person--together with that person's name on a signature block--constitutes the person's signature. (2) Paper Filing. Every document filed in paper form must be signed by the person filing it **or, if the person is represented**, by

	the person's counsel.
Bankruptcy Rule 8013	(d) Emergency Motion…. (2) Content. An emergency motion must:… (C) include: (i) the email address, office address, and telephone number of the moving counsel; and (ii) when known, the same information as in (i) for opposing counsel and **any unrepresented party to the appeal**; …. (3) Notifying Opposing Parties. Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel **and any unrepresented party** in time for them to respond….
Bankruptcy Rule 8015	(h) Certificate of Compliance. (1) Briefs and Documents That Require a Certificate. A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)--and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)--must include a certificate by the attorney, **or an unrepresented party**, that the document complies with the type-volume limitation….
Bankruptcy Rule 9011	(a) Signature. Every petition, pleading, written motion, and other document--except a list, schedule, or statement, or an amendment to one of them--must be signed by at least one attorney of record in the attorney's individual name. **A party not represented by an attorney** must sign all documents…. (b) Representations to the Court. By presenting to the court a petition, pleading, written motion, or other document--whether by signing, filing, submitting, or later advocating it--an attorney **or unrepresented party** certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances: … (c) Sanctions… (4) Nature of a Sanction; Limitations…. (B) Limitations on a Monetary Sanction. The court must not impose a monetary sanction: (i) **against a represented party** for violating (b)(2) …
Civil Rule 4	(a) Contents; Amendments. (1) Contents. A summons must:… (C) state the name and address of the plaintiff's attorney or--**if unrepresented**--of the plaintiff;… Notice of a Lawsuit and Request to Waive Service of Summons. (Caption)

	… I certify that this request is being sent to you on the date below. Date: _____ _____ (Signature of the attorney **or unrepresented party**) … Waiver of the Service of Summons. (Caption) To (name the plaintiff's attorney **or the unrepresented plaintiff**): …. Date: _____ _____ (Signature of the attorney **or unrepresented party**) …
Civil Rule 5	(b) Service: How Made. (1) Serving an Attorney. If a party is **represented by an attorney**, service under this rule must be made on the attorney unless the court orders service on the party…. (d) Filing…. (3) Electronic Filing and Signing. (A) **By a Represented Person**--Generally Required; Exceptions. **A person represented by an attorney** must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) **By an Unrepresented Person**--When Allowed or Required. **A person not represented by an attorney**: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions….
Civil Rule 11	(a) Signature. Every pleading, written motion, and other paper must

	be signed by at least one attorney of record in the attorney's name--or by a party personally **if the party is unrepresented**. .... (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney **or unrepresented party** certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: … (c) Sanctions…. (5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction: (A) against **a represented party** for violating Rule 11(b)(2); …
Civil Rule 16	(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys **and any unrepresented parties** to appear for one or more pretrial conferences …. (b) Scheduling…. (1) Scheduling Order. Except in categories of actions exempted by local rule, the district judge--or a magistrate judge when authorized by local rule--must issue a scheduling order: (A) after receiving the parties' report under Rule 26(f); or (B) after consulting with the parties' attorneys **and any unrepresented parties** at a scheduling conference…. (c) Attendance and Matters for Consideration at a Pretrial Conference. (1) Attendance. **A represented party** must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference…. (e) Final Pretrial Conference and Orders. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party **and by any unrepresented party**….
Civil Rule 17	(c) Minor or Incompetent Person. (1) **With a Representative**. The following representatives may sue or defend on behalf of a minor or an incompetent person:… (2) **Without a Representative**. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person **who is unrepresented** in an action.
Civil Rule 26	(a) Required Disclosures.

	(1) Initial Disclosure…. (B) Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure:… (iv) **an action brought without an attorney** by a person in the custody of the United States, a state, or a state subdivision; …. (f) Conference of the Parties; Planning for Discovery. (1) Conference Timing. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable--and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b). (2) Conference Content; Parties' Responsibilities. …. The attorneys of record and **all unrepresented parties that have appeared in the case** are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan…. (g) Signing Disclosures and Discovery Requests, Responses, and Objections. (1) Signature Required; Effect of Signature. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name--**or by the party personally, if unrepresented**--and must state the signer's address, e-mail address, and telephone number….
Civil Rule 27	Rule 27. Depositions to Perpetuate Testimony (a) Before an Action Is Filed…. (2) Notice and Service. …. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent **if an unserved person is not otherwise represented**. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies….
Civil Rule 32	(a) Using Depositions. (1) In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions: (A) **the party was present or represented at the taking of the deposition** or had reasonable notice of it;…. (5) Limitations on Use…. (B) Unavailable Deponent; Party Could Not Obtain an Attorney. A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it **could not**, despite diligent efforts, **obtain an attorney to represent it** at the

	deposition….
Civil Rule 55	(b) Entering a Default Judgment….. (2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person **only if represented by a general guardian, conservator, or other like fiduciary who has appeared**. If the party against whom a default judgment is sought has **appeared personally or by a representative**, that party or its representative must be served with written notice of the application at least 7 days before the hearing….
Supplemental Admiralty and Maritime Claims Rule F	Rule F. Limitation of Liability … (6) Information to be Given Claimants. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or **if the claimant has no attorney** to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of **the claimant's attorney (if the claimant is known to have one)**, (c) the nature of the claim, i.e., whether property loss, property damage, death, personal injury etc., and (d) the amount thereof….
Criminal Rule 11 [see also Criminal Rules 32.1(a)(3)(B) & 58(b)(2)]	(b) Considering and Accepting a Guilty or Nolo Contendere Plea. (1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:… (D) the right to be **represented by counsel**--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding; …
Criminal Rule 43	(b) When Not Required. A defendant need not be present under any of the following circumstances: (1) Organizational Defendant. The defendant is **an organization represented by counsel** who is present….
Criminal Rule 44	(c) Inquiry Into Joint Representation. (1) Joint Representation. Joint representation occurs when: (A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and (B) the defendants are **represented by the same counsel**, or counsel who are associated in law practice….
Criminal Rule 49	(a) Service on a Party…. (2) Serving a Party's Attorney. Unless the court orders otherwise,

	when these rules or a court order requires or permits service on a **party represented by an attorney**, service must be made on the attorney instead of the party. (3) Service by Electronic Means. (A) Using the Court's Electronic-Filing System. A party **represented by an attorney** may serve a paper on a registered user by filing it with the court's electronic-filing system. A party **not represented by an attorney** may do so only if allowed by court order or local rule…. (b) Filing…. (3) Means Used by Represented and Unrepresented Parties. (A) **Represented Party. A party represented by an attorney** must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) **Unrepresented Party. A party not represented by an attorney** must file nonelectronically, unless allowed to file electronically by court order or local rule. (4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name--or by a person filing a paper **if the person is not represented by an attorney**….

Clean versions of updated self-represented litigants' service and e-filing amendments for the Civil, Criminal, and Appellate Rules, September 21, 2025

I. Civil Rules: Amendments to Civil Rule 5 (plus a conforming amendment)

Here is the updated draft of Civil Rule 5, along with the conforming amendment to Civil Rule 6.

A. Civil Rule 5

Here is the sketch of the Civil Rule 5 amendments:

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

* * *

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service by a Notice of Case Activity Sent Through the Court's Electronic-Filing System. A notice of case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But

[(A) such service is not effective if the filer learns that it did not reach the person to be served; and

(B)] a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

(3) Service by Other Means ~~in General~~. A paper ~~is~~ may also be served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's

dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending it to a registered user by filing it with the court's electronic-filing system or~~ sending it by ~~other~~ electronic means that the person has consented to in writing – in ~~either of~~ which event~~s~~ service is complete upon ~~filing or~~ sending, but is not effective if the ~~filer or~~ sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person has consented to in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

~~**(3) Using Court Facilities.** [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.]~~ **(4) Serving Papers That Are Not Filed.** Rule 5(b)(3) governs service of a paper that is not filed.

(5) Definition of "Notice of Case Activity." The term "notice of case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

* * *

(d) Filing.

(1) Required Filings; Certificate of Service.

(A) Papers ~~after~~ After the Complaint. Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service. No certificate of service is required when a paper is served [through the court's electronic-filing system][1] under Rule 5(b)(2)~~by filing it with the court's electronic-filing system~~. When a paper that is required to be served is served by other means:

(i) if ~~the paper~~ it is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if ~~the paper~~ it is not filed, a certificate of service need not be filed, unless filing is required by court order or by local rule.

(2) ~~Nonelectronic Filing.~~ ~~A paper not filed electronically is filed by delivering it:~~

~~(A) to the clerk; or~~

~~(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.~~

1 This specification may be advisable now that Rule 5(b)(2) contemplates locally-required "other means" for serving sealed filings.

~~(3)~~ Electronic Filing and Signing.

(A) By a ~~Represented~~ Person Represented by Counsel—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By an Unrepresented ~~Person~~ Party—When Allowed or Required.

(i) **In General.** A ~~person~~ party not represented by an attorney~~: (i)~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or ~~by~~ local rule prohibits the party from doing so.~~; and (ii)~~ An unrepresented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) **Local Provisions Prohibiting Access.** If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits unrepresented parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing papers and for receiving electronic notice of activity in the case.

(iii) **Conditions and Restrictions on Access.** A court may set reasonable conditions and restrictions on unrepresented parties' access to the

court's electronic-filing system.

(iv) **Restrictions on a Particular Person.** A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

(C) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(3) Nonelectronic Filing. A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(4) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Committee Note

Rule 5 is amended to address two topics concerning unrepresented parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[2] Criminal Rule 49, and Appellate Rule 25.) Rule 5(b) is amended to address service of documents (subsequent to the complaint) filed by an unrepresented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the

2 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

court's electronic-filing system. Rule 5(b)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice. Rule 5(d) is amended to expand the availability of electronic modes by which unrepresented parties can file documents with the court and receive notice of filings that others make in the case. Also, the order of what had been Rules 5(d)(2) ("Nonelectronic Filing") and 5(d)(3) ("Electronic Filing and Signing") is reversed – with (d)(2) becoming (d)(3) and vice versa – to reflect the modern primacy of electronic filing.

Subdivision (b). Rule 5(b) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision 5(b)(2). Existing Rule 5(b)(2) becomes new Rule 5(b)(3), which continues to address alternative means of service. New Rule 5(b)(4) addresses service of papers not filed with the court, and new Rule 5(b)(5) defines the term "notice of case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (b)(2). Amended Rule 5(b)(2) eliminates the requirement of separate (paper) service (of documents after the complaint) on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 5(b)(2)(E)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 5(b)(2)] [Rule 5(b)(2)(B)] states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (b)(3). Subdivision (b)(3) carries forward the contents of current Rule 5(b)(2), with two changes.

The subdivision's introductory phrase ("A paper is served under this rule by") is amended to read "A paper may also be served under this rule by." This locution ensures that what will become Rule 5(b)(3) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to litigants who will be filing non-electronically but who wish to effect service on their opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of case activity).

Subdivision (b)(3)(E). The prior reference to "sending [a paper] to a registered user by

filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 5(b)(2).

[Subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served"; a similar provision is also included in subdivision (b)(2) with respect to service via the court's electronic-filing system.] [Although subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (b)(2). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.]

Subdivision (b)(4). New Rule 5(b)(4) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 5(b)(2): If a paper is not filed with the court, then the court's electronic system will never generate a notice of case activity, so the sender cannot use Rule 5(b)(2) for service and thus must use Rule 5(b)(3).

Subdivision (b)(5). New Rule 5(b)(5) defines the term "notice of case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of case activity" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (d)(1)(B). Subdivision (d)(1)(B) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by "[through the court's electronic-filing system] under Rule 5(b)(2)" in order to conform to the change to subdivision (b)(2).

Subdivision (d)(2)(B). Under new Rule 5(d)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 5(d)(3)(B). That is, under new Rule 5(d)(2)(B)(i), unrepresented parties are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. (The rule grants this presumptive authorization to an unrepresented 'party,' not an unrepresented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system.) If a district wishes to restrict unrepresented parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 5(d)(2)(B)(ii), a local rule or general court order that bars parties not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing

documents and receiving electronic notice of activity in the case. But Rule 5(d)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 5(d)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for unrepresented parties to the court's electronic-filing system, or (2) providing unrepresented parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit unrepresented parties to use the court's electronic filing system only if they obtain permission from the judge to whom the case is assigned; such a local rule would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 5(d)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 5(d)(2)(B)(ii) does not restrict a court from entering an order barring a specific unrepresented litigant from accessing the court's electronic-filing system.

For a court that opts to provide unrepresented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Civil Rule 83(a)(2) ("A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.").]

Rules 5(d)(2)(B)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits unrepresented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow unrepresented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on unrepresented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits unrepresented parties from e-filing might nonetheless provide an exception where the unrepresented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 5(d)(2)(B)(iv) provides that the court may deny a specific unrepresented litigant access to the court's electronic-filing system, and that the court may revoke an unrepresented litigant's access to the court's electronic-filing system.

B. Civil Rule 6

This draft of the conforming amendment to Civil Rule 6 has not changed:

Rule 6. Computing and Extending Time; Time for Motion Papers

* * *

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(~~2~~3)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Committee Note

Subdivision (d) is amended to conform to the renumbering of Civil Rule 5(b)(2) as Rule 5(b)(3).

II. Criminal Rules: Amendments to Criminal Rule 49 (plus a conforming amendment)

Here is the updated sketch of Criminal Rule 49, plus the conforming amendment to Criminal Rule 45.

A. Criminal Rule 49

Rule 49. Serving and Filing Papers

(a) Service on a Party.

(1) What is Required. Each of the following must be served on every party: any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(2) Serving a Party's Attorney. Unless the court orders otherwise, when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party.

(3) Service by ~~Electronic Means~~ a Notice of Case Activity Sent Through the Court's Electronic-Filing System. A notice of case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But

[(A) such service is not effective if the filer learns that it did not reach the person to be served; and

(B)] a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

~~**(A) Using the Court's Electronic-Filing System.** A party represented by an attorney may serve a paper on a registered user by filing it with the court's electronic-filing system. A party not represented by an attorney may do so only if allowed by court order or local rule. Service is complete upon~~

~~filing, but is not effective if the serving party learns that it did not reach the person to be served.~~

~~**(B) Using Other Electronic Means.** A paper may be served by any other electronic means that the person consented to in writing. Service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.~~

(4) Service by ~~Nonelectronic~~ Other Means. A paper may also be served by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address; ~~or~~

(E) sending it by electronic means that the person has consented to in writing – in which event service is complete upon sending, but is not effective if the sender learns that it did not reach the person to be served; or

~~(E)~~ (F) delivering it by any other means that the person has consented to in writing –in which event service is complete when the person making

service delivers it to the agency designated to make delivery.

[(5) Serving Papers That Are Not Filed. Rule 49(a)(4) governs service of a paper that is not filed.]

(6) Definition of "Notice of Case Activity." The term "notice of case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

(b) Filing.

(1) When Required; Certificate of Service. Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served ~~by filing it with the court's electronic-filing system~~ [through the court's electronic-filing system][3] under Rule 49(a)(3). When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.

(2) ~~Means of~~ Electronic Filing and Signing.

(A) By a Person Represented by Counsel – Generally Required; Exceptions. A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By a Self-Represented Party – When Allowed.

3 This specification may be advisable now that Rule 49(a)(3) contemplates locally-required "other means" for serving sealed filings.

(i) In General. A self-represented party may use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or local rule prohibits the party from doing so.[4]

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the case].

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on self-represented parties' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

(C) Means of Filing. ~~**Electronically.**~~ A paper is filed electronically by filing it with the court's electronic-filing system.

4 This provision carries forward a feature of current Rule 49(b)(3)(B) – namely, the absence of any reference to local provisions requiring a self-represented person to e-file.

(D) Signature. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature.

(E) Qualifies as Written Paper. A paper filed electronically is written or in writing under these rules.

~~**(B)**~~ **(3) Nonelectronically Filing.** A paper not filed electronically is filed by delivering it:

(i) to the clerk; or

(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

~~**(3) Means Used by Represented and Unrepresented Parties.**~~

~~**(A) Represented Party.** A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.~~

~~**(B) Unrepresented Party.** A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or local rule.~~

(4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name--or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected

after being called to the attorney's or person's attention.

(5) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(c) Service and Filing by Nonparties. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or local rule.

(d) Notice of a Court Order. When the court issues an order on any post-arraignment motion, the clerk must serve notice of the entry on each party as required by Rule 49(a). A party also may serve notice of the entry by the same means. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve--or authorize the court to relieve--a party's failure to appeal within the allowed time.

Committee Note

Rule 49 is amended to address two topics concerning self-represented parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[5] Civil Rule 5, and Appellate Rule 25.) Rule 49(a) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 49(b) is amended to expand the availability of electronic modes by which self-represented parties can file documents with the court and receive notice of filings that others make in the case.

Subdivision (a)(3). Rule 49(a)(3) is revised so that it focuses solely on the service of notice by means of the court's electronic-filing system. What had been Rule 49(a)(3)(B)

5 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

(concerning "other electronic means" of service) is relocated, as revised, to a new Rule 49(a)(4)(E).

Amended Rule 49(a)(3) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 49(a)(3)(A)'s provision for service by "on a registered user by filing [the paper] with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 49(a)(3)] [Rule 49(a)(3)(B)] states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (a)(4). Rule 49(a)(4) is retitled "Service by Other Means" to reflect the relocation into that subdivision – as new Rule 49(a)(4)(E) – of what was previously Rule 49(a)(3)(B). The subdivision's introductory phrase ("A paper may be served by") is amended to read "A paper may also be served by." This locution ensures that Rule 49(a)(4) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to litigants who will be filing non-electronically but who wish to effect service on their opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of case activity).

[Subdivision (a)(4)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served"; a similar provision is also included in subdivision (a)(3) with respect to service via the court's electronic-filing system.] [Although new subdivision (a)(4)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (a)(3). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.]

[Subdivision (a)(5). New Rule 49(a)(5) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 49(a)(3): If a paper is not filed with the court, then the court's electronic system will never generate a notice of case activity, so the sender cannot use Rule 49(a)(3) for service and thus must use Rule 49(a)(4).]

Subdivision (a)(6). New Rule 49(a)(6) defines the term "notice of case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of case activity" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (b)(1). Subdivision (b)(1) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by "[through the court's electronic-filing system] under Rule 49(a)(3)" in order to conform to the change to subdivision (a)(3).

Subdivision (b)(2). Amended Rule 49(b)(2) governs electronic filing and signing. New Rules 49(b)(2)(A) and (B) replace what had been Rule 49(b)(3). Under new Rule 49(b)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 49(b)(3)(B). That is, under new Rule 49(b)(2)(B)(i), self-represented parties are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. (The rule grants this presumptive authorization to a self-represented 'party,' not a self-represented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system. See Rule 49(c).) If a district wishes to restrict self-represented parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 49(b)(2)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 49(b)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 49(b)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented parties to the court's electronic-filing system, or (2) providing self-represented parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions

and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit self-represented parties to use the court's electronic filing system only if they obtain permission from the judge to whom the case is assigned; such a local rule would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 49(b)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 49(b)(2)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

For a court that opts to provide self-represented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Criminal Rule 57(a)(2) ("A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of an unintentional failure to comply with the requirement.").]

Rules 49(b)(2)(B)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits self-represented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow self-represented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on self-represented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits self-represented parties from e-filing might nonetheless provide an exception where the self-represented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 49(b)(2)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Subdivision (b)(3). What had been Rule 49(b)(2)(B) (concerning nonelectronic means of filing) is carried forward as new Rule 49(b)(3).

B. Criminal Rule 45

This proposed conforming amendment to Criminal Rule 45(c) has not changed:

Rule 45. Computing and Extending Time

* * *

(c) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a specified time after being served and service is made under Rule 49(a)(4)(C), (D), and ~~(E)~~ (F), 3 days are added after the period would otherwise expire under subdivision (a).

Committee Note

Subdivision (c) is amended to conform to the renumbering of Criminal Rule 49(a)(4)(E) as Rule 49(a)(4)(F).

III. Appellate Rules: Amendments to Appellate Rule 25

Here is the updated version of the proposed amendments to Appellate Rule 25:

Rule 25. Filing and Service

(a) Filing.

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

(2) Filing: Method and Timeliness.

(A) Nonelectronic Filing.

(i) In General. For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for

filing.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing ~~and Signing. (i) By~~ by a ~~Represented~~ Person Represented by Counsel--Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

~~(ii)~~ (C) Electronic Filing by ~~By~~ an Unrepresented ~~Person~~ Party--When Allowed or Required.

(i) In General. A party ~~person~~ not represented by an attorney~~: •~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or ~~by~~ local rule prohibits the person from doing so.~~; and •~~ An unrepresented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits unrepresented parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing papers and for receiving electronic notice of activity in the case.

(iii) Conditions and Restrictions on Access. A court may set reasonable

conditions and restrictions on unrepresented parties' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

~~**(iii)**~~ **(D) Signing.** A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

~~**(iv)**~~ **(E) Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

(3) Filing a Motion with a Judge. *[Not shown in this draft, for brevity.]*

(4) Clerk's Refusal of Documents. *[Not shown in this draft, for brevity.]*

(5) Privacy Protection. *[Not shown in this draft, for brevity.]*

(b) Service of All Papers Required. Unless a rule requires service by the clerk or the paper will be served [through the court's electronic-filing system][6] under Rule 25(c)(1), a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

6 This specification may be advisable now that Rule 25(c)(1) contemplates locally-required "other means" for serving sealed filings.

(1) Service by a Notice of Case Activity Sent Through the Court's Electronic-Filing System. A notice of case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But

[(A) such service is not effective if the filer learns that it did not reach the person to be served; and

(B)] a court may provide by local rule that, if a paper is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 15, or 21, it must be served by other means.

(2) Service by Other Means. A paper may also be served under this rule by:

~~Nonelectronic service may be any of the following:~~

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

(B) ~~by~~ mail; ~~or~~

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

(D) ~~. (2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by~~ sending it by ~~other~~ electronic means that the person to be served has consented to in writing.

(3) **Considerations in Choosing Other Means.** When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper

with the court.

(4) **When Service Is Complete.** Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by a notice from the court's electronic-filing system is complete as of the notice's date. Service by other electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(5) Serving Papers That Are Not Filed. Rule 25(c)(2) governs service of a paper that is not filed.

(6) Definition of "Notice of Case Activity." The term "notice of case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. *[Not shown in this draft, for brevity.]*

Committee Note

Rule 25 is amended to address two topics concerning unrepresented parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[7] Civil Rule 5, and Criminal Rule 49.) Rule 25(a)(2) is amended to expand the availability of electronic modes by which unrepresented parties can file documents with the court and receive notice of filings that others make in the case. Rule 25(c) is amended to address service of documents filed by an unrepresented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 25(c)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice.

Subdivision (a)(2)(C). Under new Rule 25(a)(2)(C)(i), the presumption is the opposite of the presumption set by the prior Rule 25(a)(2)(B)(ii). That is, under new Rule 25(a)(2)(C)(i), unrepresented parties are presumptively authorized to use the court's electronic-filing system to file documents in their case. (The rule grants this presumptive authorization to an unrepresented 'party,' not an unrepresented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system.) If a circuit wishes to restrict unrepresented parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 25(a)(2)(C)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 25(a)(2)(C)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 25(a)(2)(C)(ii) and (iii) by doing either of the following:

7 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

(1) Allowing reasonable access for unrepresented parties to the court's electronic-filing system, or (2) providing unrepresented parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, filings that commence a proceeding in the court of appeals – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit unrepresented parties to use the court's electronic filing system only if they obtain permission from the court; such a local rule would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 25(a)(2)(C)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 25(a)(2)(C)(ii) does not restrict a court from entering an order barring a specific unrepresented litigant from accessing the court's electronic-filing system.

For a court that opts to provide unrepresented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Appellate Rule 47(a)(2) ("A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.").]

Rules 25(a)(2)(C)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits unrepresented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow unrepresented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on unrepresented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits unrepresented parties from e-filing might nonetheless provide an exception where the unrepresented party meets conditions similar to

those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 25(a)(2)(C)(iv) provides that the court may deny a specific unrepresented litigant access to the court's electronic-filing system, and that the court may revoke an unrepresented litigant's access to the court's electronic-filing system.

Former Rules 25(a)(2)(B)(iii) and (iv) are carried forward but renumbered as Rules 25(a)(2)(D) and (E).

Subdivision (b). Existing Rule 25(b) generally requires that a party, "at or before the time of filing a paper, [must] serve a copy on the other parties to the appeal or review." The existing rule exempts from this requirement instances when "a rule requires service by the clerk." The rule is amended to add a second exemption, for instances when "the paper will be served [through the court's electronic-filing system] under Rule 25(c)(1)." This amendment is necessary because new Rule 25(c)(1) encompasses service by the notice of case activity that results from the clerk's uploading into the system a paper filing by an unrepresented litigant. In those circumstances, service will not occur "at or before the time of filing a paper," but it will occur when the court's electronic-filing system sends the notice to the litigants registered to receive it.

Subdivision (c). Rule 25(c) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in Rule 25(c)(1). Existing Rule 25(c)(1) becomes new Rule 25(c)(2), which continues to address alternative means of service. New Rule 25(c)(5) defines the term "notice of case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (c)(1). Amended Rule 25(c)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 25(c)(2)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 25(c)(1)] [Rule 25(c)(1)(B)] states that a court may provide by local rule that if a paper is filed under seal or initiates a proceeding in the court of

appeals under Rule 5, 15, or 21, it must be served by other means. This sentence is designed to account for circuits (if any) in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system. It also accounts for circuits that permit the use of CM/ECF to file case-initiating petitions but that do not wish to permit the filer to rely on CM/ECF for service of such a petition.

Subdivision (c)(2). Subdivision (c)(2) carries forward the contents of current Rule 25(c)(1), with two changes.

The subdivision's introductory phrase ("Nonelectronic service may be any of the following") is amended to read "A paper may also be served under this rule by." This locution reflects the inclusion of other electronic means (apart from service through the court's electronic-filing system) in new Rule 25(c)(2)(D) and also ensures that what will become Rule 25(c)(2) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to litigants who will be filing non-electronically but who wish to effect service on their opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of case activity).

The prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 25(c)(1).

Subdivision (c)(4). Amended subdivision (c)(4) carries forward the prior rule's provisions that service by electronic means other than through the court's electronic-filing system is complete on sending unless the party making service is notified that the paper was not received by the party served, and that service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

As to service through the court's electronic-filing system, the amendments make two changes. First, the amended rule provides that such service "is complete as of the notice's date." Under new subdivision (c)(1), when a litigant files a paper other than through the court's electronic-filing system, service on a litigant who is registered to receive a notice of case activity through the court's electronic-filing system occurs by means of the notice of case activity. But that service does not occur "on filing" when the filing is made other than through the court's electronic-filing system. There can be a short time lag between the date the litigant files the document with the court and the date that the clerk's office uploads it into the court's electronic-filing system. Thus, new subdivision (c)(1) and amended subdivision (c)(4) provide that service by a notice of case activity sent to a person registered to receive it through the court's electronic-filing system is complete as of the date of the notice of case activity.

[Second, while subdivision (c)(4) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "is notified that the paper was not received by the party served," the similar provision concerning service via the court's electronic-filing system now appears in subdivision (c)(1)(A).] [Second, although

subdivision (c)(4) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "is notified that the paper was not received by the party served," no such proviso is included in subdivision (c)(1) as to service by a notice of case activity sent to a person registered to receive it through the court's electronic-filing system. This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system.]

Subdivision (c)(5). New Rule 25(c)(5) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 25(c)(1): If a paper is not filed with the court, then the court's electronic system will never generate a notice of case activity, so the sender cannot use Rule 25(c)(1) for service and thus must use Rule 25(c)(2).

Subdivision (c)(6). New Rule 25(c)(6) defines the term "notice of case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of case activity" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Redlined versions of updated SRL service and e-filing amendments for the Civil, Criminal, and Appellate Rules, September 21, 2025 (showing changes compared with spring 2025 versions)

I. Civil Rules: Amendments to Civil Rule 5 (plus a conforming amendment)

Here is the updated draft of Civil Rule 5, along with the conforming amendment to Civil Rule 6.

A. Civil Rule 5

Here is the sketch of the Civil Rule 5 amendments:

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

* * *

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service by a Notice of ~~Filing~~Case Activity Sent Through the Court's Electronic-Filing System. A notice of ~~filing~~case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But

[(A) such service is not effective if the filer learns that it did not reach the person to be served; and

(B)] a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

(3) Service by Other Means ~~in General~~. A paper ~~is~~ may also be served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's

dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending it to a registered user by filing it with the court's electronic-filing system or~~ sending it by ~~other~~ electronic means that the person has consented to in writing – in ~~either of~~ which event~~s~~ service is complete upon ~~filing or~~ sending, but is not effective if the ~~filer or~~ sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person has consented to in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

~~**(3) Using Court Facilities.** [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.]~~ **(4) Serving Papers That Are Not Filed.** Rule 5(b)(3) governs service of a paper that is not filed.

(5) Definition of "Notice of ~~Filing~~Case Activity." The term "notice of ~~filing~~case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

* * *

(d) Filing.

(1) Required Filings; Certificate of Service.

(A) Papers ~~after~~ After the Complaint. Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service. No certificate of service is required when a paper is served [through the court's electronic-filing system][1] under Rule 5(b)(2)~~by filing it with the court's electronic-filing system~~. When a paper that is required to be served is served by other means:

(i) if ~~the paper~~ it is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if ~~the paper~~ it is not filed, a certificate of service need not be filed, unless filing is required by court order or by local rule.

(2) ~~Nonelectronic Filing.~~ ~~A paper not filed electronically is filed by delivering it:~~

~~(A) to the clerk; or~~

~~(B) to a judge who agrees to accept it for filing, and who must then note the filing~~

1 This specification may be advisable now that Rule 5(b)(2) contemplates locally-required "other means" for serving sealed filings.

~~date on the paper and promptly send it to the clerk.~~

~~(3)~~ Electronic Filing and Signing.

(A) By a ~~Represented~~ Person Represented by Counsel—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By an Unrepresented ~~a Self-Represented~~ ~~Person~~ Party—When Allowed or Required.

(i) **In General.** A ~~self-represented~~ ~~person~~ party not represented by an attorney~~: (i)~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system ~~[~~to file papers and receive notice of activity in the case~~],~~ unless a court order or ~~by~~ local rule prohibits the ~~person~~party from doing so.~~; and (ii)~~ ~~A self-represented~~An unrepresented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) **Local Provisions Prohibiting Access.** If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits ~~self-represented persons~~unrepresented parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing ~~[~~papers~~]~~ and for receiving electronic

notice [of activity in the case].

(iii) **Conditions and Restrictions on Access.** A court may set reasonable conditions and restrictions on ~~self-represented persons'~~ unrepresented parties' access to the court's electronic-filing system.

(iv) **Restrictions on a Particular Person.** A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

(C) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(3) Nonelectronic Filing. A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(4) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Committee Note

Rule 5 is amended to address two topics concerning ~~self-represented~~

~~litigants.~~unrepresented parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[2] Criminal Rule 49, and Appellate Rule 25.) Rule 5(b) is amended to address service of documents (subsequent to the complaint) filed by ~~a self-represented~~an unrepresented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 5(b)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice. Rule 5(d) is amended to expand the availability of electronic modes by which ~~self-represented litigants~~unrepresented parties can file documents with the court and receive notice of filings that others make in the case. Also, the order of what had been Rules 5(d)(2) ("Nonelectronic Filing") and 5(d)(3) ("Electronic Filing and Signing") is reversed – with (d)(2) becoming (d)(3) and vice versa – to reflect the modern primacy of electronic filing.

Subdivision (b). Rule 5(b) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in subdivision 5(b)(2). Existing Rule 5(b)(2) becomes new Rule 5(b)(3), which continues to address alternative means of service. New Rule 5(b)(4) addresses service of papers not filed with the court, and new Rule 5(b)(5) defines the term "notice of ~~filing~~case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (b)(2). Amended Rule 5(b)(2) eliminates the requirement of separate (paper) service (of documents after the complaint) on a litigant who is registered to receive a notice of ~~filing~~case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of ~~filing~~case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 5(b)(2)(E)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 5(b)(2~~)~~)] [Rule 5(b)(2)(B)] states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (b)(3). Subdivision (b)(3) carries forward the contents of current Rule 5(b)(2), with two changes.

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2 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

The subdivision's introductory phrase ("A paper is served under this rule by") is amended to read "A paper may also be served under this rule by." This locution ensures that what will become Rule 5(b)(3) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to ~~a litigant~~litigants who will be filing non-electronically but who ~~wishes~~wish to effect service on their ~~opponent~~opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of ~~filing~~case activity).

Subdivision (b)(3)(E). The prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 5(b)(2).

[Subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served"; a similar provision is also included in subdivision (b)(2) with respect to service via the court's electronic-filing system.] [Although subdivision (b)(3)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (b)(2). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system~~.~~.]

Subdivision (b)(4). New Rule 5(b)(4) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 5(b)(2): If a paper is not filed with the court, then the court's electronic system will never generate a notice of ~~filing~~case activity, so the sender cannot use Rule 5(b)(2) for service and thus must use Rule 5(b)(3).

Subdivision (b)(5). New Rule 5(b)(5) defines the term "notice of ~~filing~~case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of ~~filing~~case activity" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (d)(1)(B). Subdivision (d)(1)(B) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by ~~"~~"[through the court's electronic-filing system] under Rule 5(b)(2)" in order to conform to the change to subdivision (b)(2).

Subdivision (d)(2)(B). Under new Rule 5(d)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 5(d)(3)(B). That is, under new Rule 5(d)(2)(B)(i), ~~self-~~

~~represented litigants~~unrepresented parties are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. ~~If a district wishes to restrict self-represented litigants'~~(The rule grants this presumptive authorization to an unrepresented 'party,' not an unrepresented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system.) If a district wishes to restrict unrepresented parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 5(d)(2)(B)(ii), a local rule or general court order that bars ~~persons~~parties not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 5(d)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 5(d)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for ~~self-represented litigants~~unrepresented parties to the court's electronic-filing system, or (2) providing ~~self-represented litigants~~unrepresented parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). –That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit unrepresented parties to use the court's electronic filing system only if they obtain permission from the judge to whom the case is assigned; such a local rule would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 5(d)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 5(d)(2)(B)(ii) does not restrict a court from entering an order barring a specific ~~self-represented~~unrepresented litigant from accessing the court's electronic-filing system.

For a court that opts to provide unrepresented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the

rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Civil Rule 83(a)(2) ("A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.").]

Rules 5(d)(2)(B)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits unrepresented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow unrepresented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on unrepresented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits unrepresented parties from e-filing might nonetheless provide an exception where the unrepresented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 5(d)(2)(B)(iv) provides that the court may deny a specific ~~self-represented~~unrepresented litigant access to the court's electronic-filing system, and that the court may revoke ~~a self-represented~~an unrepresented litigant's access to the court's electronic-filing system.

B. Civil Rule 6

As you know, a conforming change to Civil Rule 6 would be necessary in order to update cross-references. That draft has not changed since the version shown in the fall 2024 agenda books:

Rule 6. Computing and Extending Time; Time for Motion Papers

* * *

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(~~2~~3)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Committee Note

Subdivision (d) is amended to conform to the renumbering of Civil Rule 5(b)(2) as Rule 5(b)(3).

II. Criminal Rules: Amendments to Criminal Rule 49 (plus a conforming amendment)

Here is the updated sketch of Criminal Rule 49, plus the conforming amendment to Criminal Rule 45.

A. Criminal Rule 49

Rule 49. Serving and Filing Papers

(a) Service on a Party.

(1) What is Required. Each of the following must be served on every party: any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(2) Serving a Party's Attorney. Unless the court orders otherwise, when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party.

(3) Service by ~~Electronic Means~~ a Notice of ~~Filing~~Case Activity Sent Through the Court's Electronic-Filing System. A notice of ~~filing~~case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. But

[(A) such service is not effective if the filer learns that it did not reach the person

to be served; and

(B)] a court may provide by local rule that if a paper is filed under seal, it must be served by other means.

~~**(A) Using the Court's Electronic-Filing System.** A party represented by an attorney may serve a paper on a registered user by filing it with the court's electronic-filing system. A party not represented by an attorney may do so only if allowed by court order or local rule. Service is complete upon filing, but is not effective if the serving party learns that it did not reach the person to be served.~~

~~**(B) Using Other Electronic Means.** A paper may be served by any other electronic means that the person consented to in writing. Service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.~~

(4) Service by ~~Nonelectronic~~ Other Means. A paper may also be served by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is

complete upon mailing;

(D) leaving it with the court clerk if the person has no known address; ~~or~~

(E) sending it by electronic means that the person has consented to in writing – in which event service is complete upon sending, but is not effective if the sender learns that it did not reach the person to be served; or

~~(E)~~ (F) delivering it by any other means that the person has consented to in writing –in which event service is complete when the person making service delivers it to the agency designated to make delivery.

[(5) Serving Papers That Are Not Filed. Rule 49(a)(4) governs service of a paper that is not filed.]

(6) Definition of "Notice of ~~Filing~~Case Activity." The term "notice of ~~filing~~case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the docket.

(b) Filing.

(1) When Required; Certificate of Service. Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served ~~by filing it with the court's electronic-filing system~~ [through the court's electronic-filing system][3] under Rule 49(a)(3).

3 This specification may be advisable now that Rule 49(a)(3) contemplates locally-required "other means" for serving sealed filings.

When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.

(2) ~~Means of~~ Electronic Filing and Signing.

(A) By a Person Represented ~~Person~~by Counsel – Generally Required; Exceptions. A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By a Self-Represented ~~Person~~Party – When Allowed ~~or Required~~.

(i) In General. A self-represented ~~person~~party may use the court's electronic-filing system ~~[~~to file papers and receive notice of activity in the case~~],~~, unless a court order or local rule prohibits the ~~person~~party from doing so.[4]

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits self-represented ~~persons~~parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing [papers] and for receiving electronic notice [of activity in the case].

(iii) Conditions and Restrictions on Access. A court may set reasonable

4 This provision carries forward a feature of current Rule 49(b)(3)(B) – namely, the absence of any reference to local provisions requiring a self-represented person to e-file.

conditions and restrictions on self-represented ~~persons'~~parties' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

(C) Means of Filing. ~~**Electronically.**~~ A paper is filed electronically by filing it with the court's electronic-filing system.

(D) Signature. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature.

(E) Qualifies as Written Paper. A paper filed electronically is written or in writing under these rules.

~~**(B)**~~ **(3) Nonelectronically~~** **Filing.** A paper not filed electronically is filed by delivering it:

(i) to the clerk; or

(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

~~**(3) Means Used by Represented and Unrepresented Parties.**~~

~~**(A) Represented Party.** A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.~~

~~**(B) Unrepresented Party.** A party not represented by an attorney must file~~

~~nonelectronically, unless allowed to file electronically by court order or local rule.~~

(4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name--or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.

(5) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(c) Service and Filing by Nonparties. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or local rule.

(d) Notice of a Court Order. When the court issues an order on any post-arraignment motion, the clerk must serve notice of the entry on each party as required by Rule 49(a). A party also may serve notice of the entry by the same means. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve--or authorize the court to relieve--a party's failure to appeal within the allowed time.

Committee Note

Rule 49 is amended to address two topics concerning self-represented ~~litigants~~parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[5] Civil Rule 5, and Appellate Rule 25.) Rule 49(a) is amended to address service of documents filed by a self-represented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 49(b) is amended to expand the availability of electronic modes by which self-represented ~~litigants~~parties can file documents with the court and receive notice of filings that others make in the case.

Subdivision (a)(3). Rule 49(a)(3) is revised so that it focuses solely on the service of notice by means of the court's electronic-filing system. What had been Rule 49(a)(3)(B) (concerning "other electronic means" of service) is relocated, as revised, to a new Rule 49(a)(4)(E).

Amended Rule 49(a)(3) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of ~~filing~~case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of ~~filing~~case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 49(a)(3)(A)'s provision for service by "on a registered user by filing [the paper] with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 49(a)(3~~)~~)] [Rule 49(a)(3)(B)] states that a court may provide by local rule that if a paper is filed under seal, it must be served by other means. This sentence is designed to account for districts in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system.

Subdivision (a)(4). Rule 49(a)(4) is retitled "Service by Other Means" to reflect the relocation into that subdivision – as new Rule 49(a)(4)(E) – of what was previously Rule 49(a)(3)(B). The subdivision's introductory phrase ("A paper may be served by") is amended to read "A paper may also be served by." This locution ensures that Rule 49(a)(4) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to ~~a litigant~~litigants who will be filing non-electronically but who ~~wishes~~wish to effect service on their ~~opponent~~opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of ~~filing~~case activity).

5 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

[Subdivision (a)(4)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served"; a similar provision is also included in subdivision (a)(3) with respect to service via the court's electronic-filing system.] [Although new subdivision (a)(4)(E) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "learns that it did not reach the person to be served," no such proviso is included in new subdivision (a)(3). This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system~~.~~.]

[Subdivision (a)(5). New Rule 49(a)(5) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 49(a)(3): If a paper is not filed with the court, then the court's electronic system will never generate a notice of ~~filing~~case activity, so the sender cannot use Rule 49(a)(3) for service and thus must use Rule 49(a)(4).]

Subdivision (a)(6). New Rule 49(a)(6) defines the term "notice of ~~filing~~case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of ~~filing~~case activity" is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

Subdivision (b)(1). Subdivision (b)(1) previously provided that no certificate of service was required when a paper was served "by filing it with the court's electronic-filing system." This phrase is replaced by ~~"~~"[through the court's electronic-filing system] under Rule 49(a)(3)" in order to conform to the change to subdivision (a)(3).

Subdivision (b)(2). Amended Rule 49(b)(2) governs electronic filing and signing. New Rules 49(b)(2)(A) and (B) replace what had been Rule 49(b)(3). Under new Rule 49(b)(2)(B)(i), the presumption is the opposite of the presumption set by the prior Rule 49(b)(3)(B). That is, under new Rule 49(b)(2)(B)(i), self-represented ~~litigants~~parties are presumptively authorized to use the court's electronic-filing system to file documents in their case subsequent to the case's commencement. (The rule grants this presumptive authorization to a self-represented 'party,' not a self-represented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system. See Rule 49(c).) If a district wishes to restrict self-represented ~~litigants'~~parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 49(b)(2)(B)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing

documents and receiving electronic notice of activity in the case. But Rule 49(b)(2)(B)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 49(b)(2)(B)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for self-represented ~~litigants~~parties to the court's electronic-filing system, or (2) providing self-represented ~~litigants~~parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, notices of appeal – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit self-represented parties to use the court's electronic filing system only if they obtain permission from the judge to whom the case is assigned; such a local rule would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 49(b)(2)(B)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 49(b)(2)(B)(ii) does not restrict a court from entering an order barring a specific self-represented litigant from accessing the court's electronic-filing system.

For a court that opts to provide self-represented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Criminal Rule 57(a)(2) ("A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of an unintentional failure to comply with the requirement.").]

Rules 49(b)(2)(B)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits self-represented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow self-represented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on self-represented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits self-represented parties from e-filing might nonetheless provide an exception where the self-represented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 49(b)(2)(B)(iv) provides that the court may deny a specific self-represented litigant access to the court's electronic-filing system, and that the court may revoke a self-represented litigant's access to the court's electronic-filing system.

Subdivision (b)(3). What had been Rule 49(b)(2)(B) (concerning nonelectronic means of filing) is carried forward as new Rule 49(b)(3).

B. Criminal Rule 45

This proposed conforming amendment to Criminal Rule 45(c) has not changed:

Rule 45. Computing and Extending Time

* * *

(c) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a specified time after being served and service is made under Rule 49(a)(4)(C), (D), and ~~(E)~~ (F), 3 days are added after the period would otherwise expire under subdivision (a).

Committee Note

Subdivision (c) is amended to conform to the renumbering of Criminal Rule 49(a)(4)(E) as Rule 49(a)(4)(F).

III. Appellate Rules: Amendments to Appellate Rule 25

Here is the updated version of the proposed amendments to Appellate Rule 25:

Rule 25. Filing and Service

(a) Filing.

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

(2) Filing: Method and Timeliness.

(A) Nonelectronic Filing.

(i) In General. For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of

deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or

- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing ~~and Signing. (i) By~~ by a ~~Represented~~ Person Represented by Counsel--Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

~~(ii)~~ (C) Electronic Filing by ~~By~~ an Unrepresented ~~a Self-Represented Person~~ Party--When Allowed or Required.

(i) In General. A ~~self-represented~~party ~~person~~ not represented by an attorney~~: •~~ may ~~file electronically only if allowed by~~ use the court's electronic-filing system ~~[~~to file papers and receive notice of activity in the case~~],,~~ unless a court order or ~~by~~ local rule prohibits the person from doing so.~~; and •~~ ~~A self-represented~~An unrepresented person may be required to file electronically only by ~~court~~ order in a case~~,~~ or by a local rule that includes reasonable exceptions.

(ii) Local Provisions Prohibiting Access. If a local rule – or any other local court provision that extends beyond a particular litigant or case – prohibits ~~self-represented persons~~unrepresented parties from using the court's electronic-filing system, the provision must include reasonable exceptions or must permit the use of another electronic method for filing ~~[~~papers~~]~~ and for receiving electronic notice ~~[~~of activity in the case~~]~~..

(iii) Conditions and Restrictions on Access. A court may set reasonable conditions and restrictions on ~~self-represented persons'~~unrepresented parties' access to the court's electronic-filing system.

(iv) Restrictions on a Particular Person. A court may deny a particular person access to the court's electronic-filing system and may revoke a person's previously granted access for not complying with the conditions authorized in (iii).

~~**(iii)**~~ **(D) Signing.** A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

~~**(iv)**~~ **(E) Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

(3) Filing a Motion with a Judge. *[Not shown in this draft, for brevity.]*

(4) Clerk's Refusal of Documents. *[Not shown in this draft, for brevity.]*

(5) Privacy Protection. *[Not shown in this draft, for brevity.]*

(b) Service of All Papers Required. Unless a rule requires service by the clerk or the paper will be served [through the court's electronic-filing system][6] under Rule 25(c)(1), a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service by a Notice of ~~Filing~~Case Activity Sent Through the Court's Electronic-Filing System. A notice of ~~filing~~case activity sent to a person registered to receive it through the court's electronic-filing system constitutes service on that person as of the notice's date. ~~But a court may provide by local rule that if a paper is filed under seal, it must be served by other means.~~But

[(A) such service is not effective if the filer learns that it did not reach the person to be served; and

(B)] a court may provide by local rule that, if a paper is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 15, or 21, it must be served by other means.

(2) Service by Other Means. A paper may also be served under this rule by:

~~Nonelectronic service may be any of the following:~~

(A) personal delivery, including delivery to a responsible person at the office of

6 This specification may be advisable now that Rule 25(c)(1) contemplates locally-required "other means" for serving sealed filings.

counsel;

(B) ~~by~~ mail; ~~or~~

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

(D) ~~. (2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic filing system or (B) by~~ sending it by ~~other~~ electronic means that the person to be served has consented to in writing.

(3) **Considerations in Choosing Other Means.** When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) **When Service Is Complete.** Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by a notice from the court's electronic-filing system is complete as of the notice's date. Service by other electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(5) Serving Papers That Are Not Filed. Rule 25(c)(2) governs service of a paper that is not filed.

(6) Definition of "Notice of ~~Filing~~Case Activity." The term "notice of ~~filing~~case activity" in this rule includes a notice of docket activity, a notice of electronic filing, and any other similar electronic notice provided to case participants through the court's electronic-filing system to inform them of activity on the

docket.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. *[Not shown in this draft, for brevity.]*

Committee Note

Rule 25 is amended to address two topics concerning ~~self-represented litigants.~~unrepresented parties. (Concurrent amendments are made to [add cites to Bankruptcy Rules],[7] Civil Rule 5, and Criminal Rule 49.) Rule 25(a)(2) is amended to expand the availability of electronic modes by which ~~self-represented litigants~~unrepresented parties can file documents with the court and receive notice of filings that others make in the case. Rule 25(c) is

7 The cites to the Bankruptcy Rules will depend on the option selected by the Bankruptcy Rules Committee.

amended to address service of documents filed by ~~a self-represented~~an unrepresented litigant in paper form. Because all such paper filings are uploaded by court staff into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. Rule 25(c)'s treatment of service is also reorganized to reflect the primacy of service by means of the electronic notice.

Subdivision (a)(2)(C). Under new Rule 25(a)(2)(C)(i), the presumption is the opposite of the presumption set by the prior Rule 25(a)(2)(B)(ii). That is, under new Rule 25(a)(2)(C)(i), ~~self-represented litigants~~unrepresented parties are presumptively authorized to use the court's electronic-filing system to file documents in their case. ~~If a district wishes to restrict self-represented litigants'~~(The rule grants this presumptive authorization to an unrepresented 'party,' not an unrepresented 'person'; the rule does not grant nonparty nonlawyers any right to use the court's e-filing system.) If a circuit wishes to restrict unrepresented parties' access to the court's electronic-filing system, it must adopt an order or local rule to impose that restriction.

Under Rule 25(a)(2)(C)(ii), a local rule or general court order that bars persons not represented by an attorney from using the court's electronic-filing system must include reasonable exceptions, unless that court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case. But Rule 25(a)(2)(C)(iii) makes clear that the court may set reasonable conditions on access to the court's electronic-filing system.

A court can comply with Rules 25(a)(2)(C)(ii) and (iii) by doing either of the following: (1) Allowing reasonable access for ~~self-represented litigants~~unrepresented parties to the court's electronic-filing system, or (2) providing ~~self-represented litigants~~unrepresented parties with an alternative electronic means for filing (such as by email or by upload through an electronic document submission system) and an alternative electronic means for receiving notice of court filings and orders (such as an electronic noticing program). –That is, a local rule generally prohibiting access to the court's electronic-filing system would include "reasonable exceptions" (within the meaning of the Rule) if it provided reasonable access to the court's electronic-filing system.

For a court that adopts the option of allowing reasonable access to the court's electronic-filing system, the concept of "reasonable access" encompasses the idea of reasonable conditions and restrictions. Thus, for example, access to electronic filing could be restricted to non-incarcerated litigants (in light of the distinctive logistical considerations that apply in carceral settings) and could be restricted to those persons who satisfactorily complete required training and/or certifications and comply with reasonable conditions on access. Also, a court could adopt a local provision stating that certain types of filings – for example, filings that commence a proceeding in the court of appeals – cannot be filed by means of the court's electronic-filing system. [Some courts have adopted local rules that permit unrepresented parties to use the court's electronic filing system only if they obtain permission from the court; such a local rule

would meet the Rule's requirement of "reasonable access" so long as such permission is not unreasonably withheld in practice.] Rule 25(a)(2)(C)(ii) refers to "a local rule – or any other local court provision that extends beyond a particular litigant or case" to make clear that Rule 25(a)(2)(C)(ii) does not restrict a court from entering an order barring a specific ~~self-represented~~unrepresented litigant from accessing the court's electronic-filing system.

For a court that opts to provide unrepresented parties with an alternative electronic means for filing and an alternative electronic means for receiving notice of court filings and orders, the rule does not require the court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable requirements such as that the files be in PDF format. [But see Appellate Rule 47(a)(2) ("A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.").]

Rules 25(a)(2)(C)(ii) and (iii) are intended to work in tandem. Where a local rule prohibits unrepresented parties from using the court's e-filing system, the "reasonable exceptions" required by item (ii) should align with the types of "reasonable conditions and restrictions" referenced in item (iii). That is, a local rule may allow unrepresented parties e-filing access only in particular circumstances—such as after completing a training or agreeing to specified formatting standards—provided those requirements are reasonable under item (iii).

Conversely, item (iii)'s authorization for courts to impose reasonable conditions on unrepresented parties' access also informs what counts as a reasonable exception under item (ii). For example, a local rule that generally prohibits unrepresented parties from e-filing might nonetheless provide an exception where the unrepresented party meets conditions similar to those described in item (iii). The two provisions thus establish a flexible, complementary framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures that courts retain authority to structure access responsibly.

Rule 25(a)(2)(C)(iv) provides that the court may deny a specific ~~self-represented~~unrepresented litigant access to the court's electronic-filing system, and that the court may revoke ~~a self-represented~~an unrepresented litigant's access to the court's electronic-filing system.

Former Rules 25(a)(2)(B)(iii) and (iv) are carried forward but renumbered as Rules 25(a)(2)(D) and (E).

Subdivision (b). Existing Rule 25(b) generally requires that a party, "at or before the time of filing a paper, [must] serve a copy on the other parties to the appeal or review." The existing rule exempts from this requirement instances when "a rule requires service by the clerk." The rule is amended to add a second exemption, for instances when "the paper will be served [through the court's electronic-filing system] under Rule 25(c)(1)." This amendment is necessary because new Rule 25(c)(1) encompasses service by the notice of ~~filing~~case activity

that results from the clerk's uploading into the system a paper filing by ~~a self-represented~~an unrepresented litigant. In those circumstances, service will not occur "at or before the time of filing a paper," but it will occur when the court's electronic-filing system sends the notice to the litigants registered to receive it.

Subdivision (c). Rule 25(c) is restructured so that the primary means of service – that is, service by means of the court's electronic-filing system – is addressed first, in Rule 25(c)(1). Existing Rule 25(c)(1) becomes new Rule 25(c)(2), which continues to address alternative means of service. New Rule 25(c)(5) defines the term "notice of ~~filing~~case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket.

Subdivision (c)(1). Amended Rule 25(c)(1) eliminates the requirement of separate (paper) service on a litigant who is registered to receive a notice of ~~filing~~case activity from the court's electronic-filing system. Litigants who are registered to receive a notice of ~~filing~~case activity include those litigants who are participating in the court's electronic-filing system with respect to the case in question and also include those litigants who receive the notice because they have registered for a court-based electronic-noticing program. (Current Rule 25(c)(2)'s provision for service by "sending [a paper] to a registered user by filing it with the court's electronic-filing system" had already eliminated the requirement of paper service on registered users of the court's electronic-filing system by other registered users of the system; the amendment extends this exemption from paper service to those who file by a means other than through the court's electronic-filing system.)

[The last sentence of amended Rule 25(c)(1~~)~~)] [Rule 25(c)(1)(B)] states that a court may provide by local rule that if a paper is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 15, or 21, it must be served by other means. This sentence is designed to account for circuits (if any) in which parties in the case cannot access other participants' sealed filings via the court's electronic-filing system. It also accounts for circuits that permit the use of CM/ECF to file case-initiating petitions but that do not wish to permit the filer to rely on CM/ECF for service of such a petition.

Subdivision (c)(2). Subdivision (c)(2) carries forward the contents of current Rule 25(c)(1), with two changes.

The subdivision's introductory phrase ("Nonelectronic service may be any of the following") is amended to read "A paper may also be served under this rule by." This locution reflects the inclusion of other electronic means (apart from service through the court's electronic-filing system) in new Rule 25(c)(2)(D) and also ensures that what will become Rule 25(c)(2) remains an option for serving any litigant, even one who receives notices of filing. This option might be useful to ~~a litigant~~litigants who will be filing non-electronically but who ~~wishes~~wish to effect service on their ~~opponent~~opponents before the time when the court will have uploaded the filing into the court's system (thus generating the notice of ~~filing~~case activity).

The prior reference to "sending [a paper] to a registered user by filing it with the court's electronic-filing system" is deleted, because this is now covered by new Rule 25(c)(1).

Subdivision (c)(4). Amended subdivision (c)(4) carries forward the prior rule's provisions that service by electronic means other than through the court's electronic-filing system is complete on sending unless the party making service is notified that the paper was not received by the party served, and that service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

As to service through the court's electronic-filing system, the amendments make two changes. First, the amended rule provides that such service "is complete as of the notice's date." Under new subdivision (c)(1), when a litigant files a paper other than through the court's electronic-filing system, service on a litigant who is registered to receive a notice of ~~filing~~case activity through the court's electronic-filing system occurs by means of the notice of ~~filing~~case activity. But that service does not occur "on filing" when the filing is made other than through the court's electronic-filing system. There can be a short time lag between the date the litigant files the document with the court and the date that the clerk's office uploads it into the court's electronic-filing system. Thus, new subdivision (c)(1) and amended subdivision (c)(4) provide that service by a notice of ~~filing~~case activity sent to a person registered to receive it through the court's electronic-filing system is complete as of the date of the notice of ~~filing~~case activity.

[Second, while subdivision (c)(4) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "is notified that the paper was not received by the party served," the similar provision concerning service via the court's electronic-filing system now appears in subdivision (c)(1)(A).] [Second, although subdivision (c)(4) carries forward – for service by other electronic means – the prior rule's provision that such service is not effective if the sender "is notified that the paper was not received by the party served," no such proviso is included in subdivision (c)(1) as to service by a notice of ~~filing~~case activity sent to a person registered to receive it through the court's electronic-filing system. This is because experience has demonstrated the general reliability of notice and service through the court's electronic-filing system on those registered to receive notices of electronic filing from that system~~.~~.]

Subdivision (c)(5). New Rule 25(c)(5) addresses service of papers not filed with the court. It makes explicit what is arguably implicit in new Rule 25(c)(1): If a paper is not filed with the court, then the court's electronic system will never generate a notice of case activity, so the sender cannot use Rule 25(c)(1) for service and thus must use Rule 25(c)(2).

Subdivision (c)(6). New Rule 25(c)(6) defines the term "notice of ~~filing~~case activity" as any electronic notice provided to case participants through the court's electronic-filing system to inform them of a filing or other activity on the docket. There are two equivalent terms currently in use: Notice of Electronic Filing and Notice of Docket Activity. "Notice of ~~filing~~case activity"

is intended to encompass both of those terms, as well as any equivalent terms that may come into use in future. The word "electronic" is deleted as superfluous now that electronic filing is the default method.

TAB 4B

Item 4B will be an oral report.

TAB 4C

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett

Re: Privacy (22-AP-E; 24-AP-B; 24-AP-C; 25-AP-C)

Date: September 15, 2025

The Rules Committees have been considering several suggestions to amend the privacy rules across the various rule sets. In particular, Senator Wyden has suggested that complete redaction of social security numbers should be required (22-AP-E), and the Department of Justice has suggested that pseudonyms rather than initials be used for minors (24-AP-B). The American Association for Justice, commenting on the DOJ proposal, adds that the pseudonyms should be gender neutral (24-AP-C). And in what has been docketed as a new suggestion, the American Association for Justice supports gender-neutral pseudonyms and pronouns, as well as complete redaction of social security numbers (25-AP-C).

The Criminal Rules Committee has taken the lead in this area. It will not meet until after our fall meeting. But its relevant subcommittee is proposing the following:

Rule 49.1. Privacy Protection for Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, a party or nonparty making an electronic or paper filing with the court[, including any exhibit or attachment,] must:

(1) omit or completely redact all social-security or other taxpayer-identification numbers, including employer-identification numbers; and

(2) if any of the following types of information appear in the filing, include only:

(A) the year of an individual's birth;

(B) a pseudonym in place of the name of an individual known to be a minor;

(C) the last four digits of an individual's financial-account number; and

(D) the city and state of an individual's home address.

.

* * * * *

Proposed Committee Note

In contrast to the current rule, which allows public filings to contain the last four digits of social-security and taxpayer-identification numbers, the amendment requires the omission or redaction of all digits of social-security and taxpayer-identification numbers in public filings. Recent federal policy guidance recommends avoiding the unnecessary display of any part of these numbers on forms, reports, and computers. The Committee concluded that even partial numbers are useful to identity thieves, and that the omission of these numbers from public filings will impose no hardship on either litigants or the courts. In cases in which this information is pertinent, Rule 49.1(f) allows a party to file an unredacted copy of a filing under seal.

Taxpayer-identification numbers (TINs) are identification numbers used in the administration of tax laws. In addition to Social Security numbers, TINs include individual taxpayer-identification numbers (ITINs), taxpayer-identification numbers for pending U.S. Adoptions (ATINs), and employer-identification numbers (EINs).

The amendment's protection for "taxpayer-identification numbers" includes employer-identification numbers as well as individual taxpayer-identification numbers and adoption-identification numbers. Although employer-identification numbers for some corporations may be publicly available, smaller businesses and individuals who employ others have a privacy interest in these numbers, and there is also a potential for their misuse.

To enhance the protection of minors' privacy and safety, the amendment also requires the substitution of a pseudonym, rather than initials, in place of a minor's name in public filings. When it is feasible to do so, the use of gender-neutral pseudonyms is preferable. The use of gendered pseudonyms or pronouns, combined with other information contained in public pleadings, may make it easier to uncover the identity of a minor.

The requirement for omission or redaction applies to exhibits or attachments. Parties and nonparties who include exhibits or attachments in public filings are required to review them to ensure that they do not contain information protected by the rule.

This proposal does not change any of the existing exemptions from the redaction requirement. Those exemptions include various court and agency records as well as pro se filings in habeas action. *See* Fed. R. Crim. P. 49.1(b).

The Civil Rules Committee is considering following the lead of the Criminal Rules Committee. As of this writing, it appears that the Bankruptcy Rules Committee is likely to adhere to its view that, for reasons unique to bankruptcy, it is not appropriate at this time to require complete redaction of social security numbers. See Bankruptcy Rules Committee Fall 2025 Agenda Book at 160.

The easiest thing for the Appellate Committee to do is nothing. That's because Appellate Rule 25(a)(5) applies to appeals the privacy rules that applied to that case in the court below. It provides:

> **Privacy Protection**. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

Under Appellate Rule 25(a)(5), the privacy rules simply flow through to appeal.

On the other hand, whatever need there is in the bankruptcy courts for social security numbers to identify debtors, that task should be accomplished before any appeal to a court of appeals. Plus, members of the Appellate Rules Committee have expressed concern about some of the exceptions in the existing privacy rules. For example, even if it would be too cumbersome to expect redaction of court records filed in the district court, it is hard to see why an unredacted social security number should be reproduced in a brief or appendix in the court of appeals.

For this reason, at the last meeting, the Appellate Rules Committee seemed interested in a possible amendment to Rule 25(a)(5) providing greater privacy protection to social security numbers on appeal.

As reflected in the draft above, the Criminal Rules subcommittee thinks that all social security or other taxpayer identification numbers, including employer-identification numbers, should be protected. As the draft committee note puts it, "Although employer-identification numbers for some corporations may be publicly available, smaller businesses and individuals who employ others have a privacy interest in these numbers, and there is also a potential for their misuse." Accordingly,

the draft below protects all social security or other taxpayer identification numbers, including employer-identification numbers.

Rule 25. Filing and Service

(a) Filing.

* * * * *

(5) **Privacy Protection.**

(A) **In General.** An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(B) **In a Petition Involving the Railroad Retirement Act.** The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(C) **Redacting Social-Security Number and Taxpayer Identification Numbers.** Unless the court orders filing under seal, a party or nonparty must fully redact social-security numbers or other taxpayer-identification numbers, including employer-identification numbers, from any filing it makes, despite what the rules in Rule 25(a)(5)(A) allow. But this requirement does not apply to a clerk forwarding or making the record available under Rule 6(b)(2)(C), Rule 6(c)(2), or Rule 11 or to an agency filing the record under Rule 17.

* * * * *

Committee Note

Subdivision (a). Existing paragraph (5) of subdivision (a) deals with privacy protection. In general, the privacy protection rules that governed below also govern on appeal. But whatever the justification for permitting unredacted or partially redacted social-security numbers or other taxpayer identification numbers in other settings, there is no need for them in the publicly available papers filed by litigants

in a court of appeals. For that reason, the amendment adds a new provision broadly requiring a party or nonparty to fully redact those numbers from any filing it makes, despite what the rules mentioned in subparagraph (A) would otherwise allow. If there is a rare case in which it is necessary for the court of appeals to know the number, a court order can permit filing under seal.

This prohibition does not apply to a clerk who forwards or makes the record available under Rule 6(b)(2)(C), Rule 6(c)(2), or Rule 11. Nor does it apply to an agency filing the record under Rule 17. The record can be sent as it is. The prohibition does apply, however, to any litigant who reproduces portions of the record in an appendix under Rule 30.

For clarity, the existing provisions of paragraph (5) are broken into subparagraphs and given headings. The new provision is subparagraph (C).

TAB 5

TAB 5A

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett

Re: Premature Petitions (24-AP-G)

Date: September 15, 2025

A proposed amendment to Rule 15 has been published for public comment. This amendment is designed to remove a potential trap for the unwary.

The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then a petition to review that agency decision is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Instead, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider.

Rule 4, dealing with appeals from district court judgments, used to work in a similar way regarding various post-judgment motions. But in 1993, Rule 4 was amended to provide that such a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposal is to do for Rule 15 what was done for Rule 4.

We have not received any comments. The subcommittee expects to receive comments before the comment period closes on February 16, 2026. It will meet and review any comments we receive and report at the spring meeting.

TAB 5B

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

* * * * *

(d) Premature Petition or Application. This subdivision (d) applies if a party files a petition for review or an application to enforce after an agency announces or enters its order—but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party. The premature petition or application becomes effective to seek review or enforcement of the order when the agency disposes of the last such petition for rehearing, reopening, or reconsideration. If a party intends to challenge the disposition of a petition for rehearing, reopening, or reconsideration,

[1] New material is underlined in red; matter to be omitted is lined through.

the party must file a new or amended petition for review or application to enforce in compliance with this Rule 15.

(e)~~(d)~~ **Intervention.** Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(f)~~(e)~~ **Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

Committee Note

Subdivision (d). Subdivision (d) is new. It is designed to eliminate a procedural trap. Some circuits hold that petitions for review of agency orders that have been rendered non-reviewable by the filing of a petition for

rehearing (or similar petition) are "incurably premature," meaning that they do not ripen or become valid after the agency disposes of the rehearing petition. *See, e.g., Nat'l Ass'n of Immigration Judges v. Fed. Labor Relations Auth.*, 77 F.4th 1132, 1139 (D.C. Cir. 2023); *Aeromar, C. Por A. v. Dept. of Transp*., 767 F.2d 1491, 1493 (11th Cir. 1985) (relying on the pre-1993 treatment of notices of appeal and applying the "same principle" to review of agency action). In these circuits, if a party aggrieved by an agency action does not file a second timely petition for review after the petition for rehearing is denied by the agency, that party will find itself out of time: Its first petition for review will be dismissed as premature, and the deadline for filing a second petition for review will have passed. Subdivision (d) removes this trap.

It is modeled after Rule 4(a)(4)(B)(i), as amended in 1993, and is intended to align the treatment of premature petitions for review of agency orders with the treatment of premature notices of appeal. Recognizing that while review of district court orders is generally case based, *see* Fed. R. Civ. P. 54, review of administrative orders is generally party based, subdivision (d) refers to an order that is made "non-reviewable as to that party" by a petition for rehearing, reopening, or reconsideration.

Subdivision (d) does not address whether or when the filing of a petition for rehearing, reopening, or reconsideration renders an agency order non-reviewable as to a party. That is left to the wide variety of statutes, regulations, and judicial decisions that govern agencies and appeals from agency decisions. Rather, subdivision (d) provides that when, under governing law, an agency order is non-reviewable as to a particular party because of the filing of a petition for rehearing, reopening, or reconsideration, a premature petition for review or application to enforce that

order will be held in abeyance and become effective when the agency disposes of the last such petition—that is, the last petition that renders the order non-reviewable as to that party.

As with appeals in civil cases, *see* Rule 4(a)(4)(B)(ii), the premature petition becomes effective to review the original decision, but a party intending to challenge the disposition of a petition for rehearing, reopening, or reconsideration must file a new or amended petition for review or application to enforce.

Subsequent subdivisions are re-lettered.

TAB 6

TAB 6A

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Intervention Subcommittee

Re: Working Draft of New Rule on Intervention (22-AP-G; 23-AP-C)

Date: September 17, 2025

The subcommittee on intervention on appeal has been considering a possible new Federal Rule of Appellate Procedure governing intervention since it was appointed in the spring of 2023. The Advisory Committee has expressed some skepticism regarding a highly detailed working draft produced by the subcommittee that attempted to define the kinds of legal interests that could support intervention, but openness to a more slimmed-down version. At the spring 2025 meeting, this matter was deferred, leaving further consideration until the Federal Judicial Center (FJC) completed considerable research into intervention on appeal.

Since then, there have been three developments that the subcommittee considered. First, the FJC has completed its report. It is included with this subcommittee report. Second, the Supreme Court broadly repudiated universal injunctions. *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025). Third, the Supreme Court itself granted a motion to intervene, simultaneously with granting cert. *Natl. Republican Senatorial Comm. v. Fed. Election Comm'n*, No. 24-621, 2025 WL 1787717, at *1 (U.S. June 30, 2025).

In addition, the subcommittee considered a student note responding to this subcommittee's work. Jordan Thomas, *In the (Court)room Where It Happens: The Case for A More Expansive Standard for Intervention in the Federal Courts of Appeals*, 43 Yale L. & Policy Rev. 286, 332 (2024). That note critiques a prior working draft and argues for a liberalized version that would more broadly allow intervention on appeal.

In this report, the subcommittee presents another working draft, one that is slimmed-down from the prior working draft.

Student note. The subcommittee was not persuaded to broadly allow intervention on appeal. Whatever the merits of a broad approach to intervention in the district courts, an appeal should focus on the correctness of the district court's judgment based on the way the case was shaped by the parties in the district court. Only unusual circumstances should allow someone to intervene after the claims made, the defenses offered, the discovery sought, the evidence introduced, and the decision rendered were all shaped by the parties in the district court.

Grant by Supreme Court. The subcommittee did not find much guidance in the Supreme Court's grant of a motion to intervene. The Court issued a two-sentence

order, not an opinion, in a case presenting a constitutional challenge to a federal statute that limits the amount of money a political party may spend in coordination with a candidate. The Democratic National Committee, Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee moved to intervene after the Solicitor General, as respondent, had urged the Court to grant certiorari and hold the statute unconstitutional. Neither the petitioners nor the Solicitor General opposed the motion; the latter explained:

> Movants assert an adequate interest in this litigation, arguing (Mot. 14, 18) that invalidating the challenged statute would require them to "reshape their operations," "forfeit carefully developed tactical efficiencies," and deprive them of a competitive advantage over their electoral opponents in "our two-party system." The motion is timely; movants sought leave to intervene promptly after the government explained that it would no longer defend the challenged statute. Allowing intervention would not cause any unfair prejudice to the government or petitioners. Finally, petitioners' and respondents' alignment on the question presented is the type of extraordinary factor that can justify intervention in this Court.

National Republican Senatorial Committee v. Federal Election Commission, 2025 WL 1645696, at *2–3.

Universal Injunctions. The subcommittee does think that the Supreme Court's decision in *CASA* will reduce the number and significance of motions to intervene in some cases. To the extent that some sought intervention because they were directly affected by a district court universal injunction, there is far less need to do so. But *CASA* did not decide whether universal vacatur is proper under the APA, leaving that an open question. "Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action." *CASA*, 145 S. Ct. at 2554, n.10 (citing 5 U.S.C. § 706(2) (authorizing courts to "hold unlawful and set aside agency action")). And motions to intervene are not limited to the cases seeking universal relief. Although *CASA* reduces to some extend the need for an intervention rule, the subcommittee was not persuaded to abandon the effort.

FJC Report. As the subcommittee sees it, the FJC report confirms that intervention in agency review cases brought directly to the courts of appeals does not appear to present significant problems. In many agency cases, intervention is easy and routine because the party who prevailed before the agency (or the agency itself) seeks to intervene. For that reason, the subcommittee suggests limiting any new rule to intervention on appeal from a district court decision. Accordingly, the working draft is entitled "Intervention on Appeal from a District Court," and numbered as Rule 7.1, placing it in Title II of the Federal Rules of Appellate Procedure, entitled, "Appeal from a Judgment or Order of a District Court."

On the other hand, the subcommittee also thinks that the FJC report (and the Jordan Thomas note) confirm that there is some uncertainty and conflict in how the courts of appeals treat motions to intervene on appeal from a district court. Some decisions in the FJC report show that some courts, at least sometimes, are applying a standard for intervention on appeal much more like that applied in the district courts under Civil Rule 24 than the canonical "exceptional case for imperative reasons" standard from *McKenna v. Pan Am. Petroleum Corp.*, 303 F.2d 778, 779 (5th Cir. 1962) (per curiam).

For example, in *Various Refinery Companies v. EPA* (FJC at 33), a motion judge granted intervention because intervention complied with the court's liberal application of Federal Rule of Civil Procedure 24(a)(2).

In another case, the Court of Appeals for the Seventh Circuit permitted intervention and said, "[a]lthough the Federal Rules of Appellate Procedure do not provide for intervention other than in cases involving review of certain administrative rulings, intervention is permitted in other cases as a matter of federal common law, with Rule 24 supplying the standard for determining whether to permit intervention in a particular case." *Univ. of Notre Dame v. Sebelius*, 743 F.3d 547, 558 (7th Cir. 2014), judgment vacated, 575 U.S. 901 (2015).

And in *Pub. Serv. Co. of New Mexico v. Barboan*, 857 F.3d 1101 (10th Cir. 2017) (FJC 49), the Court of Appeals for the Tenth Circuit described the criteria as being the same as under Civil Rule 24.

More generally, Jordan Thomas, the author of the student note mentioned above, writes:

> Although it is true that several circuits have at one point or another asserted that appellate courts may permit intervention on appeal only "in an exceptional case for imperative reasons," neither the Second Circuit nor the Seventh Circuit has ever used this language, and the First Circuit consistently seems to favor a more permissive standard that applies the FRCP 24 district-court framework in ways that allow intervention on appeal more often than average. Moreover, even in circuits where the heightened standard arises more frequently—such as the Fifth Circuit and the D.C. Circuit—one can find at least a few cases where the "exceptional case for imperative reasons" language was entirely absent and the court utilized the standard district-court analysis.

43 Yale L. & Policy Rev. at 302–03 (footnotes omitted).

At this point, it seems that many of the decisions that take somewhat conflicting approaches might be reconcilable in their ultimate decision. For example,

Various Refinery—the decision made by a motion judge in the Fifth Circuit—was an agency case (a petition for review of an EPA order). And the *Notre Dame* decision cited *Automobile Workers v. Scofield*, 382 U.S. 205, 217 n.10 (1965), which is far less definitive, and *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517–18 (7th Cir.2004), which permitted the victor before an administrative agency to intervene. The *Barboan* opinion, after describing the criteria as the same as under Civil Rule 24, adds the caveat that "when an applicant has not sought intervention in the district court, we permit it on appeal 'only in an exceptional case for imperative reasons.' " *Id*. at 1113.

Accordingly, the subcommittee does not claim that a new rule is urgent. But there is enough uncertainty and conflict to continue to discuss whether a rule is warranted and what such a rule would look like.

There are a fair number of cases in the FJC report involving sealing issues. The subcommittee sought to cover these cases with broad phrasing, referring to a "legal interest that may be affected in the appeal" and "adjudicating the appeal," rather than a "legal interest that may be affected by the judgment deciding the appeal" and "disposing of the appeal."

The subcommittee considered *United States v. Pawlowski* (FJC at 60), where one co-defendant successfully moved to intervene in another co-defendant's appeal for the limited purpose of deferring decision on certain issues that he also intended to raise. Thinking that this appears to be a rare use of intervention, and unsure that intervention was necessary, the subcommittee has not attempted to draft in a way that covers such case management.

Here is a working draft of a slimmed-down proposal:

Rule 7.1. Intervention on Appeal from a District Court

(a) Motion to Intervene. The preferred method for a nonparty to be heard is participation as an amicus curiae under Rule 29. Intervention on appeal is reserved for exceptional cases. A person may move to intervene on appeal by filing a motion in accordance with Rule 27. The motion must be filed as soon after the docketing of the appeal as practical in the circumstances.

(b) Criteria.

(1) **In General.**

A court of appeals may permit a movant to intervene on appeal who:

(A) demonstrates a compelling reason why intervention was not sought at a prior stage of the litigation or, if it was sought

previously, provides a compelling explanation of how circumstances have changed;

(B) has a legal interest that may be affected in the appeal—other than by the precedential effect of a decision;

(C) is so situated that adjudicating the appeal may as a practical matter impair or impede the movant's ability to protect its interest,

(D) shows that existing parties will not adequately protect that interest;

(E) shows that participating as an amicus would be insufficient to protect that interest;

(F) shows that existing parties will not be unfairly prejudiced by permitting intervention; and

(G) in any civil action of which the district courts have original jurisdiction founded solely on section 1332 of title 28, shows that intervention would be consistent with the jurisdictional requirements of section 1367(b) of title 28.

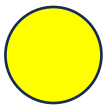
(2) **Governments, Agencies, and Officials.**

(A) The United States, a State, or a tribal government may also move to intervene to defend any law it has enacted or action it or one of its agencies or officers has taken.

(B) An agency or officer of the United States, of a State or of a tribal government may also move to intervene to defend any law it has enacted or action it or one of its agencies or officers has taken, if that agency or officer is authorized by the applicable law to defend the law or action.

(C) The United States may also move to intervene to defend its foreign relations interests.

(c) Disposition of Motion. If the court grants the motion, the intervenor becomes a party for all purposes, unless the court orders otherwise. Denial of a motion to intervene does not preclude participation as an amicus under Rule 29.



As the above draft reflects, the subcommittee is aware that the Advisory Committee was skeptical of the prior attempt to specify the kinds of legal interests that could support intervention. But further reflection and discussion might lead the Advisory Committee to think that some greater specification would be appropriate. Yet the subcommittee found it difficult to find any middle ground between (1) a slimmed-down draft that refers simply to "a legal interest that may be affected in the appeal—other than by the precedential effect of a decision," and (2) a draft that attempts to cover all the legal interests that could support intervention.

For that reason, it is also providing the following list of legal interests that could support intervention. This list is similar to the one in a prior working draft, but eliminates one category from the prior draft, a category that was most complicated and most contingent.

Legal Interests. The following legal interests support intervention on appeal:

(1) a claim by an intervenor to a property interest in the property that is the subject of the action;

(2) a claim by an intervenor that is being litigated on behalf of the proposed intervenor by a party acting in a representative capacity;

(3) a claim by an intervenor that can be currently asserted against an existing party;

(4) a defense by an intervenor to a claim by an existing party that can be currently asserted against the intervenor.

If the Advisory Committee chooses to list the legal interests that support intervention, we may also need to include something like, "a claim that material filed with the court should or should not be maintained under seal."

This draft includes references to a tribal government. The Advisory Committee might take up the broader question of how the Appellate Rules treat tribes. See Part VII C of this agenda book. If so, whether to include tribal governments in this rule might be part of that broader project.

TAB 6B

Intervention
in the Federal Courts of Appeals

Federal Judicial Center
2025

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

INTERVENTION
IN THE FEDERAL COURTS OF APPEALS

Tim Reagan and Kristin Garri
Federal Judicial Center 2025

The Federal Rules of Appellate Procedure do not currently specify standards for intervention on appeal. The rules' advisory committee asked the Federal Judicial Center to study case files and report on the circumstances in which intervention is sought. Intervention is frequently granted in agency cases. It is seldom sought in civil cases, where it is granted about half of the time. It is very rarely sought or granted in criminal cases.

Intervention is mentioned in four Rules of Appellate Procedure, including two requiring green covers for intervention briefs—Rules 28.1(d) and 32(a)(2)—and one concerning disclosure of corporate ownership—Rule 26.1(a). Rule 15(d) states that intervention in agency cases is by motion.

As the Supreme Court recently said, "Resolution of a motion for permissive intervention is committed to the discretion of the court before which intervention is sought." Cameron v. EMW Women's Surgical Ctr., 595 U.S. 267, 278–79 (2022).[1] Longer ago, the Court said that although "[t]he Federal Rules of Civil Procedure . . . apply only in the federal district courts[, the] policies underlying [the civil rules on] intervention may be applicable in appellate courts." Int'l Union v. Scofield, 382 U.S. 205, 217 n.10 (1965).

Intervention is common in agency cases, because agency cases are typically petitions to review agency decisions brought against the agencies—the winning party before the agency needs to intervene in the court of appeals to be in the case. Intervention is uncommon in court appeals. Although the Rules of Civil Procedure provide for intervention in district-court civil cases, the Rules of Criminal Procedure have no such provision for district-court criminal cases.

We studied examples of intervention sought and either granted or denied: early intervention, shortly after the cases were filed, and late intervention, typically after argument or initial judgment. For each case, or set of related cases, we prepared a summary describing what happened in the case and whether intervention was granted. In some cases, the intervention question became moot. Intervention questions not yet resolved in cases stayed or in abeyance are classified as moot, at least for the time being.

1. Deciding that a state's new attorney general should have been granted intervention, the Supreme Court opined, "Respect for state sovereignty must . . . take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court." 595 U.S. at 277.

CONTENTS

EARLY INTERVENTION

We examined a two-year filing cohort of cases—cases filed from October 1, 2021, to September 30, 2023—and examined docket entries for intervention motions during the first year of each case.[2] Among the cases we did not include in this study were those in which intervention had already occurred in the district court, appeals from district-court intervention rulings, and motions by pro se litigants to intervene in their own cases.

Eighty-one case summaries cover the civil appeals with intervention motions. Intervention was granted in thirty-five sets of cases (43%). Three case summaries cover all criminal cases with intervention motions. Intervention was granted in one case (33%). In addition, we prepared five case summaries of randomly selected agency cases in each circuit with intervention motions or notices, with the exception of the First Circuit, where four case summaries cover all such agency cases within our filing cohort. Intervention was granted in fifty-four sets of cases out of sixty-four (84%).

Whether Intervention Was Granted: Early Intervention Motions

	Civil Cases			Criminal Cases			Agency Cases		
Court	Yes	No	Moot	Yes	No	Moot	Yes	No	Moot
D.C.		3	1				3		2
1st	1	1					3	1	
2d	6	2	2				4		1
3d	2	3	2				4	1	
4th		1					5		
5th	1	4	1	1			3	1	1
6th	7	3	2		1	1	5		
7th	3	3					5[3]		
8th		2					5		
9th	12	4	3				5		
10th	1	2					4	1	
11th	2	5					3	1	1
Fed.		2					5		
Total	35	35	11	1	1	1	54	5	5

2. Our filing cohort was selected so that we would study a substantial number of recent cases, most of which would have been resolved. In our filing cohort, 50% of the civil appeals were decided within one year of filing, and 71% of those filed before July 13, 2023, were decided within two years; all four criminal cases in our filing cohort were decided within one year of filing; 25% of the agency appeals in our filing cohort were resolved within one year of filing, and 74% of those filed before July 13, 2023, were decided within two years.

3. This includes one set of cases where intervention was granted in the District of Columbia Circuit before the cases were transferred to the Seventh Circuit.

Civil Cases

Intervention on appeal in civil cases is granted about as often as it is denied.

Other Government Officer. A sometimes challenging intervention question in civil cases is the propriety of intervention on appeal when a government official charged with defending a law is succeeded by a government official with a different litigation preference. In March 2022, the Supreme Court held in *Cameron v. EMW Women's Surgical Ctr.* that a new attorney general was entitled to intervene in an appeal to petition for rehearing en banc. 595 U.S. 267 (2022).[4]

Other Political Body. Four case summaries describe cases in which intervention was sought because one political body argued that its interests were not adequately represented by another political body in the case.[5] Intervention was granted in one of them.

Constitutionality. Nine case summaries describe governmental intervention activity because of a question of constitutionality.[6] Intervention was granted in eight of them, including in one agency case.

Sealing. Several case summaries, especially covering Ninth Circuit cases, describe efforts to intervene either to seal part of the court record (seven grants)[7] or to unseal part of the court record (one grant and two denials).[8]

Bankruptcy. Eight case summaries describe cases arising from bankruptcy proceedings; four describe grants of intervention, including one among agency cases.[9] Another three case summaries describe intervention granted in other cases

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4. On July 21, 2022, after the Supreme Court's intervention ruling in the case, the court of appeals granted intervention to the attorney general, granted panel rehearing, and vacated its earlier decision in light of the Supreme Court's June 24 decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215. Order, No. 19-5516, D.E. 87, 2022 WL 2866607. Also in light of the *Dobbs* decision, the district court dismissed the lawsuit on August 17. Order, No. 3:18-cv-224 (W.D. Ky.), D.E. 158, 2022 WL 19560712.

5. District of Columbia Circuit: Huisha-Huisha v. Mayorkas, page 12 (denied). Ninth Circuit: Mayes v. Biden, page 43 (granted); East Bay Sanctuary Covenant v. Biden, page 46 (denied, also a case in which the prospective intervenor cared about the case but had no legal interest in it); Mi Familia Vota v. Hobbs, page 47 (moot).

6. Second Circuit: Giambalvo v. New York, page 18 (granted); East Fork Funding v. U.S. Bank, page 18 (granted). Third Circuit: Conner v. Fox Rehabilitation Services, page 22 (granted). Fifth Circuit: Campaign Legal Center v. Scott, page 28 (denied). Sixth Circuit: Lindenbaum v. Realgy, page 32 (granted); Brokerarte Capital Partners v. Detroit Institute of Arts, page 33 (granted). Seventh Circuit: Bevis v. City of Naperville, page 38 (granted). Eleventh Circuit: Andrews v. Autoliv Japan, page 52 (granted). Federal Circuit: Solas OLED v. Vidal, page 57 (granted, agency case).

7. Ninth Circuit: National Abortion Federation v. Center for Medical Progress, page 43 (granted); Sidibe v. Sutter Health, page 44 (granted); Innovative Health v. Biosense Webster, page 44 (granted); Littleton v. Musk, page 44 (granted); Boston Retirement System v. Uber Technologies, page 45 (granted); Carr v. Google, page 45 (granted); Comet Technologies USA v. XP Power, page 45 (granted).

8. Sixth Circuit: Grae v. Corrections Corporation of America, page 34 (denied). Ninth Circuit: Doe v. Roe, page 44 (granted). Tenth Circuit: Luo v. Wang, page 50 (denied).

9. First Circuit: GoldenTree Asset Management v. Financial Oversight and Management Board for Puerto Rico, page 15 (granted). Third Circuit: *In re* Boy Scouts of America, page 22 (granted); *In re* Truong, page 23 (denied); *In re* Atiyeh, page 23 (moot). Fifth Circuit: Gulfport Energy v. FERC, page 30 (granted, agency case); Chesapeake Energy Marketing v. FERC, page 31 (moot, agency case).

involving creditors.[10] And three more case summaries describe cases with receivers; two describe grants of intervention.[11]

Pro Se. Several case summaries describe intervention efforts, typically pro se, by persons who may care about the case but who do not have a legal interest in it; sixteen describe denials of intervention; intervention was moot in the other three.[12]

Other. The above categories account for fifty-four of the civil sets of cases (67%)[13] and for three of the agency cases (5%). Of the twenty-seven sets of civil cases not accounted for by those categories, intervention was granted in the eleven sets summarized as follows:

Cooper v. Upstairs, Downstairs of New York, 2d Cir. 21-cv-1032 and 21-cv-1066

Civil appeals filed by defendants on April 26, 2021, and by the plaintiff on April 28, 2021, challenged a Southern District of New York decision (1) denying a retrial on compensatory damages after a jury awarded the plaintiff only punitive damages, (2) granting the plaintiff attorney fees and costs, and (3) denying the defendants attorney fees but granting the defendants costs. On March 30, the plaintiff's attorneys moved to intervene in the defendants' appeal, stating that they would be subject to an award of costs to defendants and the plaintiff had not retained counsel in the defendants' appeal. The attorneys did represent the plaintiff in the plaintiff's appeal. A three-judge panel granted intervention on May 18. The intervening attorneys filed a brief on August 17. The court of appeals affirmed the district court's decisions on May 1, 2024.

Jules v. Andre Balazas Properties, 2d Cir. 23-cv-1253 and 23-cv-1283

A plaintiff's civil appeal filed on September 15, 2023, and the plaintiff's attorney's appeal filed on the following day challenged a Southern District of New York decision confirming an arbitration award. The arbitration respondent, who was not named in the plaintiff's complaint, moved on July 10, 2024, to intervene in the appeals. A three-judge panel granted intervention on November 15. On April 25, 2025, the court affirmed the confirmation.

Ninth Circuit: *In re* Silver, page 45 (granted); PG&E v. Canyon Capital Advisors, page 46 (denied).

10. Second Circuit: *In re* Approximately $3.5 Billion of Assets, page 17 (granted); Various Parties v. Republic of Argentina, page 18 (granted). Fifth Circuit: Caballero v. Rosneft Trading, page 28 (granted).

11. Fifth Circuit: SEC v. Barton, page 29 (denied). Seventh Circuit: Schneider v. Schneider, page 38 (granted). Tenth Circuit: America West Bank Members v. Utah, page 49 (granted).

12. First Circuit: Estados Unidos Mexicanos v. Smith & Wesson Brands, page 16 (denied). Second Circuit: Upsolve v. James, page 19 (denied); Carroll v. Trump, page 19 (denied); Lamothe v. Moran, page 20 (moot). Third Circuit: Lora v. Baylor, page 22 (denied); Anand v. Independence Blue Cross, page 23 (denied). Fifth Circuit: Missouri v. Biden, page 29 (moot). Sixth Circuit: *In re* Veolia North America, page 34 (denied); Bell v. Washington, page 35 (moot). Seventh Circuit: Starkey v. Roman Catholic Archdioceses of Indianapolis, page 39 (denied). Eighth Circuit: Frazier v. Smith, page 41 (denied). Ninth Circuit: Brown v. Maricopa County Attorney's Office, page 46 (denied); East Bay Sanctuary Covenant v. Biden, page 46 (denied, also a political-body case). Eleventh Circuit: Peele v. Department of Justice, page 53 (denied); Locke v. Canady, page 53 (denied); Georgia v. Meadows, page 54 (denied). Federal Circuit: Frazier v. United States, page 56 (denied).

13. Headings for civil cases include case category.

Jackson v. General Electric, 6th Cir. 21-cv-3226

A March 10, 2021, civil appeal by the plaintiff's attorneys challenged the Southern District of Ohio's denial of the defendant's motion to enforce a settlement agreement in an employment-discrimination case. The case had been conditionally dismissed with prejudice, and although the plaintiff herself apparently refused to sign the settlement agreement, the deadline for reopening the case had expired. The plaintiff moved to intervene in the appeal on December 17, and the clerk of court granted intervention on January 10, 2022. The plaintiff was the appellee in a related appeal by the defendant employer (21-3237). On July 5, the court of appeals affirmed denial of the enforcement motion.

Newell v. Foley, 6th Cir. 22-pr-3912

A pro se October 28, 2022, civil appeal challenged the Northern District of Ohio's dismissal of a prisoner petition. The prisoner's complaint was dismissed before service on the defendant, so Ohio moved to intervene in the appeal as an interested party on November 14. The clerk granted intervention four days later. The court affirmed dismissal of the complaint on June 8, 2023.

Tennessee v. Department of Education, 6th Cir. 22-cv-5807

A September 13, 2022, civil appeal challenged a July 15 Eastern District of Tennessee preliminary injunction against federal education policies in conflict with state laws regarding sexual orientation and gender identity. On September 14, the district court granted intervention to an association of Christian schools and to three minor female athletes claiming unfairness if they were required to compete against transgender girls. On September 21, the association and one of the female athletes moved to intervene in the appeal as well. The clerk granted intervention on October 6. The association and the athlete filed their appellee brief on January 24, 2023. Over a dissent, the court of appeals affirmed the preliminary injunction on June 14, 2024. 104 F.4th 577.

Various Parties, 6th Cir. 23-cv-5447, 23-c-5451, 23-cv-5453, 23-cv-5454, and 23-cv-5455

On May 15 and 16, 2023, two civil defendants appealed the plaintiffs' court-approved voluntary dismissals of five Western District of Kentucky civil actions as settled by the defendants' insurer. Settling defendants moved to consolidate the appeals on June 16. On June 20, the insurer moved to intervene in the five cases. The clerk consolidated the cases on July 17, and a three-judge panel granted the insurer intervention on September 29. The insurer filed its brief on November 3. A merits panel affirmed the district court's dismissals on February 29, 2024.

Friends of George's v. Mulroy, 6th Cir. 23-cv-5611

A June 30, 2023, civil appeal challenged the Western District of Tennessee's holding unconstitutional a Tennessee statute criminalizing adult cabaret entertainment that could be viewed by a minor. A drag performer and an organization promoting LGBTQ+ interests moved to intervene on September 8. A three-judge motion panel granted permissive intervention on September 15. The intervenors filed a brief on

October 23. On July 18, 2024, the court determined that the plaintiffs in the case did not have standing to pursue it. 108 F.4th 431. On September 5, the panel denied the intervenors' August 21 motion to respond to a petition for rehearing en banc. The court denied rehearing on September 20.

Driftless Area Land Conservancy v. Huebsch, 7th Cir. 20-cv-3325 and 20-cv-3365

In an interlocutory civil appeal by original defendants, the court of appeals granted intervention to intervenors in the district court and denied the intervenors their own interlocutory appeal.

Conservation organizations' December 11, 2019, complaint filed in the Western District of Wisconsin challenged a public service commission's granting a permit for an electricity transmission line. Developers who were granted the permit moved to intervene as defendants. Finding that the original defendants would adequately oppose the complaint, the district judge denied intervention, but the court of appeals decided that the developers were entitled to intervene. 969 F.3d 742 (2020). The district court denied dismissal motions on November 20, 2020. Original defendants and intervenors filed interlocutory appeals. Noting that the intervenors did not have the same rights of interlocutory appeal as the state defendants, a motion judge for the court of appeals issued an order to show cause why their appeal should not be dismissed for lack of jurisdiction. In addition to arguing that the court of appeals had jurisdiction over their interlocutory appeal, the developers moved to intervene in the original defendants' appeal. On January 6, 2021, the clerk issued an order for the court dismissing the developers' appeal and allowing the developers to intervene in the original defendants' appeal. The appellants and the intervenors filed briefs on January 15, and they filed reply briefs on February 1. On October 21, the same panel that ordered the district court to grant intervention ruled that the district-court case should be stayed pending state litigation. 16 F.4th 508.

Caballero v. United States, 9th Cir. 20-cv-17356

A December 2, 2020, civil appeal challenged the Eastern District of California's dismissal of an in rem action involving tribal territory. When the district court dismissed the action, an intervention motion by a group involved in the property dispute was pending, and the district court denied intervention as moot. The group moved to intervene in the appeal on April 1, 2021. A two-judge motion panel granted intervention on May 14. An intervenor brief was filed on July 12. The court of appeals affirmed dismissal of the action on October 22.

Shahrokhi v. Harter, 9th Cir. 23-cv-16012

A pro se July 19, 2023, civil appeal challenged the District of Nevada's dismissal of a suit challenging state-court custody proceedings. Nevada and its attorney general moved to intervene on August 18 to provide a defense for a defendant state-court judge who had died. On August 28 and 30, they moved to oppose pending motions by the appellant. On September 11, Nevada asked the court to expedite consideration of its intervention motion so that it would not waste time preparing a brief that would be rejected because of a denial of its motion. On September 14,

Nevada filed a response to the appellant's motion to strike Nevada's earlier responses. On September 21, Nevada filed another motion to respond to an appellant motion. A two-judge motion panel granted intervention on October 2. Nevada filed its intervenor brief on January 12, 2024. The case remains pending.

Peden v. Stephens, 11th Cir. 21-pricivil-10723

A March 4, 2021, civil appeal challenged the Northern District of Georgia's granting summary judgment to defendants. The trial court had quashed the deposition of a journalist who reported on the underlying story, and the journalist moved to intervene in the appeal on October 1 to defend the district court's decision. On October 26, a motion judge granted intervention. The journalist filed a brief that day. On August 29, 2022, the court concluded that it lacked jurisdiction over the case because the district judge improperly certified final judgment while some claims remained unresolved. 50 F.4th 972.

Criminal Case

Intervention was granted in one criminal appeal:

United States v. deBerardinis, 5th Cir. 21-ncrim-30282

A May 26, 2021, appeal by criminal defense attorneys and their law firm challenged the Western District of Louisiana's denial of a motion to withdraw as counsel following the court's disqualifying one of the attorneys for being a potential witness in the case. Co-counsel with the law firm moved on July 14 to intervene to represent his and the defendant's interests. A motion judge granted intervention on the following day. The appellants voluntarily dismissed their case on August 2.

Agency Cases

A typical agency case is a petition for review by a party in an adversary proceeding before an agency. The agency is the respondent. For other parties to be included in the review by the court of appeals, they have to intervene. They are not automatically included as parties as they would be if the case were an appeal from a district court. Some petitions for review challenge agency rules rather than agency decisions in adversary proceedings. Entities that participated actively in the rulemaking process often seek to intervene in the review by the court of appeals. Their status as parties below is not necessarily as clear as it would be in a petition to review an adversary decision.

Intervention was denied in five of the agency cases in our samples:

Responsible Offshore Development Alliance v. Haaland, 1st Cir. 21-ag-1660

A September 13, 2021, petition challenged the Bureau of Ocean Energy Management's approval of a wind-energy project. The operator of the project moved to intervene on September 24. On November 1, a motion judge granted a joint motion to stay proceedings and denied the intervention motion without prejudice to refiling after a lifting of the stay. The court dismissed the case as settled on November 16, 2023.

Port Hamilton Refining and Transportation v. EPA, 3d Cir. 23-ag-1094

A refinery's January 13, 2023, petition challenged the Environmental Protection Agency's decision requiring the refinery to undergo a permit process before undertaking a construction project. A previous owner of the refinery operating an adjacent petroleum-storage business moved to intervene on February 10. A group of environmental organizations moved to intervene on February 13. The clerk of court denied intervention on March 29, "but the movants are invited to participate as amici curiae." On July 25, the court vacated the agency's decision. 75 F.4th 166, *amended*, 87 F.4th 188 (2023). A motion for attorney fees is pending.

Various States v. EPA, 5th Cir. 23-ag-60069

Texas's February 14, 2023, petition challenged the Environmental Protection Agency's disapproving a Texas air-quality implementation plan. Environmental organizations moved to intervene on March 27. Mississippi and Louisiana joined the case as petitioners on March 16 and 20, respectively. On March 27, the organizations moved to file a response motion in opposition to a stay motion, but the court rejected the motion, stating that the organizations' intervention motion had been denied, although the denial was not issued by the court's motion judge until April 19. A June 5 motion for reconsideration was denied by a three-judge panel on June 9. On March 25, 2025, the court denied the petitions by Texas and Louisiana and granted the petition by Mississippi. 132 F.4th 808.

Various Petitioners v. EPA, 10th Cir. Nos. 23-agpet-9509, 23-agpet-9512, 23-agpet-9514, 23-agpet-9520, 23-agpet-9521, 23-agpet-9529, 23-agpet-9531, 23-agpet-9533, 23-agpet-9534, and 23-agpet-9537

Ten petitions to review the Environmental Protection Agency's decision disapproving twenty-one states' plans to prevent ozone contamination of neighboring states were filed from February 13 to April 14, 2023.

On March 15, two environmental organizations moved to intervene in the first case, arguing also that venue properly belonged in the District of Columbia Circuit. In response to agency motions to transfer the cases to the court of appeals for the District of Columbia Circuit or dismiss them for improper venue, a three-judge panel decided on April 27 to leave that as a merits-panel question. In a case-management order issued on the following day, the clerk of court issued an order respecting intervention. The pending intervention motion noted "that in the D.C. Circuit, a motion to intervene filed in one case is deemed a motion to intervene in all cases before that court involving the same agency action or order. This circuit does not have a similar rule." The clerk ordered the prospective interveners to seek intervention in any other case in which they desired to intervene within five days. On May 18, a two-judge motion panel denied the organizations' intervention in the seven cases in which they sought intervention (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). "As appropriate, Movants may file an amicus brief or motion in accordance with Federal Rule of Appellate Procedure 29." The prospective intervenors appeared as amici.

In January 2024, the cases with Wyoming petitioners were voluntarily dismissed (nos. 23-9529, 23-9531, and 23-9537). On February 16, a three-judge

panel transferred cases with Oklahoma and Utah petitioners to the District of Columbia Circuit (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). 93 F.4th 1262. On June 18, 2025, the Supreme Court determined that the cases belonged in a regional circuit. 605 U.S. ___, 145 S. Ct. 1720.

Hunt Refining Company v. EPA, 11th Cir. 22-agen-11617

A refinery's May 12, 2022, petition challenged the Environmental Protection Agency's denying thirty-six small refineries Renewable Fuel Standard exemptions. On February 17, 2023, renewable fuels producers moved to intervene in support of the agency. On April 28, a motion judge denied intervention. On January 11, 2024, the court ruled that the case should have been brought in the District of Columbia Circuit. 90 F.4th 1107.

EARLY-INTERVENTION CASE SUMMARIES

Our case summaries are organized by court. Before the case summaries, we present relevant information about intervention on appeal from local rules and circuit law, if any. The case summaries are presented in the following order: civil cases; criminal cases, if any; and agency cases. Within each type of case, if any, we present examples, if any, of intervention granted, intervention denied, and intervention moot.

District of Columbia Circuit

> A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.

D.C. Cir. R. 15.

"A court of appeals may allow intervention at the appellate stage where none was sought in the district court only in an exceptional case for imperative reasons." Amalgamated Transit Union Int'l v. Donovan, 771 F.2d 1551, 1552 (D.C. Cir. 1985) (internal quotation marks omitted). Intervention in a civil appeal requires satisfaction of Civil Rule 24(a)(2)'s requirements for intervention of right. *In re* Brewer, 863 F.3d 861, 872 (D.C. Cir. 2017).

Generally in agency cases, "[i]ntervenors may only argue issues that have been raised by the principal parties; they simply lack standing to expand the scope of the case to matters not addressed by the petitioners in their request for review." Nat'l Ass'n of Regul. Util. Comm'rs v. ICC, 41 F.3d 721, 729 (D.C. Cir. 1994). The court will depart from that rule only in extraordinary cases. Lamprecht v. FCC, 958 F.2d 382, 389 (D.C. Cir. 1992).

There were 2,895 cases in our filing cohort. Four case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Four case summaries cover all civil cases with intervention motions, filed from zero

to 110 days after case filings. Intervention was denied in three sets of cases and never fully at issue in the other.

Intervention Denied

United States v. Assets Held at Credit Suisse (Guernsey), 20-cvus-5356
(intervention category: other)

A November 30, 2020, civil appeal challenged the district court's striking a claim in a forfeiture action. Two daughters of the appellant filed a motion to intervene in the appeal on January 15, 2021. On April 9, a three-judge motion panel referred the intervention question to the merits panel, permitting the daughters to lodge a joint brief as movant-intervenors. The daughters lodged their initial brief on June 8 and lodged a reply brief on August 23. On August 16, 2022, the court denied intervention:

> Here, the daughters seek to raise precisely the same arguments as their father. Moreover, the daughters have revealed by their conduct that they find his representation adequate. In their cross-motion below, they adopted his arguments wholesale. And in this appeal, they declined our invitation to appear at oral argument. We therefore deny the daughters' motion to intervene.

45 F.4th 426, 432. The court of appeals also affirmed the district court's decision.

Huisha-Huisha v. Mayorkas, 21-cvus-5200 and 22-cvus-5325
(intervention category: other political body)

In a class action brought by asylum-seeking families, a September 17, 2021, civil appeal challenged a preliminary injunction against the government's Covid-related immigration policies. On October 11, Texas moved to intervene in support of the federal government. A three-judge motion panel ordered responses to the intervention motion, and both sides opposed the motion as untimely. According to the government, "Although this litigation began nine months ago, and this appeal has been pending for weeks, the State of Texas has moved to intervene a mere ten days before the opening brief is due under this Court's expedited schedule." On October 26, the motion panel denied intervention but permitted Texas to participate as an amicus curiae. On March 4, 2022, the court of appeals endorsed a preliminary injunction narrower than the one the plaintiffs wanted, allowing the government to expel unauthorized immigrants so long as the government did not expel them to places where they would be persecuted or tortured. 27 F.4th 718.

A December 9, 2022, civil appeal challenged a later partial summary-judgment injunction in favor of the asylum-seeking families. On the day that the appeal was filed, nineteen states filed a motion to intervene. Noting that their motion to intervene in the district court was pending, the states argued that their intervention motion either should be pending in the court of appeals by operation of law or entertained anew by the court of appeals. On December 12, the states filed a motion to stay the injunction pending appeal. In a four-page opinion, a three-judge panel denied the intervention motion as untimely: "[A]lthough this litigation has been pending for almost two years, the States never sought to intervene in the district court until almost a week *after* the district court granted plaintiffs' partial summary

judgment motion." On December 19, the states applied to the Supreme Court for a stay of the district court's injunction, which the states characterized as rulemaking by collective acquiescence. The Court granted a stay on December 27 pending the Court's reviewing the following: "Whether the State applicants may intervene to challenge the District Court's summary judgment order." 598 U.S. ___, 143 S. Ct. 478. On May 12, 2023, the solicitor general informed the Court that the public-health emergency underlying the immigration policies at issue had expired. Six days later, the Court vacated the court of appeals' denial of intervention, ordering the motion dismissed as moot. 598 U.S. ___, 143 S. Ct. 1312. The court of appeals did as instructed on September 7, also granting the government's motion to vacate the injunction as moot.

Estate of Levin v. Wells Fargo Bank, 23-cvpri-7080 and 23-cvpri-7082
(intervention category: other)

Two civil appeals filed on June 23 and 29, 2023, challenged a decision to quash writs of attachment intended to recover for the plaintiffs Iranian funds seized to compensate victims of terrorism. On June 27, the seller of a ship to an alleged front company for Iran moved to intervene, claiming "a far greater interest in this case than any of the parties." The government opposed intervention, arguing that even if the seller had an interest in the funds, the proper forum for intervention would have been the forfeiture action and not the appeal. A three-judge panel denied intervention on September 28. The appeals were heard on September 20, 2024.

Intervention Question Moot

Stone v. U.S. Embassy Tokyo, 20-cvus-5360, 21-cvus-5015, and 21-cvus-5055
(intervention category: other)

A December 4, 2020, pro se civil appeal challenged dismissal of a complaint alleging unlawful refusal to issue citizenship and immigration documents. A January 15, 2021, appeal challenged denial of reconsideration, and the court consolidated the appeals on January 25. A third appeal filed on March 9 challenged minute orders in the district court, and the court of appeals consolidated that case with the others that day. On April 9, the appellee U.S. embassy opposed a March 24 pro se motion to intervene: "The Movant fails to allege that he has, does, or will suffer any injury as a result of the Department of State's decisions to deny a passport application and a certificate of birth abroad application for two minors who appear to be unrelated to him." The court of appeals summarily affirmed dismissal of the district-court case on May 17, denying the intervention motion as moot.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from nineteen to thirty-one days after case filings; they were granted in three sets of cases and not fully at issue in two sets.

Intervention Granted

Duke Energy Progress v. FERC, 21-rev-1272, 22-rev-1072, 22-rev-1284, and 22-rev-1327

A power company's December 27, 2021, petition challenged the Federal Energy Regulatory Commission's rejecting an operator agreement. Another power company, which was a party to a contract at issue in the case, moved to intervene in support of the commission on January 26, 2022. The clerk of court issued an order holding the case in abeyance on February 11. The petitioner filed a second petition challenging a commission order on rehearing on May 4, and the two cases were consolidated on May 6. The clerk issued an order granting intervention on May 24. The petitioner filed a third petition challenging additional commission orders on November 3, and the intervening power company filed a motion to intervene on December 2. The petitioner's fourth petition filed on December 20 challenged an additional commission order. The clerk issued an order on December 30 consolidating the four cases and holding them in abeyance. The cases were returned to the active docket on February 15, 2023. On July 9, 2024, the court denied the petitions for review. 106 F.4th 1145.

Various Petitioners v. EPA, 22-rev-1271, 22-rev-1302, and 22-rev-1303

An October 24, 2022, petition challenged an Environmental Protection Agency decision on emission standards for industrial boilers. An environmental organization moved to intervene in support of the agency on November 22. On December 2, the petitioner opposed intervention, arguing that the agency adequately represented the organization's interests. During the following week, the court consolidated the petition with two other December petitions, one of which included the environmental organization as a petitioner. The petitioners in the second case, along with a couple of other organizations, moved to intervene in the third case on January 4, 2023. A three-judge panel granted the first intervention motion on January 24. The clerk of court granted the second intervention motion on February 16. The intervenors filed their briefs on October 10 and December 14. On September 3, 2024, the court granted the industry petitioners' petitions and denied the environmental petitioners' petitions. 113 F.4th 984.

Various Petitioners v. EPA, 23-rev-1143, 23-rev-1144, 23-rev-1145, 23-rev-1146, 23-rev-1147, and 23-rev-1148

Six petitions filed on June 5, 2023, challenged the Environmental Protection Agency's granting California a waiver of federal preemption respecting vehicle emission regulations. The cases were consolidated on June 6. Three collections of states, cities, and organizations moved to intervene in support of the agency on June 28 and 29. The clerk of court issued an order granting intervention on July 24. On December 21, a two-judge motion panel agreed to hold the cases in abeyance pending decisions in other cases.

Intervention Question Moot

Evergy Kansas Central v. FERC, 23-rev-1027

A February 2, 2023, petition challenged the Federal Energy Regulatory Commission's decision granting one energy company refunds from another energy company. The energy company that was granted the refunds moved to intervene on February 24. The case was dismissed as settled on March 23.

Various Petitioners v. FERC, 23-rev-1167, 23-rev-1168, 23-rev-1169, and 23-rev-1170

Four June 30, 2023, petitions challenged the Federal Energy Regulatory Commission's accepting in part and rejecting in part a compliance filing respecting a tariff. The court consolidated the petitions on July 3. A Maine power company moved to intervene in the petitions on July 19, expecting to support the petitioners. The power company that initiated the administrative proceeding, the petitioner in one of the cases, moved to intervene in the other three cases on July 31. The court granted motions by the commission to hold the cases in abeyance pending further commission action. A December 5 petition was consolidated with the others on December 6. The cases were dismissed as settled on March 5, 2025.

First Circuit

It may be appropriate to permit intervention on appeal on findings that the intervening party "has a substantial stake in the outcome and that its interests are not fairly represented by any other party." Alstom Caribe, Inc. v. Geo. P. Reintjes Co., 484 F.3d 106, 110 (1st Cir. 2007).

There were 3,230 cases in our filing cohort. Two case summaries cover the civil appeals with intervention activity, and four case summaries cover the agency appeals with intervention activity.

Civil Cases

Two case summaries cover all civil cases with intervention motions, filed from six to 119 days after case filings. Intervention was granted in one case and denied in the other.

Intervention Granted

GoldenTree Asset Management v. Financial Oversight and Management Board for Puerto Rico, 23-civil-1737
(intervention category: bankruptcy, creditor, receiver)

A September 7, 2023, interlocutory civil appeal challenged a District of Puerto Rico procedural order in Puerto Rico's bankruptcy proceedings. A committee of unsecured creditors moved on September 13 to participate in briefing and oral argument, a motion docketed as a motion to intervene. A three-judge motion panel granted participation on September 22. A trustee bank moved on Tuesday, September 26, to participate in the appeal as an interested party, a motion docketed as a motion to intervene. On the following day, a motion judge granted the bank

permission to file a brief within three days. The bank filed a brief on Monday, October 2. The unsecured creditors filed a brief on October 10. The court of appeals affirmed the district court's judgment on January 22, 2024. 91 F.4th 501.

Intervention Denied

Estados Unidos Mexicanos v. Smith & Wesson Brands, 22-civil-1823
(intervention category: pro se)

Mexico's December 5, 2022, civil appeal challenged the District of Massachusetts's dismissal of Mexico's suit against gun manufacturers. A pro se motion to intervene was filed on April 3, 2023, by a person stating that he was disbarred as an attorney in Florida and would like to pursue a First Amendment right to practice law. A motion judge denied the intervention motion on April 24. On January 22, 2024, the court reversed the district court's dismissal. 91 F.4th 511. The Supreme Court reversed the decision of the court of appeals on June 5, 2025, agreeing that the complaint did not plausibly plead that the defendants participated in the unlawful sale or marketing of firearms. 605 U.S. ___, 145 S. Ct. 1556 (2025).

Agency Cases

Four case summaries cover all agency cases with intervention motions, filed from eleven to thirty days after case filings. Intervention was granted in three cases and denied in another.

Intervention Granted

City of Quincy v. Massachusetts Department of Environmental Protection, 21-ag-1131

A February 17, 2021, petition challenged a state agency's air permit for a natural-gas compressor station. The company that was granted the permit moved to intervene on March 2. A motion judge granted intervention on March 9. The court denied the petition on December 17. 21 F.4th 8.

City of Quincy v. FERC, 22-ag-1201

A March 21, 2022, petition challenged the Federal Energy Regulatory Commission's order authorizing operation of a compressor station. An association of natural-gas pipelines moved to intervene on April 19. The pipeline owner of the compressor station moved to intervene on April 20. The clerk of court issued orders granting intervention to the association on April 20 and to the pipeline on May 3. On June 30, the court transferred the case to the District of Columbia Circuit.

Housatonic River Initiative v. EPA, 22-ag-1398

A May 19, 2022, petition challenged the Environmental Protection Agency's permit decision respecting river-cleanup obligations. The company obligated to do the cleanup filed an intervention motion on June 16. A regional intergovernmental organization filed an intervention motion on June 17, stating that it was a party to a settlement agreement respecting the river cleanup that the petitioners were trying to undo. The clerk of court issued an order granting the intervention motions on

June 22. The court denied the petition on July 25, 2023. 75 F.4th 248.

Intervention Denied

Responsible Offshore Development Alliance v. Haaland, 21-ag-1660

A September 13, 2021, petition challenged the Bureau of Ocean Energy Management's approval of a wind-energy project. The operator of the project moved to intervene on September 24. On November 1, a motion judge granted a joint motion to stay proceedings and denied the intervention motion without prejudice to refiling after a lifting of the stay. The court dismissed the case as settled on November 16, 2023.

Second Circuit

"Generally, [in agency cases,] intervenors may only argue issues that have been raised by the principal parties; they simply lack standing to expand the scope of the case to matters not addressed by petitioners in their request for review." N.Y. State Dep't of Env't Conservation v. FERC, 884 F.3d 450, 456 (2d Cir. 2018) (quotation marks omitted).

There were 8,625 cases in our filing cohort. Ten case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Ten case summaries cover all civil cases with intervention motions, filed from seven to 338 days after case filings. Intervention was granted in six sets of cases, denied in two cases, and never fully at issue in two sets.

Intervention Granted

Cooper v. Upstairs, Downstairs of New York, 21-cv-1032 and 21-cv-1066
(intervention category: other)

Civil appeals filed by defendants on April 26, 2021, and by the plaintiff on April 28, 2021, challenged a Southern District of New York decision (1) denying a retrial on compensatory damages after a jury awarded the plaintiff only punitive damages, (2) granting the plaintiff attorney fees and costs, and (3) denying the defendants attorney fees but granting the defendants costs. On March 30, the plaintiff's attorneys moved to intervene in the defendants' appeal, stating that they would be subject to an award of costs to defendants and the plaintiff had not retained counsel in the defendants' appeal. The attorneys did represent the plaintiff in the plaintiff's appeal. A three-judge panel granted intervention on May 18. The intervening attorneys filed a brief on August 17. The court of appeals affirmed the district court's decisions on May 1, 2024.

In re Approximately $3.5 Billion of Assets, 22-cv-965 and 22-cv-975
(intervention category: bankruptcy, creditor, receiver)

Two civil appeals filed on April 28, 2022, challenged a Southern District of New

York decision dismissing a class-action complaint as duplicative of the plaintiffs' existing case against the Taliban for damages related to the September 11, 2001, attacks. Existing judgment creditors moved to intervene in the appeals on August 5. A motion judge granted intervention on August 10. On October 4, a motion judge agreed to hold the appeals in abeyance pending the district court's resolution of related matters.

Various Parties v. Republic of Argentina, 22-cv-2198, 22-cv-2231, 22-cv-2274, 22-cv-2282, 22-cv-2295, 22-cv-2296, 22-cv-2301, 22-cv-2312, 22-cv-2313, 22-cv-2316, 22-cv-2325, 22-cv-2328, 22-cv-2330, 22-cv-2331, and 22-cv-2332
(intervention category: bankruptcy, creditor, receiver)

In fifteen civil appeals filed on September 21, 2022, Argentina challenged Southern District of New York attachment orders imposed on Argentina's assets used to secure defaulted bonds. One of Argentina's creditors moved on October 13 to intervene in the appeals to challenge Argentina's motion to seal substantial portions of the record, which the creditor argued would deprive the creditor of information in public proceedings relevant to its recovery of alleged obligations. On October 20, a motion judge referred the sealing and intervention motions to a three-judge motion panel. The three-judge panel granted intervention on January 4, 2023, and provisionally granted the sealing motion. The court affirmed the attachment orders on August 21. 113 F.4th 220, *cert. denied*, 604 U.S. ___, 145 S. Ct. 1141 (2025).

Giambalvo v. New York, 23-cv-208
(intervention category: constitutionality)

A February 16, 2023, civil appeal challenged an Eastern District of New York decision denying a preliminary injunction that had been sought to make pistol permitting more convenient. On April 12, New York's attorney general moved to intervene to defend the constitutionality of state law. The attorney general filed a brief on May 25. On June 8, the clerk of court referred the intervention motion to the merits panel. The court granted intervention on July 28. The case was heard on September 27. On October 2, the court decided to hold the case in abeyance pending a decision in another case.

East Fork Funding v. U.S. Bank, 23-cv-659
(intervention category: constitutionality)

An April 21, 2023, civil appeal challenged the Eastern District of New York's award of summary judgment to a plaintiff seeking discharge of a mortgage. On October 17, New York's attorney general moved to intervene in defense of New York's Foreclosure Abuse Prevention Act. She filed a merits brief on October 31. On the following day, a motion judge granted intervention. On October 1, 2024, the court certified a question of state law to New York's court of appeals regarding the act's retroactivity. The case otherwise remains pending.

Jules v. Andre Balazas Properties, 23-cv-1253 and 23-cv-1283
(intervention category: other)

A plaintiff's civil appeal filed on September 15, 2023, and the plaintiff's attorney's

appeal filed on the following day challenged a Southern District of New York decision confirming an arbitration award. The arbitration respondent, who was not named in the plaintiff's complaint, moved on July 10, 2024, to intervene in the appeals. A three-judge panel granted intervention on November 15. On April 25, 2025, the court affirmed the confirmation.

Intervention Denied

Upsolve v. James, 22-cv-1345
(intervention category: pro se)

On June 22, 2022, New York's attorney general appealed from the Southern District of New York's preliminary injunction allowing nonlawyers to provide free assistance to low-income clients facing debt defaults. According to the attorney general's opposition to a July 29, 2022, intervention motion, the pro se movant was a disbarred attorney who was denied intervention in the district court's case. A motion judge denied intervention, and later a three-judge panel denied reconsideration. The court subsequently denied a motion for the merits panel to revisit the intervention denial and then later denied the movant's several additional intervention motions. Also in the case, a debtor filed a pro se motion to intervene in support of the plaintiffs, which a motion judge denied. The appeal was heard on May 29, 2024.

Carroll v. Trump, 23-cv-793
(intervention category: pro se)

A May 11, 2023, civil appeal challenged a Southern District of New York judgment in favor of Jean Carroll against Donald Trump. A pro se motion to intervene filed on May 18 alleged concrete proof that the district court's jury interrogatory sheet "made absolutely no sense and was totally wrong and unconstitutional as a matter of law and fact." On June 6, a motion judge denied intervention. The court affirmed the district court's judgment on December 30, 2024.

Intervention Question Moot

Various Parties v. City of New York, 21-cv-2089, 21-cv-2091, and 21-cv-2237
(intervention category: other)

Two civil appeals filed on August 27, 2021, and one filed on September 16, 2021, challenged a Southern District of New York decision sealing parts of the court records in three related cases challenging stop-and-frisk practices by the New York City Police Department. On November 8, a motion judge consolidated the three appeals. Ten days later, a monitor appointed by the district court to oversee a remedial process moved to intervene in the appeals: "The Monitor is not and has never been a party in these Actions, but has participated in motion practice where appropriate to advance the Remedial Process." The court accepted stipulated dismissals of the appeals on January 7, 2022. In light of the stipulated dismissals, a three-judge panel denied intervention as moot on January 6.

Lamothe v. Moran, 21-cv-2295
(intervention category: pro se)

A pro se September 21, 2021, civil appeal challenged a District of Connecticut decision dismissing a pro se shareholder derivative action without prejudice to the pro se party's pursuing the case with an attorney. On March 29, 2022, another pro se party moved to intervene in the appeal as an additional plaintiff. On July 13, the court issued a summary affirmance and denied the intervention motion as moot. A defective motion to reconsider the intervention order was stricken for failure to cure a violation of the court's filing requirements.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from twenty-five to thirty-two days after case filings; they were granted in four sets of cases and never fully at issue in another case.

Intervention Granted

Various Petitioners v. U.S. Department of Energy, 20-ag-4256 and 20-ag-4285

Two December 29, 2020, petitions challenged a new rule regarding dishwasher run times: one petition by a collection of advocacy organizations and another petition by a collection of states and cities. On January 28, 2021, a pair of organizations promoting limited government, one of which had initiated the creation of the new rule, filed a motion to intervene. A motion judge consolidated the cases on February 10, agreeing to hold them in abeyance pending further review by the new administration. On May 6, 2024, a three-judge panel granted intervention, denying the intervenors' motion to dismiss the petitions as moot. The cases remain pending.

Various Petitioners v. National Highway Traffic Safety Administration, 21-ag-139, 21-ag-339, and 21-ag-593

A January 25, 2021, petition by two environmental organizations and a February 16, 2021, petition by fifteen states each challenged the partial reversal of a 2016 inflation adjustment to the civil penalty for violations of Corporate Average Fuel Economy standards. In the first case, an automaker moved to intervene on February 19, and an alliance of automakers moved to intervene on February 24. The automaker filed its own petition on February 29 in the Ninth Circuit, and that case was transferred to the Second Circuit on March 16. On April 6, a three-judge panel consolidated the three cases and granted the alliance's intervention motion. The panel denied the automaker's intervention motion as moot, because the automaker had become a petitioner in a consolidated case. On June 17, 2022, the court granted the petitioners' voluntary dismissals of their cases.

Riverkeeper v. FAA, 21-ag-2243

A September 20, 2021, petition challenged the environmental impact of a light-rail project serving LaGuardia Airport. The Port Authority of New York and New Jersey moved on October 21 to intervene in defense of the Federal Aviation

Administration's decision. A motion judge granted intervention five days later. On September 29, 2023, the court accepted a settlement of the case.

Cascades Containerboard Packaging—Niagara v. NLRB, 21-ag-2521 and 21-ag-2635

An employer's October 7, 2021, petition challenged a finding by the National Labor Relations Board of unfair labor practices. The Justice Department moved to intervene on November 8, because a complication in the case involved possibly improper presidential personnel actions. On November 23, a motion judge granted intervention in the employer's petition and the board's October 18 enforcement application. Another motion judge agreed on May 2, 2022, to hold the cases in abeyance pending settlement negotiations. The court granted a stipulated dismissal on September 20.

Intervention Question Moot

New York v. Department of Energy, 21-ag-602

A March 16, 2021, petition challenged new regulations of furnaces and water heaters. On March 24, a motion judge agreed to hold the case in abeyance pending further review by the new administration. One of the entities that sought the new regulatory rule moved to intervene in the case on April 12. Other entities that sought the regulatory change moved to intervene one and two days later. The case remains in abeyance pending resolution of a case in the District of Columbia Circuit.

Third Circuit

"[O]rdinarily a single judge will not entertain and grant or deny . . . a motion for leave to intervene." 3d Cir. R. 27.0.

In civil appeals from district-court cases with an intervenor who was not the party to bring the appeal, the court issues an order such as the following that the intervenor clarify whether it wishes to participate in the appeal:

> During the district-court proceedings, ___ participated as an intervenor. ___ is directed to advise this Court within fourteen (14) days of the date of this order if it will participate in the appeal and, if so, what party it will support. If the District wishes to participate in the appeal and file a separate brief, the brief will be due on the same day as the party it is supporting. ___ and the party it is supporting are encouraged to consult with one another regarding the contents of their briefs as the Court disfavors repetitive briefs. ___ may join in or adopt portions by reference *See* Fed. R. App. P. 28(i). Failure to respond to this order will be deemed a notice of non-participation and ___ will not be permitted to file a brief.

There were 7,477 cases in our filing cohort. Seven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Seven case summaries cover all civil cases with intervention motions, filed from five

to 363 days after case filings. Intervention was granted in two sets of cases, denied in three sets, and never fully at issue in two cases.

Intervention Granted

In re Boy Scouts of America, 23-cv-1664, 23-cv-1665, 23-cv-1666, 23-cv-1667, 23-cv-1668, 23-cv-1669, 23-cv-1670, 23-cv-1671, 23-cv-1672, 23-cv-1673, 23-cv-1674, 23-cv-1675, 23-cv-1676, 23-cv-1677, 23-cv-1678, and 23-cv-1780
(intervention category: bankruptcy, creditor, receiver)

Sixteen civil appeals filed on April 10, 11, and 12 and May 1, 2023, challenged a district judge's decision that affirmed a District of Delaware bankruptcy confirmation order resolving sexual-abuse claims against the Boy Scouts of America. The settlement trust, which was not a party in the bankruptcy-court or district-court proceedings, moved on October 17 for permission to file responses to stay motions pending before the court of appeals. On the following day, the clerk of court referred the participation motion to the panel deciding the stay motions. A two-judge motion panel granted the participation motion and denied the stay motions on November 2. The trust filed a declaration and a supplemental declaration on December 1, 2023. On May 13, 2025, the court of appeals decided that a few insurers' appeals had merit for impermissible release of their claims. 137 F.4th 126.

Conner v. Fox Rehabilitation Services, 23-cv-1684
(intervention category: constitutionality)

An April 13, 2023, appeal by a civil defendant challenged an Eastern District of Pennsylvania bench-trial decision in favor of the plaintiff in a case concerning illegal junk faxes. On March 28, 2024, the clerk of court certified to the U.S. attorney general that the constitutionality of a federal statute had been questioned in the briefing, inviting the government to intervene in the appeal within fourteen days. The government's attorney filed a notice of appearance on April 10. The government filed a brief opposing the appeal on May 13. On January 24, 2025, the court of appeals affirmed the district court's decision.

Intervention Denied

Lora v. Baylor, 20-cv-3297
(intervention category: pro se)

A November 12, 2020, pro se civil appeal challenged the Middle District of Pennsylvania's dismissal of eight plaintiffs' pro se action challenging pretrial detention. A January 14, 2021, handwritten letter requested joinder as a plaintiff; the letter was signed by one plaintiff and six others. On the following day, the clerk of court issued an order: "To the extent the non-parties wish to move to intervene in this appeal, they must file separate motions to intervene personally signed by each individual." On March 17, a motion judge denied a dozen pro se motions to intervene. A three-judge panel denied additional pro se intervention motions on May 14. On July 19, the three-judge merits panel denied additional intervention motions in its opinion remanding the case to the district court for reevaluation.

In re Truong, 21-cv-1171 and 21-cv-1172
(intervention category: bankruptcy, creditor, receiver)

Two civil appeals filed on February 2, 2021, challenged a District of New Jersey decision in a bankruptcy appeal. A pro se motion to intervene by an alleged creditor was filed on March 16. The court affirmed the district court's decision on August 5, denying the intervention motion in a footnote.

Anand v. Independence Blue Cross, 21-cv-2679
(intervention category: pro se)

A September 9, 2021, pro se civil appeal challenged the Eastern District of Pennsylvania's dismissal with prejudice of the appellant's pro se amended complaint for failure to comply with Federal Rule of Civil Procedure 8's requirement of short and plain statements of the claims. Another person filed a pro se motion to intervene in the appeal on December 8. Her motion to intervene in the district-court case had been denied as incomprehensible. On January 11, 2022, the clerk of court referred the intervention motion to a motion panel. A motion judge denied intervention in the court of appeals on January 14. On March 2, a three-judge panel denied a February 9 motion to reconsider. Granting the appellant some relief, the court of appeals ruled on June 29 that the "complaints provided fair notice of at least some of his claims and thus were not subject to dismissal in their entirety for failure to comply with Rule 8."

Intervention Question Moot

Doe v. Upper Saint Clair School District, 22-cv-1141
(intervention category: other)

A January 23, 2022, interlocutory civil appeal challenged the Western District of Pennsylvania's denial of a temporary restraining order in a pseudonymous class action that challenged a school district's decision to make wearing face masks optional. A collection of parents who opposed the complaint filed a motion to intervene in the district court three days after the appeal was filed. Two days after that, they filed a motion to intervene in the appeal. On February 25, the court of appeals instructed the parties to advise the court whether the case had become moot "[g]iven that Plaintiffs seek mandatory masking for as long as the [Covid-19] risk level is classified as 'substantial' or 'high,' and Allegheny County is now classified in the 'low' category." On March 1, the court of appeals dismissed its case as moot and ordered the district court to dismiss as moot its case without prejudice. Pending motions before the court of appeals were dismissed as moot as well.

In re Atiyeh, 22-cv-1848
(intervention category: bankruptcy, creditor, receiver)

A May 3, 2022, pro se civil appeal challenged the Eastern District of Pennsylvania's affirming the dismissal of a bankruptcy case with prejudice and barring bankruptcy filing for three years without leave of court. On May 25, a school district filed a motion to intervene in the appeal to challenge a motion to reinstate the automatic stay so that a sheriff's sale for delinquent school property taxes could proceed. On

the following day, a three-judge panel denied the motion to reinstate the stay and therefore denied the intervention motion as moot. On November 30, the court of appeals affirmed the district court's decision.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from eight to thirty-two days after case filings; they were granted in four sets of cases and denied in one case.

Intervention Granted

Jacobs Project Management v. Department of the Interior, 22-ag-1147

Am employer's January 24, 2022, petition challenged an inspector-general report by the Department of the Interior concerning employment termination allegedly related to reporting mismanagement and waste on Ellis Island. Beginning on February 1, the employee made several pro se court filings. On February 28, the employer wrote to the court asking the court not to regard the employee as a party in the case. On March 2, the respondent department informed the court that it would have no objection to the employee's participation in the case, noting that it was clear that he was a real party in interest. On April 8, the clerk referred to a motion panel the questions of whether the employee should remain in the case as a respondent or be included in the case as an intervenor. A two-judge panel decided on May 2 that the employee could intervene as a respondent. On April 3, 2023, the court denied the petition. 64 F.4th 123.

Trenton Threatened Skies v. FAA, 22-ag-1965

A May 19, 2022, petition challenged the Federal Aviation Administration's approval of an improvement project for Trenton Mercer Airport. Mercer County, the airport's owner, moved to intervene on June 17. The clerk of court granted the motion on July 13. The court denied the petition on January 4, 2024. 90 F.4th 122.

PG Publishing v. NLRB, 22-ag-2774 and 22-nlrb-2868

An employer's September 21, 2022, petition challenged the National Labor Relations Board's finding that two employees' layoffs were unlawful. The board filed an enforcement action on October 5. The employees' union moved to intervene in the employer's petition case on October 19. The clerk of court granted the motion on October 25. The court remanded the case to the board for further findings on September 26, 2023. 83 F.4th 200.

Two Petitioners v. EPA, 22-ag-3026 and 22-ag-3039

Two power companies filed petitions on October 27 and 28, 2022, challenging an Environmental Protection Agency rule on emissions from coal-fired electricity plants in Pennsylvania. The court consolidated the cases on November 1. On November 21, Pennsylvania's Department of Environmental Protection moved to intervene as a petitioner in the two cases. An environmental organization moved to intervene in support of the agency on November 23, and a power company moved

to intervene in support of the agency on November 28. The clerk of court granted the more recent intervention motions on December 7. On the following day, a motion judge granted intervention to Pennsylvania. On May 2, 2024, the court denied the petitions. 100 F.4th 434.

Intervention Denied

Port Hamilton Refining and Transportation v. EPA, 23-ag-1094

A refinery's January 13, 2023, petition challenged the Environmental Protection Agency's decision requiring the refinery to undergo a permit process before undertaking a construction project. A previous owner of the refinery operating an adjacent petroleum-storage business moved to intervene on February 10. A group of environmental organizations moved to intervene on February 13. The clerk of court denied intervention on March 29, "but the movants are invited to participate as amici curiae." On July 25, the court vacated the agency's decision. 75 F.4th 166, *amended*, 87 F.4th 188 (2023). A motion for attorney fees is pending.

Fourth Circuit

"[A]n appellate tribunal is generally not the proper place for a litigant to commence its participation in a case . . . ." United States v. Under Seal, 853 F.3d 706, 721 (4th Cir. 2017). "Although the Federal Rules of Civil Procedure contain detailed provisions governing intervention in civil cases in federal district court, those rules do not apply in this Court." Ass'n for Educ. Fairness v. Montgomery County, 88 F.4th 495, 498 (4th Cir. 2023) (citations omitted). Resolution of motions to a motion to intervene on appeal is committed to the appellate court's discretion. *Id.*

There were 12,236 cases in our filing cohort. One case summary covers the single civil appeal with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Case

One case summary covers the one civil case with an intervention motion, filed forty-one days after the case was filed. Intervention was denied.

Intervention Denied

Association for Education Fairness v. Montgomery County Board of Education, 23-cv.pri-1068
(intervention category: other)

A January 20, 2023, civil appeal challenged the District of Maryland's dismissal of a suit claiming racial discrimination in public schools and denials of intervention motions by civil-rights organizations as moot. On March 2, the organizations moved to intervene in the appeal. On December 8, a three-judge panel denied intervention without prejudice in a published opinion. 88 F.4th 495.

> We take all involved to agree on two points. First, those seeking to force their way into lawsuits between others generally must do so while the case is pending before a trial court rather than waiting to do so on appeal. Second, because a district

> court's decision denying intervention is reviewed only for an abuse of discretion, appellate courts must police against attempts to evade that deferential standard by declining to seek review of an adverse district court decision and then filing a fresh motion to intervene on appeal.

88 F.4th at 499 (citations omitted). The court concluded that the would-be intervenors' arguments would be adequately presented by the appellee school board, and the would-be intervenors could present their arguments as amici curiae, which they did. The case remains pending.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from one to thirty days after case filings; they were granted in all five sets of cases.

Intervention Granted

Appalachian Voices v. Department of the Interior, 20-rvw-2159

An October 27, 2020, petition by several environmental organizations challenged a government decision regarding a natural-gas pipeline. The pipeline moved to intervene on the following day. On the third day, the clerk of court issued an order for the court granting intervention. On February 3, 2022, the court agreed that the agency failed to adequately consider the pipeline's environmental context while analyzing impacts to two species of endangered fish. 25 F.4th 259. A motion for attorney fees is pending.

Various Petitioners v. EPA, 20-rvw-2187 and 20-rvw-2244

A November 2, 2020, petition challenged an environmental regulation covering steam electric power. On November 19, the Judicial Panel on Multidistrict Litigation selected the Fourth Circuit at random for the consolidation of two petitions, including a petition filed in the District of Columbia Circuit. Operators of steam power moved to intervene in support of the rule on December 2. Also on December 2, an organization whose members belonged to the regulated industry moved to intervene. The clerk of court issued an order on December 3 granting both intervention motions. The cases are held in abeyance pending related litigation in the Eighth Circuit.

Sinai Hospital of Baltimore v. NLRB, 21-rvw-1642 and 21-enf-1683

An employer's June 2, 2021, petition challenged a decision by the National Labor Relations Board. The board filed an application for enforcement on June 16. The court consolidated the cases that day. Stating that the board's decision held that the employer failed to bargain collectively with a union, the union moved to intervene in the cases on July 2. On July 13, the clerk of court issued an order granting intervention. On May 10, 2022, the court granted enforcement of the bargaining order. 33 F.4th 715.

Bardon v. NLRB, 22-rvw-1340 and 22-enf-1421

A March 30, 2022, petition challenged the National Labor Relations Board's

decision that the petitioner discouraged union activities. A union's motion to intervene was filed on April 13 and granted on the following day. The board filed an enforcement action on April 20, and the court consolidated the two cases that day. On January 8, 2024, the court ruled in favor of the board.

Various Petitioners v. FCC, 22-rvw-2220 and 23-rvw-1096

An electric utility's November 28, 2022, petition challenged a decision made by the Federal Communications Commission in a dispute over rates that the electric utility charged a telecommunication company for using the electric utility's poles. The telecommunication company moved to intervene on December 28. On the following day, the clerk of court issued an order granting intervention. On January 30, 2023, the court consolidated the case with a petition by the telecommunication company transferred from the District of Columbia Circuit. The electric utility had moved to intervene in the District of Columbia Circuit on January 23, and the Fourth Circuit's clerk issued an order on January 30 granting intervention. The cases were dismissed as settled on January 8, 2024.

Fifth Circuit

Fifth Circuit Rule 27.2.2 includes motions to intervene among those that can be decided by a single judge. "A party to a [Federal Energy Regulatory Commission] proceeding may intervene in a review of the proceeding in this court by filing a notice of intervention." 5th Cir. R. 15.3.3(a).

"[I]ntervention on appeal is reserved for exceptional cases . . . ." Richardson v. Flores, 979 F.3d 1102, 1103 (5th Cir. 2020). "A court of appeals may, but only in an exceptional case for imperative reasons, permit intervention where none was sought in the district court." McKenna v. Pan Am. Petroleum Corp., 303 F.2d 778, 779 (5th Cir. 1962).

For agency cases, the Federal Rules of Appellate Procedure provide "no standard for resolving intervention questions, but the Court has identified two considerations: first, the statutory design of the act and second, the policies underlying intervention in the trial courts pursuant to Fed. R. Civ. P. 24." Texas v. U.S. Dep't of Energy, 754 F.2d 550, 551 (5th Cir. 1985) (decision by a motion judge).

There were 17,280 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity, and one case summary covers the criminal case with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Five case summaries cover all civil cases with intervention motions, filed from two to forty-eight days after case filings.[14] Intervention was granted in one case, denied in three sets of cases, and never fully at issue in one case.

14. Intervention was sought in a sixth case within a year of filing, but after the court issued its judgment: *NetChoice v. Paxton*, 21-pcf-51178, page 68.

Intervention Granted

Caballero v. Rosneft Trading, 23-pcf-20115
(intervention category: bankruptcy, creditor, receiver)

A plaintiff garnisher's March 24, 2023, civil appeal challenged the Southern District of Texas's vacating state-court writs of garnishment. The garnishee removed the underlying action on January 15, 2021. On January 6, 2023, the district court granted a third-party respondent judgment on the pleadings. The plaintiff had received from the state court an ex parte decision that the third party was an instrumentality of Fuerzas Armadas Revolucionarias de Columbia, known as FARC, against which the plaintiff had obtained a default antiterrorism judgment of more than $46 million in the Southern District of Florida. The Southern District of Texas judge found the ex parte decision to be a violation of due process. On April 24, 2023, the garnishee, a third-party petitioner in the district court, moved to intervene in the appeal, stating that the circuit clerk advised the garnishee's attorney that the garnishee was not a party to the appeal. A motion judge granted intervention two days later. The plaintiff voluntarily dismissed the appeal on July 6, stating that it was succeeding in obtaining assets at issue elsewhere.

Intervention Denied

In re Civelli, 20-op-20659
(intervention category: other)

A December 21, 2020, petition for a writ of mandamus challenged a Southern District of Texas discovery order as violating the plaintiffs' attorney–client privilege and work-product protection. District-court defendants moved to intervene in the writ action on December 23. In an order entered at the direction of the court five days later, the appellate clerk of court denied intervention but permitted participation as amici curiae. The clerk issued a one-sentence order denying the writ on March 22, 2021.

Campaign Legal Center v. Scott, 22-cr-50692
(intervention category: constitutionality)

Texas's August 8, 2022, civil appeal by its secretary of state challenged a Western District of Texas injunction requiring him to provide the plaintiffs with voter-registration records as required by the National Voter Registration Act. The court granted the secretary an administrative stay on August 12 and set the case for hearing on August 30. On August 24, the government filed a notice of intervention to defend the constitutionality of the act. On the following day, the clerk of court entered an order at the direction of the court denying intervention "because the United States expressly declined to intervene in the district court, but the Court GRANTS the filing of the United States's brief as amicus curiae." On August 29, the government sought reconsideration, arguing that the district judge could rule before the government decided whether to intervene because the district judge did not rule the act unconstitutional. On September 29, the court reversed the district court's injunction and held that the plaintiffs lacked standing to seek that relief, also ruling that the government's intervention was unnecessary. 49 F.4th 931.

SEC v. Barton, 22-usc-11132, 22-usc-11226, 22-usc-11242, and 23-usc-10515
(intervention category: bankruptcy, creditor, receiver)

A November 18, 2022, civil appeal challenged the Northern District of Texas's appointment of a receiver. A December 22 appeal challenged the receiver's sale of property. The receiver moved to intervene in the two appeals on January 5 and 20, 2023. A motion judge denied intervention in the first case on January 6 but permitted the receiver to participate as an amicus curiae. The judge denied intervention in the second case on January 25 but permitted the receiver to file a dismissal motion as an amicus curiae. On June 28, the court remanded the first case to the district court for reconsideration, conditionally vacating the receivership in ninety days should the district court not again appoint a receiver. 72 F.4th 640. On August 31, the court denied rehearing and issued a substitute opinion with the same holding. 79 F.4th 573. The court dismissed the second appeal as moot on September 1.

A third appeal filed on December 28, 2022, and a fourth appeal filed on May 18, 2023, challenged receiver activity. The receiver moved to intervene in the third case on February 13. On the following day, the motion judge denied intervention but permitted the receiver to file a dismissal action as an amicus curiae. On May 22, the receiver moved in the fourth case to intervene and for dismissal of the appeal as beyond the court's jurisdiction. A three-judge panel denied intervention on May 25 "without prejudice to Movant's right to properly file an amicus brief if he so chooses." The court granted dismissal in the fourth case on July 17 and denied reconsideration on October 12. The court dismissed the third appeal on March 13, 2024, as moot in light of "the shifting landscape of the underlying litigation."

Intervention Question Moot

Missouri v. Biden, 23-usc-30445
(intervention category: pro se)

The government's July 6, 2023, civil appeal challenged a Western District of Louisiana injunction against government communication with social-media companies intended to suppress speech. A pro se August 7 submission included a heading "Motion to Intervene" after citations to the appeal and several other high-profile cases. The court docketed the submission, "No action will be taken at this time on the Motion to Intervene . . . because the motion to intervene is insufficient." On October 3, the court of appeals modified the injunction. 83 F.4th 350. On June 26, 2024, the Supreme Court ruled that the plaintiffs in the case did not have standing to pursue the injunction. 603 U.S. ___, 144 S. Ct. 1972. So on August 26, the court of appeals vacated the injunction. 114 F.4th 406.

Criminal Case

One case summary covers the one criminal case with intervention activity. Intervention was granted in the case.

Intervention Granted

United States v. deBerardinis, 21-ncrim-30282

A May 26, 2021, appeal by criminal defense attorneys and their law firm challenged the Western District of Louisiana's denial of a motion to withdraw as counsel following the court's disqualification of one of the attorneys for being a potential witness in the case. Co-counsel with the law firm moved on July 14 to intervene to represent his and the defendant's interests. A motion judge granted intervention on the following day. The appellants voluntarily dismissed their case on August 2.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from thirteen to 290 days after case filings; they were granted in three sets of cases, denied in one case, and never fully at issue in another case.

Intervention Granted

Gulfport Energy v. FERC, 21-ag-60016, 21-ag-60017, 21-ag-60020, and 21-ag-60201

Two January 11, 2021, petitions challenged Federal Energy Regulatory Commission orders granting declaratory requests—should the petitioner file for bankruptcy protection—by natural-gas companies, three in one case and one in the other. The three natural-gas companies filed a notice of intervention in the first case on January 28. On March 12, the petitioner filed two related petitions concerning commission orders granted to an additional pipeline company and to the three companies at issue in the first petition. The pipeline company at issue in the third case filed a notice of intervention on March 25. On April 5, the court granted the petitioner's motion to consolidate the four cases. The three intervenors in the first case submitted a notice of intervention in the fourth case, but the court rejected the notice for filing, instructing the companies to file it in the first case, a case in which the companies already had noticed intervention. On October 14, the petitioner voluntarily dismissed the first and fourth cases, the ones against the set of three companies. On July 19, 2022, the court vacated the commission orders still at issue: bankruptcy debtors "may 'reject' regulated energy contracts even if the Federal Energy Regulatory Commission ('FERC') would not like them to." 41 F.4th 667, 671.

United Natural Foods v. NLRB, 21-ag-60532

A July 2, 2021, petition challenged a National Labor Relations Board order. On July 30, two unions sought intervention in support of the board as the charged parties before the board. A motion judge granted intervention on August 6. On April 24, 2023, the court denied the petition. 66 F.4th 536. On July 2, 2024, the Supreme Court vacated the ruling and remanded the case for reconsideration in light of its decision that day in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244, holding that courts need not, and under the Administrative Procedure Act

may not, defer to an agency's interpretation of the law simply because a statute is ambiguous. On May 28, 2025, the court of appeals again denied the petition. 138 F.4th 937.

Various Refinery Companies v. EPA, 22-ag-60266, 22-ag-60425, 22-ag-60433, and 22-ag-60434

Petitions filed on May 3 and August 2, 2022, plus another two filed on August 4, challenged the Environmental Protection Agency's denial of the petitioners small-refinery hardship relief. Organizations involved in renewable fuels moved to intervene on February 17, 2023, in support of the agency's decision. Concluding that intervention complied with the court's liberal application of Federal Rule of Civil Procedure 24(a)(2), a motion judge granted intervention on March 16. The court of appeals vacated the agency's rulings on November 22. 86 F.4th 1121. On June 18, 2025, the Supreme Court determined that the case belonged in the District of Columbia Circuit. 605 U.S. ___, 145 S. Ct. 1735.

Intervention Denied

Various States v. EPA, 23-ag-60069

Texas's February 14, 2023, petition challenged the Environmental Protection Agency's disapproving a Texas air-quality implementation plan. Environmental organizations moved to intervene on March 27. Mississippi and Louisiana joined the case as petitioners on March 16 and 20, respectively. On March 27, the organizations moved to file a response motion in opposition to a stay motion, but the court rejected the motion, stating that the organizations' intervention motion had been denied, although the denial was not issued by the court's motion judge until April 19. A June 5 motion for reconsideration was denied by a three-judge panel on June 9. On March 25, 2025, the court denied the petitions by Texas and Louisiana and granted the petition by Mississippi. 132 F.4th 808.

Intervention Question Moot

Chesapeake Energy Marketing v. FERC, 20-ag-60970
(intervention category: bankruptcy, creditor, receiver)

An October 22, 2020, petition challenged the Federal Energy Regulatory Commission's declaratory order, issued to a natural-gas company, retaining the commission's joint jurisdiction with the bankruptcy court over contracts with the petitioner should the petitioner receive bankruptcy protection. The party that obtained the declaratory order filed a notice of intervention in the appellate case on November 11. The petitioner voluntarily dismissed the case on March 10, 2021.

Sixth Circuit

In the Sixth Circuit, the clerk of court may decide procedural motions. 6th Cir. R. 45(a)(1).

In an agency appeal, where the agency is the respondent, parties to the agency proceeding may move to intervene. Am. Nuclear Resources v. U.S. Dep't of Labor, 134 F.3d 1292, 1294 n.2 (6th Cir. 1998).

There were 11,112 cases in our filing cohort. Eleven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Eleven case summaries cover all civil cases with intervention motions, filed from eight to 282 days after case filings.[15] Intervention was granted in seven sets of cases, denied in three sets, and never fully at issue in one case.

Intervention Granted

Lindenbaum v. Realgy, 20-cv-4252
(intervention category: constitutionality)

A November 30, 2020, civil appeal challenged the Northern District of Ohio's dismissal of a class action against unwanted robocalls. Because the constitutionality of a federal statute was at issue, the government moved on December 15 for sixty days to decide whether to seek intervention, a motion that a case manager granted on the following day. The government moved to intervene on February 11, 2021, and filed a brief on February 16. The case manager granted intervention on February 19. On September 9, the court reversed the district court's dismissal. 13 F.4th 524.

Jackson v. General Electric, 21-cv-3226
(intervention category: other)

A March 10, 2021, civil appeal by the plaintiff's attorneys challenged the Southern District of Ohio's denial of the defendant's motion to enforce a settlement agreement in an employment-discrimination case. The case had been conditionally dismissed with prejudice, and although the plaintiff herself apparently refused to sign the settlement agreement, the deadline for reopening the case had expired. The plaintiff moved to intervene in the appeal on December 17, and the clerk of court granted intervention on January 10, 2022. The plaintiff was the appellee in a related appeal by the defendant employer (21-3237). On July 5, the court of appeals affirmed denial of the enforcement motion.

Newell v. Foley, 22-pr-3912
(intervention category: other)

A pro se October 28, 2022, civil appeal challenged the Northern District of Ohio's dismissal of a prisoner petition. The prisoner's complaint was dismissed before service on the defendant, so Ohio moved to intervene in the appeal as an interested party on November 14. The clerk granted intervention four days later. The court affirmed dismissal of the complaint on June 8, 2023.

15. Intervention was sought in a twelfth case within a year of filing but after the case was heard: *Hall v. Meisner*, 21-cv-1700, page 62.

Tennessee v. Department of Education, 22-cv-5807
(intervention category: other)

A September 13, 2022, civil appeal challenged a July 15 Eastern District of Tennessee preliminary injunction against federal education policies in conflict with state laws regarding sexual orientation and gender identity. On September 14, the district court granted intervention to an association of Christian schools and to three minor female athletes claiming unfairness if they were required to compete against transgender girls. On September 21, the association and one of the female athletes moved to intervene in the appeal as well. The clerk granted intervention on October 6. The association and the athlete filed their appellee brief on January 24, 2023. Over a dissent, the court of appeals affirmed the preliminary injunction on June 14, 2024. 104 F.4th 577.

Brokerarte Capital Partners v. Detroit Institute of Arts, 23-cv-1062
(intervention category: constitutionality)

A January 24, 2023, civil appeal challenged an Eastern District of Michigan decision denying relief to an alleged owner of a Van Gogh painting on temporary display at the defendant's museum. Issuing an injunction on appeal on February 6, a three-judge panel of the court of appeals observed that the government would be entitled to intervene in support of federal law protecting public exhibition of art. The government sought intervention on March 7 and filed an appellee brief that day. The clerk granted intervention on March 28. The three-judge panel granted a voluntary dismissal of the appeal on April 10 following a confidential agreement between the plaintiff and the party who lent the painting to the museum.

Various Parties, 23-cv-5447, 23-cv-5451, 23-cv-5453, 23-cv-5454, and 23-cv-5455
(intervention category: other)

On May 15 and 16, 2023, two civil defendants appealed the plaintiffs' court-approved voluntary dismissals of five Western District of Kentucky civil actions as settled by the defendants' insurer. Settling defendants moved to consolidate the appeals on June 16. On June 20, the insurer moved to intervene in the five cases. The clerk consolidated the cases on July 17, and a three-judge panel granted the insurer intervention on September 29. The insurer filed its brief on November 3. A merits panel affirmed the district court's dismissals on February 29, 2024.

Friends of George's v. Mulroy, 23-cv-5611
(intervention category: other)

A June 30, 2023, civil appeal challenged the Western District of Tennessee's holding unconstitutional a Tennessee statute criminalizing adult cabaret entertainment that could be viewed by a minor. A drag performer and an organization promoting LGBTQ+ interests moved to intervene on September 8. A three-judge motion panel granted permissive intervention on September 15. The intervenors filed a brief on October 23. On July 18, 2024, the court determined that the plaintiffs in the case did not have standing to pursue it. 108 F.4th 431. On September 5, the panel denied the intervenors' August 21 motion to respond to a petition for rehearing en banc. The court denied rehearing on September 20.

Intervention Denied

Donaldson v. Lyon, 20-cv-2006
(intervention category: other)

A pro se October 15, 2020, civil appeal challenged the Eastern District of Michigan's abstention in litigation in parallel with state litigation over medical reimbursement. The plaintiff attempted to add a second plaintiff in an amended complaint, but the second plaintiff did not sign it. The district court ruled that the original pro se plaintiff could not represent another plaintiff. The second plaintiff's daughter moved to substitute herself for her mother, who had died after the amended complaint was attempted, and the court ruled that the daughter could not substitute for someone who never became a party to the case. The daughter filed a pro se appeal (20-2055), and she filed a pro se motion to intervene on March 4, 2021, in the original plaintiff's appeal. On December 1, a three-judge panel issued a three-page opinion denying intervention; because the daughter was never a party in the district-court case, she did not have an interest in the abstention appeal. The panel denied reconsideration on January 21, 2022. On February 9, 2024, a merits panel dismissed the appeal for lack of jurisdiction; abstention had become moot because the state-court proceedings had concluded.

In re Veolia North America, 21-perm-103 and 21-cv-1530
(intervention category: pro se)

A March 26, 2021, petition challenged class certification in Eastern District of Michigan litigation over the Flint water crisis. On August 31, a Flint resident moved pro se to intervene in the appeal. Over a dissent on January 24, 2022, the court denied permission for the interlocutory appeal. The three-judge panel resolving the petition also denied intervention.

On May 26, 2021, the Flint resident appealed from the district court's dismissal of his pro se complaint. On August 28, he filed a motion that another person be permitted to intervene. The court affirmed dismissal of the complaint on March 29, 2022, and denied the intervention motion.

Grae v. Corrections Corporation of America, 22-cv-5312
(intervention category: sealing)

A plaintiff in a Middle District of Tennessee wrongful-death action against a private prison sought intervention in a closed class action against the prison to unseal filings in the earlier case. The district court denied intervention, although the defendant agreed to the unsealing of some filings. On August 17, 2022, the day that the plaintiff moved to voluntarily dismiss her April 15 appeal as settled, another person with the same lawyer moved to intervene and pursue the appeal instead. On January 13, 2023, the court denied intervention and dismissed the appeal. 57 F.4th 567. The proposed intervenor lacked standing to step in as appellant, because he had no personal need for the sealed documents.

Intervention Question Moot

Bell v. Washington, 22-pr-2132
(intervention category: pro se)

A pro se December 20, 2022, civil appeal challenged the Eastern District of Michigan's dismissal of an action against prison officials. Three prisoners filed motions to intervene in the appeal on August 4, 2023, and two of them filed amended motions on September 11. The court affirmed dismissal of the complaint on September 29. The decision denied the pro se appellant "equitable relief for leave to purchase a laptop and accessories and to efile pleadings." His motion for equitable relief failed

> because he did not show that he would likely prevail on the merits on appeal. Consequently, the related motions for leave to file amici briefs and to intervene are moot. In any event, the motions to intervene fail to identify "a claim or defense that shares with the main action a common question of law or fact."

2023 WL 6438597.

Criminal Cases

Two case summaries cover all criminal cases with intervention motions, filed from seventeen to twenty-six days after case filings. Intervention was denied in one set of cases and never fully at issue in another case.

Intervention Denied

United States v. Petlechkov, 22-cr-6043 and 22-cr-6044

Two December 2, 2022, pro se appeals challenged a Western District of Tennessee forfeiture decision against a criminal defendant. A December 28 pro se motion sought intervention in the appeals by a third party claiming an interest in forfeited property. Acknowledging a government representation that the appellant may have been the one actually behind the intervention motion, the clerk of court denied intervention on January 31, 2023, as forbidden by statute as an avenue for a third party to challenge forfeiture, citing U.S.C. § 853(k). The court of appeals gave the appellant partial relief on June 28. 72 F.4th 699.

Intervention Question Moot

United States v. Adelakun, 22-cr-1220

A March 18, 2022, pro se criminal appeal challenged the Eastern District of Michigan's denial of a third party's pro se miscellaneous action to consolidate and vacate a criminal complaint and search warrant against the appellant and a forfeiture action against the third party. On April 4, the appellant filed a motion to consolidate three of his appeals and for the third party to intervene. On July 21, the court of appeals determined that the appeal was not taken from an appealable order.

Agency Cases

The following five case summaries include agency appeals selected at random.

Intervention motions were filed from one to eighty-five days after case filings; they were granted in all five sets of cases.

Intervention Granted

NLRB v. McLaren Macomb, 23-nlrb-1335 and 23-nlrb-1403

The National Labor Relations Board's April 12, 2023, application sought enforcement of a decision that severance agreements were unlawful. The employer filed a petition challenging the board's decision on May 3. A union filed motions to intervene in the two cases on May 8, and the clerk granted intervention on May 15. The court affirmed the board's ruling on September 19, 2024.

Various Petitioners v. Department of Labor, 20-ag-4342, 21-ag-3017, and 21-ag-3282

An employer's December 31, 2020, petition challenged a Department of Labor decision in a whistleblower action. The estate of the original complainant moved to intervene on March 26, 2021. The estate also moved for consolidation of the case with its January 5, 2021, petition challenging the denial of punitive damages. On February 4, the employer moved to intervene in the second case. The employer filed another petition on March 24 challenging an award of attorney fees, and the estate moved to intervene on March 26. On March 29, the estate moved to consolidate the three cases. On April 13, the clerk granted consolidation and intervention. The court denied all three petitions on May 24, 2023. 68 F.4th 1030.

Various Petitioners v. FERC, 21-ag-4072, 22-ag-3351, 23-ag-3196, 23-ag-3324, 23-ag-3366, and 23-ag-3417

On November 16, 2021, four Ohio power companies filed a petition challenging the Federal Energy Regulatory Commission's ruling that denied a basis-point adjustment to a return on equity as incentive for participation in a regional transmission organization. Ohio's Federal Energy Advocate moved to intervene on December 2, and Ohio's Consumers' Counsel moved to intervene on December 15. The transmission organization also moved to intervene on December 15. The power companies filed a second petition on April 18, 2022, challenging the commission's denial of a rehearing. On May 4, the clerk of court granted the power companies' May 2 motion to consolidate the two petitions. On July 12, 2023, the clerk consolidated the cases with four additional petitions: two by one of the power companies filed on March 8 and April 26, 2023, and two by the consumers' counsel filed on April 17 and May 9. The clerk granted intervention to the following intervenors on August 9: Ohio's energy advocate in all six cases, Ohio's consumers' counsel in the four cases in which it was not the petitioner, some power companies in cases in which they were not the petitioner, the transmission organization in the second case, a group of investor-owned transmission owners in the last four cases, and an Ohio nonprofit generation-and-transmission cooperative in the last four cases. On January 17, 2025, the court held that power companies that voluntarily join a regional transmission organization can receive an incentive benefit that companies required by state law to do so may not, but the agency did not apply the

rule evenly among the power companies in the case. 126 F.4th 1107, *cert. pending*, U.S. Nos. 24-1304, 24-1318.

NLRB v. Starbucks, 23-nlrb-1767

An August 24, 2023, National Labor Relations Board application sought enforcement of a wrongful-termination order. The employee's union moved to intervene on September 21, and the clerk granted intervention on October 5. The case was heard on October 31, 2024.

Quickway Transportation v. NLRB, 23-nlrb-1780 and 23-nlrb-1820

An August 28, 2023, petition challenged the National Labor Relations Board's decision finding wrongful cessation at an operational location and termination of employment there without union bargaining. A board application filed on September 7 sought enforcement of the order. The union sought intervention on September 27. The clerk granted intervention on October 4. The court ruled in favor of the board's order on September 11, 2024. 117 F.4th 789, *cert. denied*, 604 U.S. ___, 145 S. Ct. 1427 (2025).

Seventh Circuit

> Although the Federal Rules of Appellate Procedure do not provide for intervention other than in cases involving review of certain administrative rulings, intervention is permitted in other cases as a matter of federal common law, with [Civil] Rule 24 supplying the standard for determining whether to permit intervention in a particular case.

Univ. of Notre Dame v. Sebelius, 743 F.3d 547, 558 (7th Cir. 2014), *rev'd on other grounds*, 575 U.S. 901 (2015).

And because Appellate Rule 15(d)'s provision for intervention in agency appeals does not provide standards for intervention, "appellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24." Sierra Club v. E.P.A., 358 F.3d 516, 517–18 (7th Cir. 2004). In an agency appeal, "[i]ntervention by the original victor places the private adversaries on equal terms." *Id.* at 518.[16]

There were 7,457 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Five case summaries cover all civil cases with intervention motions, filed from zero to 282 days after case filings.[17] Intervention was granted in three sets of cases and denied in three cases.

16. In agency appeals, interested parties can move to intervene. Saban v. U.S. Dep't of Labor, 509 F.3d 376, 379 (7th Cir. 2007) (dicta).

17. Intervention was sought in a sixth case within a year of filing but after the court issued its judgment: *Cook County v. Wolf*, 20-cv-3150, page 69.

Intervention Granted

Driftless Area Land Conservancy v. Huebsch, 20-cv-3325 and 20-cv-3365
(intervention category: other)

In defendants' interlocutory civil appeal, the court of appeals granted intervention to intervenors in the district court and denied the intervenors their own interlocutory appeal.

Conservation organizations' December 11, 2019, complaint filed in the Western District of Wisconsin challenged a public service commission's grant of a permit for an electricity transmission line. Developers who were granted the permit moved to intervene as defendants. Finding that the original defendants would adequately oppose the complaint, the district judge denied intervention, but the court of appeals decided that the developers were entitled to intervene. 969 F.3d 742 (2020). The district court denied dismissal motions on November 20, 2020. The original defendants and intervenors filed interlocutory appeals on December 1 and 4, respectively. Noting that the intervenors did not have the same rights of interlocutory appeal as the state defendants, a motion judge for the court of appeals issued an order to show cause why their appeal should not be dismissed for lack of jurisdiction. In addition to arguing that the court of appeals had jurisdiction over their interlocutory appeal, the developers moved to intervene in the original defendants' appeal on December 21. On January 6, 2021, the clerk issued an order for the court that dismissed the developers' appeal and allowed the developers to intervene in the original defendants' appeal. The appellants and the intervenors filed briefs on January 15, and they filed reply briefs on February 1. On October 21, the same panel that ordered the district court to grant intervention ruled that the district-court case should be stayed pending state litigation. 16 F.4th 508.

Bevis v. City of Naperville, 23-cv-1353
(intervention category: constitutionality)

A February 23, 2023, civil appeal challenged a Northern District of Illinois decision that denied a temporary restraining order and a preliminary injunction against a municipality's enforcement of a statute and an ordinance banning the sale of assault weapons. The district judge denied injunctive relief before the deadline for Illinois to intervene in defense of its statute. On March 2, a motion judge granted Illinois's February 23 appellate intervention motion. Illinois opposed a motion for an injunction pending appeal, later filed an appellee brief, and participated in oral argument. On November 3, the court concluded that civilian possession of assault weapons is not protected by the Second Amendment. 85 F.4th 1175, *cert. denied*, 603 U.S. ___, 144 S. Ct. 2491 (2024).

Schneider v. Schneider, 23-cv-1806
(intervention category: bankruptcy, creditor, receiver)

An April 27, 2023, civil appeal challenged a Western District of Wisconsin summary judgment granted in a family dispute over the operation of an automobile dealership. Following notification that the appellant dealership was in receivership, a motion judge invited the receiver to seek intervention, a July 21 motion that

another motion judge granted on August 2. Both the intervenor and the appellees moved for dismissal of the case. On October 3, a three-judge panel dismissed the dealership as a party: "only the receiver has authority to litigate in the company's name." The case was heard on December 6, 2024.

Intervention Denied

Starkey v. Roman Catholic Archdiocese of Indianapolis, 20-cv-3265
(intervention category: pro se)

A Catholic school's November 20, 2020, appeal challenged a Southern District of Indiana decision declining to dismiss a lawsuit that alleged employment discrimination against a lesbian educator. On February 2, 2021, a motion judge denied a January 21 motion to intervene by a similar plaintiff in a separate action against the same defendants. "This denial is without prejudice to a motion for leave to file a brief as amicus curiae that meets this court's standards for such a brief." On July 21, the court dismissed the appeal as premature.

Pavlock v. Holcomb, 21-cv-1599
(intervention category: other)

An April 6, 2021, civil appeal by owners of beachfront property on Lake Michigan challenged the Northern District of Indiana's rejection of a taking claim. 532 F. Supp. 3d 685 (2021). An Indiana statute codified a state supreme-court ruling that Indiana had exclusive title to the lake shore up to the ordinary high-water mark despite the plaintiffs' apparent deed extending ownership to the water's edge. A magistrate judge denied a conservation organization's motion to intervene in the district court, 337 F.R.D. 173 (2020), and the district judge dismissed the action before ruling on a motion to review the magistrate judge's decision. On June 9, 2021, a motion judge denied an April 29 intervention motion in the court of appeals "without prejudice to a motion for leave to file a brief as amicus curiae that meets this court's standards for such a brief." On May 25, 2022, the court affirmed the case's dismissal, modifying the dismissal to be without prejudice. 35 F.4th 581, *cert. denied*, 598 U.S. ___, 143 S. Ct. 374 (2022).

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from seven to twenty-seven days after case filings;[18] they were granted in all five sets of cases.

18. Excluded from this interval analysis are intervention motions filed in other circuits before the cases were transferred.

Intervention Granted

Various Petitioners v. FERC, 20-ag-3027, 20-ag-3028, 20-ag-3029, 20-ag-3030, 20-ag-3031, 20-ag-3032, 20-ag-3033, 20-ag-3034, 20-ag-3035, 20-ag-3036, 20-ag-3037, 20-ag-3038, 20-ag-3039, 20-ag-3040, 20-ag-3041, 20-ag-3042, 20-ag-3043, 20-ag-3044, 20-ag-3045, and 20-ag-3046

On October 20, 2020, the court docketed twenty consolidated petitions by thirty-one petitioners, including two that were petitioners in two cases, seeking review of the Federal Energy Regulatory Commission's market-mitigation order. The cases were transferred from the District of Columbia Circuit by order dated October 14. The petitions were filed in the District of Columbia Circuit from February 28 through August 17. The District of Columbia Circuit's court of appeals had granted intervention to nine parties, including two that later filed their own cases.

On January 10, 2023, the Third Circuit's court of appeals determined that the market-mitigation rule was lawful. 88 F.4th 250. The commission informed the Seventh Circuit's court of appeals that the Third Circuit decision mooted the Seventh Circuit cases. The Seventh Circuit cases were dismissed.

Wisconsin Central v. Surface Transportation Board, 20-ag-3507

A December 23, 2020, petition challenged an order issued by the Surface Transportation Board respecting where the petitioner could receive traffic in interchange from another railroad. On January 12, 2021, the other railroad, a party to the proceeding before the board, moved to intervene. A motion judge granted intervention on the next day. On January 19, a third railroad, which would be affected if the court granted the petitioner relief, sought intervention in support of the board's decision. Another motion judge granted intervention two days later. But on March 17, the court granted the third railroad's March 16 motion to withdraw intervention. On December 8, the court vacated the board's order as based on a misinterpretation of a statute. 20 F.4th 292.

Brousil v. Department of Labor, 21-ag-1532

A March 26, 2021, petition challenged an employment-discrimination decision by the Department of Labor's Administrative Review Board. The railroad employer that was the respondent in the agency action moved to intervene on April 6. A motion judge granted intervention on April 9. The court denied the petition on August 9, 2022. 43 F.4th 808.

Bessemer & Lake Erie Railroad v. STB, 21-ag-1726

A railroad's April 23, 2021, petition challenged a condition in the Surface Transportation Board's approval of a line sale transaction between the petitioner and another railroad. The other railroad moved on April 30 to intervene in support of the petition. A motion judge granted intervention on May 3. The case was dismissed as settled on June 7, 2022.

Various Petitioners v. NLRB, 22-ag-2674 and 23-ag-1014

A union's September 21, 2022, petition challenged the National Labor Relations Board's decision in favor of an employer who was charged with firing an employee

for union activity. The employer moved to intervene on September 28. The employer had filed a petition in the District of Columbia Circuit on September 23, and the case was transferred to the Seventh Circuit on January 4, 2023. The Seventh Circuit's court of appeals consolidated the two cases on January 9. The transfer included a pending motion by the union to intervene in the employer's petition. A Seventh Circuit motion judge granted intervention on January 9. The court denied the petitions and granted the board's November 13, 2023, enforcement application on July 23, 2024. 109 F.4th 905.

Eighth Circuit

There were 9,081 cases in our filing cohort. One civil appeal had intervention activity. In addition to a summary of that case, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

One case summary covers the one civil case with an intervention motion, filed seventy-three days after the case was filed.[19] Intervention was denied.

Intervention Denied

Frazier v. Smith, 22-pr-1323
(intervention category: pro se)

A prisoner's pro se February 15, 2022, civil appeal challenged the District of Nebraska's grant of summary judgment to defendants in an action that challenged the prisoner's arrest and home search. A pro se motion to intervene was filed on April 29. On May 10, the clerk of court referred the intervention motion to the merits panel. On July 29, the court of appeals affirmed dismissal of the case and denied the intervention motion.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from six to thirty days after case filings; they were granted in all five sets of cases.

Intervention Granted

Oglala Sioux Tribe v. EPA, 21-ag-1167

A January 22, 2021, petition challenged the Environmental Protection Agency's approval of an aquifer program revision. A power company moved to intervene in support of the agency on February 18. The petitioner opposed intervention. A motion judge granted intervention and agreed to hold the case in abeyance on March 9. The case remains pending.

19. Intervention was sought in a second case within a year of filing but after the court issued its judgment: *Cheatum v. Ramey v. Wolf*, 20-pr-3623, page 70.

Phox v. Secretary, Department of Labor, 22-ag-2364

A pro se June 27, 2022, petition challenged a Department of Labor Administrative Review Board decision in favor of the petitioner's employer. The employer moved to intervene on July 27. The clerk of court granted intervention on August 9. The court denied the petition on February 10, 2023.

NLRB v. Enright Seeding, 22-ag-2848 and 22-ag-2996

The National Labor Relations Board's August 30, 2022, application sought enforcement of its order requiring an employer to provide a union with information for collective bargaining. The employer filed a review petition on September 21. The union filed motions to intervene in the two cases on September 27. The clerk of court granted intervention on October 7. On July 25, 2024, the court concluded that the board's order regarding the employer–union relationship was not supported by substantial evidence. 109 F.4th 1012.

Associated Electric Cooperative v. FERC, 22-ag-3593

A December 14, 2022, petition challenged the Federal Energy Regulatory Commission's declaratory decision respecting sales of emergency energy during winter storm Uri. The power company that sought the declaratory decision moved to intervene in the appeal on December 22. That day, the clerk of court informed the parties that they had eight days to object to the motion or it would be granted. The clerk granted intervention on January 3, 2023. On August 5, 2024, the court denied the petition. 111 F.4th 914.

Missouri v. EPA, 23-ag-1719

Missouri's April 13, 2023, petition challenged the Environmental Protection Agency's disapproval of Missouri's interstate air-pollution plan. A Missouri power company moved to intervene on May 5 in opposition to the agency's decision. On May 8, the clerk of court informed the parties that they had eight days to object to the motion or it would be granted. The case was heard on October 22, 2024, and now is in abeyance.

Ninth Circuit

"The Court may delegate to the Clerk or designated deputy clerks, staff attorneys, appellate commissioners or circuit mediators authority to decide motions filed with the Court." 9th Cir. R. 27-7.

"Intervention on appeal is governed by Rule 24 of the Federal Rules of Civil Procedure. Intervention at the appellate stage is, of course, unusual and should ordinarily be allowed only for imperative reasons." Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997) (citations and quotation marks omitted). "This Court disfavors putative intervenors who merely seek to attack or thwart a remedy." East Bay Sanctuary Covenant v. Biden, 102 F.4th 996, 1001 (9th Cir. 2024) (quotation marks omitted). And the court "typically will not consider issues raised exclusively by an intervenor." Solar Energy Indus. Ass'n v. FERC, 80 F.4th 956, 974 (9th Cir. 2023).

There were 18,227 cases in our filing cohort. Nineteen case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Nineteen case summaries cover all civil cases with intervention motions, filed from zero to 354 days after case filings. Intervention was granted in twelve sets of cases, denied in five sets of cases, and never fully at issue in three cases.

Intervention Granted

Caballero v. United States, 20-cv-17356
(intervention category: other)

A December 2, 2020, civil appeal challenged the Eastern District of California's dismissal of an in rem action involving tribal territory. When the district court dismissed the action, an intervention motion by a group involved in the property dispute was pending, and the district court denied intervention as moot. The group moved to intervene in the appeal on April 1, 2021. A two-judge motion panel granted intervention on May 14. An intervenor brief was filed on July 12. The court of appeals affirmed dismissal of the action on October 22.

National Abortion Federation v. Center for Medical Progress, 21-cv-15953
(intervention category: sealing)

A June 3, 2021, civil appeal challenged a Northern District of California decision that enjoined the defendants from sharing information learned at a meeting of the plaintiff organization. Two motions filed on February 2, 2022, sought intervention to maintain some information under seal. On February 28, the appellate commissioner granted intervention and agreed to sealing requests. The court affirmed the injunction on August 19. The Supreme Court declined to review the decision. 601 U.S. ___, 144 S. Ct. 86 (2023).

Mayes v. Biden, 22-cv-15518
(intervention category: other political body)

The federal government's April 11, 2022, civil appeal challenged a District of Arizona injunction awarded to Arizona against a vaccination requirement for federal contractors. Stating that Arizona's attorney general "now affirmatively advocates a substantial narrowing of the injunctive relief that her predecessor had obtained for the State in the district court," Arizona's legislature, its presiding officers, and Arizona's chamber of commerce moved to intervene in the appeal on February 20, 2023. On February 28, a three-judge panel granted intervention to the legislature and the chamber but denied it to the presiding officers. On April 19, the panel reversed the injunction. 67 F.4th 921. On December 28, after the government rescinded the contractor mandate, the court vacated its April 19 decision. 89 F.4th 1186.

Sidibe v. Sutter Health, 22-cv-15634
(intervention category: sealing)

An April 28, 2022, civil appeal challenged summary judgment and a jury verdict in favor of the defendant in a Northern District of California action alleging improper healthcare market activity. In October and January, several medical insurers filed five motions to intervene to oppose the unsealing of some district-court filings. In December through March, they filed motions under seal to maintain documents under seal. On March 29, 2023, a two-judge motion panel granted intervention and agreed to maintain some documents under seal. On June 4, 2024, by a vote of two to one, the court reversed judgment in favor of the defendant and remanded the case for a new trial. 103 F.4th 675.

Doe v. Roe, 22-cv-15757
(intervention category: sealing)

A May 18, 2022, civil appeal challenged the Northern District of California's preventing a pseudonymous defendant from publicly identifying a pseudonymous plaintiff in a case that the plaintiff dismissed voluntarily. On September 15, a law professor moved to intervene to challenge the partial sealing of a brief. A two-judge motion panel granted the intervention motion. On June 16, 2023, the court dismissed the appeal as moot in light of the plaintiff's identity becoming public.

Innovative Health v. Biosense Webster, 22-cv-55413
(intervention category: sealing)

An April 22, 2022, civil appeal challenged the Central District of California's summary judgment. A business that provided the parties with discovery moved to intervene in the appeal on November 29 to seek sealing of its confidential discovery in the appellate record. A two-judge motion panel granted the intervention motion on January 26, 2023. By a two-to-one vote, the court reversed the summary judgment on January 5, 2024.

Littleton v. Musk, 23-cv-16010
(intervention category: sealing)

A July 18, 2023, civil appeal challenged a Northern District of California judgment after trial. On February 16, 2024, a company moved to intervene in the appeal to move for the sealing of four trial exhibits. On May 1, the appellate commissioner granted the company's intervention and sealing motions. The company's brief supporting its sealing motion was filed that day. The court of appeals affirmed the district court's judgment on November 6.

Shahrokhi v. Harter, 23-cv-16012
(intervention category: other)

A pro se July 19, 2023, civil appeal challenged the District of Nevada's dismissal of a suit challenging state-court custody proceedings. Nevada and its attorney general moved to intervene on August 18 to provide a defense for a defendant state-court judge who had died. On August 28 and 30, they moved to oppose pending motions by the appellant. On September 11, Nevada asked the court to expedite

consideration of its intervention motion so that it would not waste time preparing a brief that would be rejected because of a denial of its motion. On September 14, Nevada filed a response to the appellant's motion to strike Nevada's earlier responses. On September 21, Nevada filed another motion to respond to an appellant motion. A two-judge motion panel granted intervention on October 2. Nevada filed its intervenor brief on January 12, 2024. The case remains pending.

Boston Retirement System v. Uber Technologies, 22-23f-80076
(intervention category: sealing)

An August 9, 2022, petition challenged the Northern District of California's certifying a plaintiff class in a securities action. An investment company that produced documents in the district-court case pursuant to subpoena moved to intervene on August 31 to seek the sealing of its evidence. On September 2, a deputy clerk granted the investment company permission to file its sealing motion. A two-judge motion panel granted intervention on February 24, 2023. The panel also ordered the sealing of some filings and the denial of the petition for permission to appeal class certification.

Carr v. Google, 23-cv-15285
(intervention category: sealing)

A March 1, 2023, civil appeal challenged the Northern District of California's certification of a class action. On June 29, a business moved to intervene to file a motion to seal evidence produced as part of discovery. On August 2, it filed a motion to file one volume of the excerpts of record under seal. The clerk of court granted both motions on August 2. The appeal remains pending.

Comet Technologies USA v. XP Power, 23-cv-15601 and 23-cv-15709
(intervention category: sealing)

An April 25, 2023, civil appeal and a May 10 cross-appeal challenged a Northern District of California jury-verdict judgment for plaintiffs in a trade-secret action. A former employer of an employee who left to work for a plaintiff filed an intervention motion on September 19 to protect under seal its confidential information at issue in the litigation. With its intervention motion, the former employer filed a motion to maintain documents under seal. On October 24, a two-judge motion panel granted intervention. The appeals will be heard on September 19, 2025, following a January 28 district-court award of prejudgment interest.

In re Silver, 23-bkp-60004
(intervention category: bankruptcy, creditor, receiver)

A bankruptcy debtor's pro se appeal filed on January 13, 2023, sought protection of his home from foreclosure. The bank holding the mortgage moved to intervene on January 2, 2024. With its motion, the bank filed a brief opposing the debtor's motion for an injunction pending appeal. On February 3, the bank's attorneys filed a brief opposing the debtor's motion for sanctions. On February 28, the court held that the bankruptcy court did not abuse its discretion by denying the debtor's motion to convert his case from Chapter 7 to Chapter 13. The opinion also granted

the bank's intervention motion.

Intervention Denied

PG&E v. Canyon Capital Advisors, 21-bkd-15025
(intervention category: bankruptcy, creditor, receiver)

A January 5, 2021, civil appeal challenged the Northern District of California's dismissal of an unsecured creditor's bankruptcy appeal. A collection of trade creditors moved to intervene on March 17. On the same day, an additional creditor moved to intervene separately. On April 16, a two-judge motion panel denied intervention. The court of appeals affirmed dismissal of the bankruptcy appeal on December 16.

Brown v. Maricopa County Attorney's Office, 23-pr-15141
(intervention category: pro se)

A February 1, 2023, civil appeal challenged the District of Arizona's closing a removed civil action by several prisoners and separating the case into individual cases for each prisoner. From April 27 to May 8, three prisoners not included in the original complaint moved to intervene as plaintiffs in the appeal. On May 30, a two-judge motion panel denied intervention. The case remains pending.

East Bay Sanctuary Covenant v. Biden, 23-cv-16032
(intervention categories: other political body, pro se)

The government's July 26, 2023, civil appeal challenged the Northern District of California's summary judgment in favor of plaintiff organizations that represent and assist asylum seekers. On February 21, 2024, the court placed the appeal in abeyance pending settlement discussions. 93 F.4th 1130. Five states moved to intervene on March 7, asserting that they could not rely on the President to enforce immigration laws. In a twenty-eight-page opinion, by a vote of two to one, the court denied intervention on May 22, 2024, reasoning that "states have no legally protectible interest in compelling enforcement of federal immigration policies." 102 F.4th 996, 1002, *cert. denied*, 604 U.S. ___, 145 S. Ct. 415 (2024). On June 20, a person with a Russian address filed a pro se motion to intervene. The court denied intervention four days later. On April 10, 2025, the court remanded the case to the district court for reconsideration of organizational standing in light of the Supreme Court's June 13, 2024, decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). 134 F.4th 545.

Various Parties v. Lawson, 22-cv-56220 and 23-cv-55069
(intervention category: other)

A December 30, 2022, civil appeal challenged the Central District of California's denial of a preliminary injunction against a California statute intended to proscribe physicians' misinformation about Covid-19 vaccines. A January 24, 2023, civil appeal challenged a Southern District of California decision to stay a preliminary-injunction motion pending a decision in the first appeal. A deputy clerk consolidated the two appeals on January 25. On February 15, two organizations who had obtained a preliminary injunction from the Eastern District of California

moved to intervene in the two appeals from the other districts. A two-judge motion panel denied the intervention motion on February 28. On February 29, 2024, the court of appeals held that California's repealing the statute at issue mooted the cases. 94 F.4th 864.

Intervention Question Moot

Mi Familia Vota v. Hobbs, 20-cv-16932
(intervention category: other political body)

The Republican Party's October 6, 2020, civil appeal challenged a District of Arizona preliminary injunction that required Arizona's secretary of state to extend a voter-registration deadline because of the Covid-19 pandemic. The district court had permitted the party to intervene in the action by proponents of voter rights. On the day that the appeal was filed, the attorney general filed a motion to intervene in the appeal on behalf of Arizona. Also on the day that the appeal was filed, the appellants filed a motion to stay the injunction. The court's October 7 scheduling order stated, "For purposes of this scheduling order only, we assume without deciding that we will grant the State's pending motion to intervene." Arizona filed briefs supporting a stay. On October 9, the panel set the case for hearing on the stay and intervention motions for October 12. The court's October 13, 2020, decision to stay the injunction stated that it was not then necessary to resolve the intervention motion "in the present posture of the appeal." 977 F.3d 948, 952. The court accepted a voluntary dismissal of the case on February 2, 2021.

Caballero v. Williams, 21-cv-15879
(intervention category: other)

A May 18, 2021, civil appeal challenged the Eastern District of California's denial of a temporary restraining order. On the day after the temporary restraining order was denied, a university claiming an interest in real property at issue moved to intervene in the district court. It moved to intervene in the appeal on June 21. On July 28, the court of appeals ruled that it did not have jurisdiction to review denial of a temporary restraining order and dismissed the intervention motion as moot. The plaintiff voluntarily dismissed the district-court case, and the district judge denied the pending intervention motion as moot.

Moriarty v. American General Life Insurance Company, 21-cv-55220
(intervention category: other)

On March 10, 2021, the court of appeals granted a life-insurance company permission to pursue an interlocutory appeal deciding whether a California statute applied retroactively to life-insurance policies. On March 19, the insurance company moved to coordinate the appeal with other cases presenting the same issue. A plaintiff in one of the other cases moved to intervene on March 26, filing a brief opposing coordination. On September 23, the court accepted a voluntary dismissal of the case.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from six to thirty-six days after case filings; they were granted in all five sets of cases.

Intervention Granted

Various Petitioners v. FERC, 20-ag-72958 and 20-ag-72973

Petitions filed on October 2 and 5, 2020, challenged the Federal Energy Regulatory Commission's decision regarding hydroelectric projects in California. The circuit mediator consolidated the cases on October 15. An irrigation district that owned the projects moved to intervene on October 28. A deputy clerk granted intervention on November 6. On August 4, 2022, the court overruled certain commission findings and remanded the cases for further proceedings. 43 F.4th 920, *cert. denied*, 598 U.S. ___, 143 S. Ct. 2459 (2023).

Various Petitioners v. Bonneville Power Administration, 20-ag-73761, 20-ag-73762, and 20-ag-73775

Petitions by environmental organizations and an Indian tribe filed on December 23, 2020, and a petition filed by another Indian tribe on December 24 challenged a Bonneville Power Administration decision respecting the Columbia River. A deputy clerk consolidated the cases on January 13, 2021. An interstate agency that was established to protect wildlife affected by hydroelectric projects on the Columbia River moved to intervene on January 20. A deputy clerk granted intervention one week later. The second two cases were dismissed as settled on October 11, 2023, and the first was dismissed as settled on February 23, 2024.

Kava Holdings v. NLRB, 21-ag-70225, 21-ag-70638, and 21-ag-71334

A February 3, 2021, petition challenged the National Labor Relations Board's decision that a hotel improperly changed terms of employment and refused to bargain with a union. The union moved to intervene on March 4. The board filed an enforcement action on March 17, and the circuit mediator consolidated the cases on March 19. A deputy clerk granted the intervention motion on March 26. On November 12, a deputy clerk consolidated the cases with a second enforcement action filed by the agency on October 18. On October 18, 2023, the court held that substantial evidence supported the agency's decision. 85 F.4th 479, *cert. denied*, 604 U.S. ___, 145 S. Ct. 139 (2024).

Various Parties v. NLRB, 21-ag-70388 and 21-ag-70700

A union's February 22, 2021, petition challenged a National Labor Relations Board decision that partially favored a hotel. The board filed an enforcement action on March 24. The union moved to intervene in the enforcement action on March 30. A deputy clerk consolidated the cases and granted intervention on April 26. On July 29, 2022, the court ruled against the union and in favor of the board.

Thorstenson v. Department of Labor, 22-ag-70020

An employee's February 4, 2022, petition challenged a finding by the Department of Labor's Administrative Review Board that the employee would have been fired even if he had not engaged in protected activity. On February 11, the employer moved to intervene. A deputy clerk granted intervention on February 17. On March 15, 2023, the court granted the petition and remanded the case for computation of damages.

Tenth Circuit

By local rule, "[a] party to an agency proceeding may intervene in a review of that proceeding by filing a notice of intervention in the court." 10th Cir. R. 15.4(A).

The court grants motions to intervene on appeal based on the intervention-of-right requirements of Federal Rule of Civil Procedure 24(a). Pub. Serv. Co. of N.M. v. Barboan, 857 F.3d 1101 (10th Cir. 2017). In an agency appeal, an intervenor "may join issue only on matters brought before the court by the . . . petitioner." Arapahoe Cnty. Pub. Airport Auth. V. FAA, 242 F.3d 1213, 1217 n.4 (10th Cir. 2001).

The criteria for intervention on appeal are the same as the criteria for intervention as a matter of right in the district court. Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co., 407 F.3d 1091, 1102–03 (10th Cir. 2005). "When intervention was not sought below, however, intervention on appeal will be permitted only in an exceptional case for imperative reasons." *Id.* at 1103 (quotation marks and citation omitted).

There were 4,886 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petition and enforcement actions.

Civil Cases

Three case summaries cover all civil cases with intervention motions, filed from thirty to forty-two days after case filings.[20] Intervention was granted in one case and denied in two sets of cases.

Intervention Granted

America West Bank Members v. Utah, 23-cv-4091
(intervention category: bankruptcy, creditor, receiver)

A July 6, 2023, civil appeal challenged the District of Utah's summary judgment for defendants in an action against state regulators on a finding that the plaintiff bank's claims had been assumed by the FDIC as receiver for the bank. In a series of orders, the district court granted the FDIC limited intervention to (1) oppose a motion to amend the complaint, (2) move for disqualification of a plaintiff's lawyer for contacting an FDIC employee without FDIC counsel present, and (3) oppose a motion to compel discovery. On August 14, the FDIC sought to intervene in the appeal to protect its interests and because the district court relied on a theory of the

20. Excluded from this interval analysis is a case in which an intervenor brief was filed without permission.

case different from the one briefed. On August 29, a two-judge motion panel provisionally granted the FDIC intervention subject to reconsideration by the merits panel. The FDIC filed an appellee brief as intervenor on December 27. The court affirmed summary judgment on August 14, 2024, noting in a footnote that the FDIC had intervened. The Supreme Court denied certiorari. 605 U.S. ___, ___ S. Ct. ___, 2025 WL 1678999.

Intervention Denied

Luo v. Wang, 22-cv-1200
(intervention category: sealing)

A pro se June 29, 2022, civil appeal challenged a District of Colorado decision denying the appellant permission to participate as a plaintiff by pseudonym in a defamation action. A law professor was granted intervention in the district court for the purpose of challenging the partial sealing of the court record. He filed an appellee brief in the court of appeals as an intervenor. The merits panel granted the appellant's motion to strike the intervention brief—because the appeal did not concern the issue on which the professor was granted intervention—and denied the law professor intervention on appeal. He did not "identify any imperative reason for his intervention in this appeal on the issue of whether Ms. Doe may proceed under a pseudonym." On July 3, 2023, the court affirmed the district court's requirement that the plaintiff proceed under her real name. 71 F.4th 1289.

Various Appellants v. Biden, 23-cv-4106 and 23-cv-4107
(intervention category: other)

Civil appeals filed on August 15 and 16, 2023, challenged the District of Utah's dismissal of two actions against the expansion of two national monuments. A collection of organizations moved to intervene in the two appeals on September 15. A second group of organizations moved to intervene three days later. Eight days after that, a third group of organizations moved to intervene. On October 11, a two-judge motion panel denied intervention but suggested that the groups consider filing amici curiae briefs. The appeals were heard on September 26, 2024.

Agency Cases

The following five case summaries include agency petition and enforcement actions selected at random. Intervention motions were filed from seven to sixty-eight days after case filings; they were granted in four sets of cases and denied in one set of cases.

Intervention Granted

NLRB v. BS&B Safety Systems, 21-agenf-9536 and 21-agpet-9544

The National Labor Relations Board's April 13, 2021, petition sought enforcement of its order proscribing penalties for union activities. The employer filed a petition challenging the agency order on May 4. On May 11, the union moved to intervene as the charging party before the board. The clerk of court granted the unopposed motion on May 12. The parties stipulated dismissals of the cases on January 27,

2022.

Alpine Securities v. SEC, 22-agpet-9579

A November 30, 2022, petition challenged the Securities and Exchange Commission's decision regarding a backtesting charge. On December 12, the National Securities Clearing Corporation moved to intervene as the entity that had assessed the charge. On the following day, the clerk of court granted intervention. The parties stipulated dismissal of the case on April 17, 2023.

Kunz v. FAA, 22-agpet-9583

A December 13, 2022, petition challenged the Federal Aviation Administration's decision respecting a city's not acquiring an interest in the petitioner's real property for expansion of a general-aviation airport. The city filed a notice of intervention on January 12, 2023, but in the end decided not to file a brief. On May 20, 2025, the court of appeals affirmed the agency's decision.

Coreslab Structures (Tulsa) v. NLRB, 23-agpet-9502 and 23-agenf-9505

A January 18, 2023, petition challenged the National Labor Relations Board's decision proscribing penalties for union activities. The board filed an enforcement action five days later. The union filed a notice of intervention in both cases on February 2. The court of appeals granted the employer some relief on February 28, 2024. 94 F.4th 969. The court clarified its decision on April 24. 100 F.4th 1123. The court issued a modification of the board order on June 18.

Intervention Denied

Various Petitioners v. EPA, 23-agpet-9509, 23-agpet-9512, 23-agpet-9514, 23-agpet-9520, 23-agpet-9521, 23-agpet-9529, 23-agpet-9531, 23-agpet-9533, 23-agpet-9534, and 23-agpet-9537

Ten petitions to review the Environmental Protection Agency's decision disapproving twenty-one states' plans to prevent ozone contamination of neighboring states were filed from February 13 to April 14, 2023.

On March 15, two environmental organizations moved to intervene in the first case, arguing also that venue properly belonged in the District of Columbia Circuit. In response to agency motions to transfer the cases to the court of appeals for the District of Columbia Circuit or dismiss them for improper venue, a three-judge panel decided on April 27 to leave that as a merits-panel question. In a case-management order issued on the following day, the clerk of court issued an order respecting intervention. The pending intervention motion noted "that in the D.C. Circuit, a motion to intervene filed in one case is deemed a motion to intervene in all cases before that court involving the same agency action or order. This circuit does not have a similar rule." The clerk ordered the prospective interveners to seek intervention in any other case in which they desired to intervene within five days. On May 18, a two-judge motion panel denied the organizations' intervention in the seven cases in which they sought intervention on May 3 (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). "As appropriate, Movants may file

an amicus brief or motion in accordance with Federal Rule of Appellate Procedure 29." The prospective intervenors appeared as amici.

In January 2024, the cases with Wyoming petitioners were voluntarily dismissed (nos. 23-9529, 23-9531, and 23-9537). On February 16, a three-judge panel transferred cases with Oklahoma and Utah petitioners to the District of Columbia Circuit (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). 93 F.4th 1262. On June 18, 2025, the Supreme Court determined that the cases belonged in a regional circuit. 605 U.S. ___, 145 S. Ct. 1720.

Eleventh Circuit

"A court of appeals may, but only in an exceptional case for imperative reasons, permit intervention where none was sought in the district court." McKenna v. Pan Am. Petroleum Corp., 303 F.2d 778, 779 (5th Cir. 1962).

"[C]ourts have broad authority to limit the ability of intervening parties to expand the scope of a proceeding beyond the issues litigated by the original parties." Johnson v. Bd. of Regents of Univ. of Ga., 263 F.3d 1234, 1269 (11th Cir. 2001). "Except for extraordinary cases, an intervenor is precluded from raising issues not raised by the principal parties." Ga. Power Co. v. Teleport Commc'ns Atlanta, Inc., 346 F.3d 1047, 1049 (11th Cir. 2003).

There were 13,357 cases in our filing cohort. Seven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petitions.

Civil Cases

Seven case summaries cover all civil cases with intervention motions, filed from seven to 211 days after case filings. Intervention was granted in two cases and denied in five sets of cases.

Intervention Granted

Peden v. Stephens, 21-pricivil-10723
(intervention category: other)

A March 4, 2021, civil appeal challenged the Northern District of Georgia's granting summary judgment to defendants. The trial court had quashed the deposition of a journalist who reported on the underlying story, and the journalist moved to intervene in the appeal on October 1 to defend the district court's decision. On October 26, a motion judge granted intervention. The journalist filed a brief that day. On August 29, 2022, the court concluded that it lacked jurisdiction over the case because the district judge improperly certified final judgment while some claims remained unresolved. 50 F.4th 972.

Andrews v. Autoliv Japan, 22-pricivil-13713
(intervention category: constitutionality)

A November 1, 2022, civil appeal challenged the Northern District of Georgia's bench-trial product-liability award. On February 6, 2023, Georgia moved to intervene as a plaintiff-appellee to protect its statutory seventy-five percent share of

the punitive-damages award. On February 27, a motion judge granted intervention. Georgia filed its brief on May 18. On August 7, Georgia filed a notice that it consented to the parties' August 3 joint motion to dismiss the appeal, a motion the court granted on August 8.

Intervention Denied

Fernandez v. Seaboard Marine, 22-pricivil-12966
(intervention category: other)

A September 6, 2022, civil appeal challenged the Southern District of Florida's dismissal of an action for trafficking in property confiscated by the Cuban government. A March 28, 2023, motion to intervene challenged a pending settlement which would include vacating the district court's summary judgment. An intervention motion was filed in the district court on March 27. On April 27, a motion judge denied intervention in the court of appeals. Two days before that, the district court granted intervention. The district court denied the motion to vacate summary judgment on June 13. On April 14, 2025, the court partially reversed the dismissal, determining that the plaintiffs had provided sufficient evidence to support a finding of trafficking in property confiscated from one of the plaintiffs' companies. 135 F.4th 939.

Peele v. Department of Justice, 22-usc-13173
(intervention category: pro se)

A September 21, 2022, pro se civil appeal challenged the Southern District of Florida's dismissal of a removed civil complaint as impermissible shotgun pleading. A person with the same residential address as the plaintiff filed a pro se motion to submit a brief in intervention on October 19. The plaintiff endorsed the motion that day. On November 28, a motion judge denied the motion. The court of appeals summarily affirmed the district court's dismissal on January 31, 2024.

Locke v. Canady, 22-pricivil-13971, and Warren v. DeSantis, 23-pricivil-10459
(intervention category: pro se)

A November 28, 2022, civil appeal challenged the Northern District of Florida's dismissal of a suit that challenged the Florida Supreme Court's suspension of an attorney's license. Another attorney, apparently disbarred and denied intervention in the district court, moved to intervene in the court of appeals on January 6, 2023, to challenge Florida's licensing scheme. On February 15, a motion judge denied intervention. The attorney's subsequent motions to intervene were unsuccessful. The court of appeals affirmed the district court's dismissal on January 5, 2024.

A February 14, 2023, civil appeal challenged a Northern District of Florida bench-trial decision in the governor's favor in a case arising from his suspending an elected state attorney on the basis of false allegations. A criminal defendant in state court claiming similarly unlawful silencing by the governor moved to intervene on February 21. He had been denied intervention in the district court. On March 19, the apparently disbarred attorney in the other case, claiming a somewhat similar situation as the plaintiff's in the district court, moved to intervene as well. On March 20, the clerk of court entered orders denying the two intervention

motions. On April 5, the clerk issued an order denying reconsideration of the second intervention denial. On January 10, 2025, the court concluded that the case had become moot when the plaintiff's term of office expired.

Hispanic Federation v. Florida Secretary of State, 23-pricivil-12313
(intervention category: other)

Florida's July 12, 2023, civil appeal challenged a Northern District of Florida preliminary injunction against new laws that curtailed voter-registration efforts. On August 25, the League of Women Voters moved to intervene. Its motion for a preliminary injunction in a different case challenging the same laws was denied as moot; it was not otherwise a party before the court of appeals. On October 12, a motion judge denied intervention. On August 27, 2024, the court granted a voluntary dismissal of the appeal as moot; by that time, a permanent injunction had been issued and was on appeal.

Georgia v. Meadows, 23-pricivil-12958
(intervention category: pro se)

A state-court criminal defendant's September 8, 2023, civil appeal challenged the Northern District of Georgia's declining jurisdiction over the prosecution of a former White House chief of staff. Noting that a document titled "Amicus – Friend of the Court Brief – Motion to Intervene" was filed pro se on September 15 by someone with a history of frivolous filings in high-profile cases, the clerk of court entered an order by direction on September 29 denying the filer participation in the case. On December 18, the court of appeals affirmed the district court's decision. 88 F.4th 1331, *cert. denied*, 604 U.S. ___, 145 S. Ct. 545 (2024).

Agency Cases

The following five case summaries include agency petition and enforcement actions selected at random. Intervention motions were filed from thirteen to 281 days after case filings; they were granted in three sets of cases, denied in one case, and never fully at issue in another case.

Intervention Granted

Lhoist North American of Alabama v. NLRB, 21-agen-11791

An employer's May 26, 2021, petition challenged the National Labor Relations Board's injunction against the employer's interference with union activities. The union moved to intervene on June 21. A motion judge granted intervention on August 3. The court affirmed the board's decision on July 21, 2023.

Alabama v. EPA, 22-agen-12685

Alabama's August 17, 2022, petition challenged the Environmental Protection Agency's ruling that Alabama failed to submit a complete infrastructure-state-implementation-plan revision to satisfy interstate transport requirements of the Clean Air Act. Power companies moved to intervene on September 14, stating that it deemed the agency ruling an unlawful regulation of its emissions. On October 3,

the agency opposed intervention. On October 14, Alabama and the agency moved jointly to hold the case in abeyance pending further agency review. On October 17, the power companies filed a proposed response to the abeyance motion, arguing for more limited abeyance than requested by the parties. On November 2, a motion judge granted intervention to the power companies, and granted sixty days' abeyance, more limited than the parties requested but less limited than the power companies requested. Alabama and the agency moved for another sixty days' abeyance on December 30; the power companies argued on January 1, 2023, for forty-five days' abeyance. The motion judge granted forty-five days' abeyance on January 30. Following another forty-five days' abeyance, the court granted a voluntary dismissal of the case on May 19.

NLRB v. ArrMaz Products, 23-agen-10291

The National Labor Relations Board's January 31, 2023, application sought enforcement of an order requiring an employer to bargain with a union. The union filed a motion to intervene on February 13. A motion judge granted intervention on March 28. On December 16, 2024, the court granted the board enforcement of its order. 123 F.4th 1295.

Intervention Denied

Hunt Refining Company v. EPA, 22-agen-11617

A refinery's May 12, 2022, petition challenged the Environmental Protection Agency's denial of Renewable Fuel Standard exemptions to thirty-six small refineries. On February 17, 2023, renewable fuels producers moved to intervene in support of the agency. On April 28, a motion judge denied intervention. On January 11, 2024, the court ruled that the case should have been brought in the District of Columbia Circuit. 90 F.4th 1107.

Intervention Question Moot

Delta Air Lines v. Department of Labor Administrative Review Board, 22-agen-11539

An employer's May 6, 2022, petition challenged a decision by the Department of Labor's Administrative Review Board in favor of an employee's whistleblower complaint. The employee moved to intervene on May 20. On August 29, the court concluded that it did not have jurisdiction over the case because the board's decision included a remand for consideration of damages. The intervention motion was denied as moot.

Federal Circuit

There were 4,363 cases in our filing cohort. Two case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petitions.

Civil Cases

Two case summaries cover all civil cases with intervention motions, filed eighteen and sixty-nine days after case filings. Intervention was denied in both cases.

Intervention Denied

SAGAM Securite Senegal v. United States, 21-cvUS-2279
(intervention category: other)

The government's September 2, 2021, civil appeal challenged a Court of Federal Claims injunction. On September 20, a joint venture moved to intervene "because the remedy ordered by the trial court in the bid protest below disqualified [the venture] from the subject procurement." The trial court's judgment stated, among other things, that the Department of State was directed to disqualify the venture as the beneficiary of improperly disclosed information taken from the plaintiff's proposal. The venture had moved to intervene in the trial-court case on September 10. The trial court denied intervention on October 7. On November 3, a motion judge for the court of appeals also denied intervention, "particularly given that it did not participate below and its belated motion to intervene after entry of judgment was denied by the trial court as untimely." The judge invited the venture to seek participation as an amicus curiae. The court affirmed the Court of Federal Claims judgment on October 12, 2023.

Frazier v. United States, 22-cvUS-1407
(intervention category: pro se)

A January 25, 2022, pro se civil appeal challenged a Court of Federal Claims dismissal for lack of jurisdiction. On April 28, 2022, the clerk of court issued an order denying a pro se motion to intervene filed on April 4, "particularly given that she was not a party in the underlying case and did not seek to intervene below." The court accepted her brief submitted with her motion as an amicus curiae brief. On April 7, 2023, the court of appeals affirmed the trial court's dismissal.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from fourteen to fifty-two days after case filings; they were granted in all five cases.

Intervention Granted

Philips North America v. ITC, 21-ag-2064

A June 17, 2021, petition challenged an International Trade Commission decision that certain patents did not violate the Tariff Act. Companies whose products were at issue moved to intervene on July 1. The clerk of court issued an order granting intervention on July 2. On July 12, the clerk issued an order granting a July 7 intervention motion by other companies whose products were at issue. The court issued a summary affirmance on August 5, 2022.

Solas OLED v. Vidal, 22-bcaag-1309

A patent applicant's December 28, 2021, agency appeal challenged an adverse decision by the Patent Trial and Appeal Board. Because the appeal challenged the constitutionality of the board judges' appointments, the clerk of court issued an order on January 20, 2022, inviting the government to intervene. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office filed a notice of intervention on February 18. The court dismissed the case as settled on July 18.

Regents of the University of California v. ITC, 22-ag-1521

A March 11, 2022, petition challenged an International Trade Commission decision finding that importation of filament light-emitting diodes did not violate the Tariff Act. Prevailing parties before the commission moved to intervene on March 29 and 30. On April 5, the clerk of court issued an order granting intervention. On May 16, 2023, the court affirmed the commission's decision.

Koss Corporation v. Vidal, 22-bcaag-2091

A patent applicant's August 2, 2022, agency appeal challenged an adverse decision by the Patent Trial and Appeal Board. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office filed a notice of intervention on September 19. On July 31, 2024, the court dismissed the appeal as moot in light of a decision in another case.

Young v. MSPB, 23-ag-1309

A pro se December 30, 2022, petition challenged a decision by the Merit Systems Protection Board. The postal service was named as the respondent, but on January 18, 2023, it moved for a recaptioning of the case with the board as respondent and the postal service as an intervenor. On February 13, the clerk of court issued an order granting intervention. The court transferred the case to the Southern District of New York on December 13.

LATE INTERVENTION

If intervention is permitted to accommodate a change in executive administration, that can happen late in a case as well as early in a case. Intervention has also been permitted to accommodate constitutionality or sealing issues that arise late in a case. An issue perhaps especially likely to arise late in a case is the matter of attorney fees that might result in the attorneys' interests departing from the interests of their clients.

To examine intervention activity late in a case, such as for the purpose of seeking review of an appellate decision by rehearing en banc or by the Supreme Court, we examined a four-year termination cohort of cases: those decided from 2020 through 2023.

With three exceptions, cases with intervention activity in our filing cohort included one of the following phrases:

- motion . . . to intervene
- motion . . . for leave to intervene
- motion . . . to proceed as intervenor
- motion . . . to permit intervention

So we examined cases with docket entries containing the phrases "to intervene," "to proceed as intervenor," or "to permit intervention" that were dated at least one year after each case's filing. Also included here are cases in our filing cohort with intervention motions filed within a case's first year but after argument or judgment. We excluded most late motions to intervene that were late because of lengthy mediation or stay periods at the beginning of the case. Because late intervention is rare in agency cases, we were able to examine all of them rather than only a sample.

Intervention was granted by the courts of appeals in nine sets of civil cases and in two agency cases. The Supreme Court ordered intervention granted in an additional civil case.[21]

Whether Intervention Was Granted: Late Intervention Motions

	Civil Cases			Criminal Cases			Agency Cases		
Phase of Case	**Yes**	**No**	**Moot**	**Yes**	**No**	**Moot**	**Yes**	**No**	**Moot**
Pre-Argument	1	2		1					
Post-Argument	3				1				
Post-Judgment	6[22]	13	2		2		2		
Total	10	15	2	1	3		2		

Other Government Officer, Constitutionality, Sealing. Late intervention was granted in three cases permitting a different government officer to represent a

21. Cameron v. EMW Women's Surgical Ctr., 595 U.S. 267 (2022).

22. This includes one case in which the court of appeals denied intervention but the Supreme Court ordered intervention to be granted.

state's interests,[23] one case concerning constitutionality,[24] and two sets of cases where the question of sealing records arose (including one agency case).[25]

Attorney Fees. Late intervention was granted to attorneys in two cases because a question of attorney fees made the attorneys' interests different from the interests of their clients.[26]

Other. Late intervention was granted in three other civil cases[27] and in one agency case.[28]

Criminal Case. Late intervention was granted in one criminal case to a codefendant so that he could move for issues common to the two appeals to be decided at the same time.[29]

Denied or Moot. Intervention was denied or moot in seventeen civil cases and three criminal cases.

Late Intervention Motions

Described here are four cases with intervention motions filed late in each case but before argument.

Intervention was granted in one civil case and one criminal case and denied in two civil cases. Intervention was granted in the civil case to permit a request to unseal part of the record.[30] Intervention was granted in the criminal case to a codefendant who sought a delay of appellate proceedings until his case was ready for appeal.[31]

Courts of appeals denied a pro se motion to intervene[32] and an intervention motion citing relevant intervening events.[33]

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23. Supreme Court: EMW Women's Surgical Center v. Friedlander, page 65. Sixth Circuit: EMW Women's Surgical Center v. Friedlander, page 61. Ninth Circuit: Democratic National Committee v. Hobbs, page 64.

24. Sixth Circuit: Hall v. Meisner, page 62.

25. Third Circuit: Doe v. SEC, page 65 (agency case). Fourth Circuit: De Simone v. Various Appellants, page 60.

26. Sixth Circuit: NPF Franchising v. SY Dawgs, page 64. Ninth Circuit: De Borja v. Razon, page 65.

27. Seventh Circuit: Walton v. First Merchants Bank, page 64 (a similar target of vexatious pro se litigation). Ninth Circuit: Apache Stronghold v. United States, page 62 (a mining company in a challenge to the government's provision to the company of land that included an Apache ceremonial ground). Eleventh Circuit: Pitch v. United States, page 65 (a second historian seeking the unsealing of grand-jury records after the original plaintiff died).

28. Ninth Circuit: National Family Farm Coalition v. EPA, page 66 (herbicide manufacturers who stated they did not know that the court's decision would apply to manufacturers other than the one at issue in the case).

29. Third Circuit: United States v. Pawlowski, page 60.

30. De Simone v. Various Appellants, page 60.

31. United States v. Pawlowski, page 60.

32. Eleventh Circuit: Wells v. Warden, page 61.

33. Ninth Circuit: Devas Multimedia Private v. Antrix Corporation, page 60.

Intervention Granted in Civil Cases

De Simone v. Various Appellants, 4th Cir. 19-cv.pri-1731, 19-cv.pri-1761, and 19-cv.pri-1762

Civil appeals filed on July 12 and 22, 2019, challenged District of Maryland judgments in an intellectual-property action concerning a probiotic formulation. On October 22, 2020, one week before scheduled oral arguments, a law professor moved to intervene to challenge the sealing of "volume five of the joint appendix, which includes portions of the parties' briefing below, the joint statement of undisputed facts, a joint pretrial order, and the trial transcript." On October 28, the clerk of court issued an order granting intervention and unsealing volume five of the joint appendix. On February 17, 2021, the court of appeals modified the relief granted by the district court to the plaintiffs, holding that an injunction against false advertising was overbroad.

Intervention Granted in a Criminal Case

United States v. Pawlowski, 3d Cir. 18-cr-3390

A November 1, 2018, criminal appeal challenged an Eastern District of Pennsylvania conviction and sentence imposed on an Allentown mayor who was accused of steering city contracts in exchange for campaign contributions. On September 24, 2019, the court of appeals set the case for submission on November 12. On November 8, a codefendant moved to intervene "to request deferral of this Court's disposition of limited certain legal issues that [he] intends to raise in his appeal to this Court." The case was submitted on November 12. The codefendant filed an amended intervention motion on November 14. On the following day, the merits panel agreed to stay the case pending consolidation with the codefendant's appeal before the same merits panel. The codefendant filed his appeal on December 5. The panel affirmed the mayor's conviction and sentence on March 4, 2022. 27 F.4th 897. The panel affirmed the codefendant's conviction on the same day. 27 F.4th 913, *cert. denied*, 598 U.S. ___, 143 S. Ct. 427 (2022).

Intervention Denied in Civil Cases

Devas Multimedia Private v. Antrix Corporation, 9th Cir. 20-cv-36024, 22-cv-35085, and 22-cv-35103

A November 25, 2020, civil appeal challenged the Western District of Washington's arbitration-judgment confirmation of over one billion dollars against an Indian corporation. On January 3, 2022, the district court granted a motion by district-court intervenors to register the judgment in one other district but not nationwide. A January 31, 2022, appeal and a February 4, 2022, cross-appeal followed. On March 26, 2023, the court of appeals set its three cases for hearing on June 7. On May 5, three companies moved to intervene, stating that they were parent companies of district-court intervenors and they sought intervention as a result of recent foreign business and judicial events related to the litigation. On August 1, the court of appeals determined that the district court did not have personal jurisdiction over the defendant corporation, and the court denied intervention by

the parent companies. Finding that the district court did have personal jurisdiction over the defendant corporation, the Supreme Court reversed the decision of the court of appeals on June 5, 2025. 605 U.S. ___, 145 S. Ct. 1572 (2025).

Wells v. Warden, 11th Cir. 21-stp-10550

A February 18, 2021, civil appeal challenged the Southern District of Georgia's dismissing a prisoner's pro se action for failure to pay the filing fee as required by the Prison Litigation Reform Act following the filing of three meritless suits. The court of appeals affirmed the dismissal on December 2, but the court agreed on April 15, 2022, to rehear the case en banc. 30 F.4th 1333. On October 14, four days before scheduled oral argument, a pro se motion to intervene was filed by "a Hospital Workers' Representative with serious blue-collar street cred [and] an Atlanta Mayoral Candidate 2025." The clerk of court issued an order denying intervention three days later. On February 1, 2023, the court ruled en banc that the plaintiff's previous adverse summary judgment was not the type of "strike" contemplated by the Prison Litigation Reform Act. 58 F.4th 1347.

Post-Argument Intervention Motions

Described here are four cases with intervention motions filed after argument but before judgment. Intervention was granted in three civil cases, and a pro se motion to intervene was denied in one criminal case.

Intervention was granted to a newly elected attorney general,[34] an attorney general making arguments ancillary to constitutionality,[35] and a foreign company that was a party to a government contract at issue in the case.[36]

Intervention Granted in Civil Cases

EMW Women's Surgical Center v. Friedlander, 6th Cir. 18-cv-6161

A November 5, 2018, civil appeal challenged a Western District of Kentucky permanent injunction against Kentucky's requirement for "abortion facilities to maintain transfer agreements with local hospitals and transport agreements with ambulance services to ensure provision of emergency care to patients experiencing complications following abortion procedures." The appeal was heard on August 8, 2019. On July 24, 2020, Kentucky's attorney general moved to intervene:

> Since the argument, the Commonwealth of Kentucky has elected a new Governor and a new Attorney General. The previous Governor's lawyers represented the Commonwealth in briefing and arguing this case. The current Governor—who was the Attorney General when this case was briefed and argued—and his appointees have made it clear in a separate case that they will not defend the constitutionality of laws regulating abortion clinics. To ensure that the law at issue continues to receive a robust defense, the current Attorney General hereby moves to intervene so that he can be positioned to continue defending the law on behalf

34. Sixth Circuit: EMW Women's Surgical Center v. Friedlander, page 61.
35. Sixth Circuit: Hall v. Meisner, page 62.
36. Ninth Circuit: Apache Stronghold v. United States, page 62.

of the Commonwealth in the event there are further appellate proceedings after the Court issues its decision.

On August 4, the merits panel denied expedited briefing on the intervention motion. Two days later, it granted intervention. On October 16, the court of appeals concluded that "the district court erred in concluding that Kentucky would be left without an abortion facility." 978 F.3d 418, 423.

Hall v. Meisner, 6th Cir. 21-cv-1700

A November 5, 2021, civil appeal challenging the Eastern District of Michigan's dismissal of an action against real-estate foreclosures for nonpayment of property taxes, 565 F. Supp. 3d 928 (2021), was heard on July 20, 2022. On September 8, Michigan's attorney general moved to intervene, asserting that the constitutionality of state law had been drawn into question. On September 16, following briefing on the motion, the merits panel granted intervention only insofar as the attorney general presented arguments ancillary to constitutionality, "namely that we should either abstain from deciding [the case and a related appeal] or certify questions of state law to the Michigan Supreme Court." On the lateness of the intervention motion, the panel noted that the attorney general "has not shown, or tried to show, that she neither knew about this suit nor had reason to know about it." "Nor does the Attorney General now seek to make any arguments as to the statute's constitutionality . . . ." On October 13, the panel overruled the district court's dismissal, finding it improper for the county to seize a home worth nearly $300,000 because of a $22,262 tax debt and refuse to refund any of the difference. 51 F.4th 185. The defendants sought en banc rehearing on November 10, and Michigan's attorney general filed a motion on November 18 to intervene should en banc review be granted. No judge requested an en banc vote, and en banc review was denied on January 4, 2023. The Supreme Court declined to review the case on June 20. 599 U.S. ___, 143 S. Ct. 2639.

Apache Stronghold v. United States, 9th Cir. 21-cv-15295

A February 19, 2021, civil appeal challenged the District of Arizona's denial of a preliminary injunction against an exchange between the government and a foreign mining company of land that included an Apache ceremonial ground. 519 F. Supp. 3d 591. By a vote of two to one, the court of appeals affirmed the injunction denial on June 24, 2022. 38 F.4th 742. An en banc panel reheard the case on March 21, 2023. On June 16, the mining company moved to intervene "for the limited purpose of enabling it to participate in any proceedings in the Supreme Court of the United States that may follow this Court's en banc decision," stating that it did not wish to delay the appellate en banc panel's decision. The en banc panel granted intervention on June 30 and affirmed the district court's denial of a preliminary injunction on March 1, 2024. 101 F.4th 1036, *cert. denied*, 605 U.S. ___, 145 S. Ct. 1480 (2025).

Intervention Denied in a Criminal Case

United States v. Wasylyshyn, 2d Cir. 18-cr-1344

A May 3, 2018, criminal appeal challenged a Northern District of New York conviction for creating a loud or unusual noise or nuisance in a federal courthouse.

The case was heard on May 20, 2019. Three days later, a pro se motion to intervene was filed by someone who read about the case and claimed "extremely pertinent information" based on his experiences with security officials in another district. On November 3, 2020, the court of appeals affirmed the conviction. 979 F.3d 165. The merits panel also denied the intervention motion.

Post-Judgment Intervention Motions

Described here are twenty-five cases with intervention motions filed after judgment. Intervention was granted in six civil cases and two agency cases. It was denied in thirteen civil cases and two criminal cases and moot in two civil cases.

Intervention was granted in two civil cases and one agency case because another party demonstrated sufficient interest in the litigation: a similar target of vexatious pro se litigation,[37] a second historian seeking the unsealing of grand-jury records after the original plaintiff died,[38] and herbicide manufacturers who stated they did not know that the court's decision in an agency case would apply to manufacturers other than the one at issue in the case.[39]

Intervention was granted to two state attorneys general who said that the state officers defending each lawsuit had declined to seek post-judgment relief.[40]

Courts of appeals granted intervention in two civil cases in which plaintiffs' attorneys were on the hook for sanctions: a plaintiff's attorneys in a defense costs-and-fees appeal who no longer represented the plaintiff[41] and plaintiffs' attorneys wishing to respond to a fees-on-appeal motion.[42]

Intervention was also granted to journalists in a whistleblower agency case who sought the unsealing of the court's opinion.[43]

Five unsuccessful motions were filed by political entities.[44] Four other unsuccessful motions sought intervention to cure mootness[45] or lack of standing.[46] Two pro se intervention motions were unsuccessful.[47] Post-judgment intervention

37. Seventh Circuit: Walton v. First Merchants Bank, page 64.

38. Eleventh Circuit: Pitch v. United States, page 65.

39. Ninth Circuit: National Family Farm Coalition v. EPA, page 66.

40. Sixth Circuit: EMW Women's Surgical Center v. Friedlander, page 65 (intervention ordered by the Supreme Court). Ninth Circuit: Democratic National Committee v. Hobbs, page 64.

41. Sixth Circuit: NPF Franchising v. SY Dawgs, page 64.

42. Ninth Circuit: De Borja v. Razon, page 65.

43. Third Circuit: Doe v. SEC, page 65.

44. Fourth Circuit: Casa de Maryland v. Biden, page 67 (motion by states after a change in the presidential administration). Sixth Circuit: Gary B. v. Snyder, page 71 (motion by a state legislature in case other state defendants declined to seek post-judgment relief declared moot after the court granted en banc rehearing). Seventh Circuit: Frank v. Evers, page 68 (motion by a state legislature in case another state defendant declined to seek post-judgment relief); Cook County v. Wolf, page 69 (motion by states after a change in the presidential administration). Ninth Circuit: Various State and Local Governments v. Federal Immigration Agencies, page 70 (motion by states in the waning days of a presidential administration).

45. Fourth Circuit: Hirschfield v. ATF, page 67; Suarez v. Camden Property Trust, page 71 (intervention moot). Ninth Circuit: New York Hotel Trades Council v. Impax Laboratories, page 69.

46. Tenth Circuit: Kerr v. Polis, page 70.

47. Fifth Circuit: NetChoice v. Paxton, page 68. Eighth Circuit: Cheatum v. Ramey, page 70.

was unsuccessful in two criminal cases: one denied by sealed order[48] and one filed by an attorney challenging ineffective assistance of counsel.[49] In four other civil cases, motions to add parties by intervention were unsuccessful.[50]

Intervention Granted in Civil Cases

NPF Franchising v. SY Dawgs, 6th Cir. 21-cv-3516

A June 7, 2021, civil appeal challenged a Northern District of Ohio grant of costs and attorney fees to defendants in a voluntarily dismissed contract suit concerning women's professional softball. On June 15, 2022, the court of appeals affirmed the discovery sanction against the plaintiff's attorneys but vacated the award against their law firm. 37 F.4th 369. On July 19, the defendants moved for an award of costs and fees on appeal. The plaintiff's attorneys moved to intervene on August 1, stating that their representation of the plaintiff ended after the appellate court's decision, and the court's electronic filing system would only allow them to respond to the costs-and-fees motion as attorneys for the plaintiff, which they no longer were. With their intervention motion, the attorneys filed an opposition to the costs-and-fees motion. On August 5, the merits panel granted intervention. It denied the costs-and-fees motion on August 15.

Walton v. First Merchants Bank, 7th Cir. 22-cv-1240

A February 15, 2022, civil appeal challenged the Southern District of Indiana's declaration that a pro se action against a bank was "frivolous, baseless, and failed to state a claim upon which relief can be granted." On September 1, 2022, observing a history of frivolous litigation by the plaintiff, the court of appeals dismissed the appeal as frivolous and limited further filings by her. On July 12, 2024, another bank moved to intervene for the purpose of seeking a recall of the mandate and expansion of the limitation on the plaintiff's filings. The merits panel granted the second bank's motions.

Democratic National Committee v. Hobbs, 9th Cir. 18-cv-15845

A May 10, 2018, civil appeal challenged the District of Arizona's bench-trial judgment in favor of Arizona in an action to allow provisional ballots that were cast in the wrong precinct to be counted. 329 F. Supp. 3d 824. The court of appeals affirmed the district court's decision on September 18 by a vote of two to one. 904 F.3d 686. En banc, with four judges dissenting, the court held on January 27, 2020, that racial discrimination was a motivating factor in Arizona's policy and therefore a violation of the Voting Rights Act. 948 F.3d 989. On March 3, Arizona's attorney general moved to intervene on behalf of the state, stating that the secretary of state

48. Second Circuit: United States v. Mcintosh, page 71.

49. District of Columbia Circuit: United States v. Scurry, page 71.

50. District of Columbia Circuit: Al-Hela v. Biden, page 66 (motion by an additional Guantánamo Bay detainee); Humane Society of the United States v. Department of Agriculture, page 67 (motion by a horse association in an action alleging insufficient regulation). Fifth Circuit: Janvey v. GMAG, page 68 (motion by a bank's chair in an action alleging fraud by the bank). Seventh Circuit: EEOC v. Walmart Stores East, page 69 (motion by the employee at issue in an action brought by the Equal Employment Opportunity Commission).

had decided not to continue a defense of Arizona law. With one judge dissenting, the en banc panel granted intervention on April 9. By a vote of six to three, the Supreme Court held on July 1, 2021, that the district court's finding that Arizona did not have a discriminatory purpose was not clearly erroneous. 594 U.S. 647. So the court of appeals affirmed the district court's decision on August 30. 9 F.4th 1218.

De Borja v. Razon, 9th Cir. 19-cv-35905

An October 30, 2019, civil appeal challenged the District of Oregon's dismissal of a case that it determined should have been brought in the Philippines. The court of appeals affirmed the dismissal on November 3, 2020. Two weeks later, the defendants moved for attorney fees on appeal. The plaintiffs' attorneys moved to intervene on December 9, stating that the motion subjected them personally to a potential sanction: "Although motion is framed as against Plaintiffs, the motion is based upon alleged mis-analysis of the law of subject matter jurisdiction by Plaintiffs' counsel. For that reason, [the plaintiffs' attorneys] would like to be heard on these issues." The merits panel granted intervention on December 11 and denied fees on January 20, 2021.

Pitch v. United States, 11th Cir. 17-usc-15016

The government's November 13, 2017, appeal challenged the Middle District of Georgia's grant of a historian's petition to unseal 1946 grand jury records concerning "what has been described as the last mass lynching in the United States." The court of appeals affirmed the district court's order on February 11, 2019, 915 F.3d 704, but on June 4, 2019, the full court ordered en banc rehearing, 925 F.3d 1224. The historian died on June 29. On August 15, the court granted a motion by the historian's widow to substitute herself as plaintiff and appellee. Another historian moved to intervene in the appeal on August 19, stating that she was the only historian remaining to have published scholarship in the lynching. A two-judge motion panel granted intervention on September 5. The court ruled en banc on March 27, 2020, that district courts do not have inherent power to release grand jury materials for reasons other than those stated in Federal Rule of Criminal Procedure 6(e). 953 F.3d 1226, *cert. denied*, 592 U.S. ___, 141 S. Ct. 624 (2020).

Intervention Ordered by the Supreme Court in a Civil Case

EMW Women's Surgical Center v. Friedlander, 6th Cir. 19-cv-5516

A May 15, 2019, civil appeal challenged the Western District of Kentucky's permanent injunction against a Kentucky statute regulating second-trimester abortion procedures. 373 F. Supp. 3d 807. On June 2, 2020, the court of appeals affirmed the injunction by a vote of two to one. 960 F.3d 785. Kentucky's new attorney general moved to intervene on June 11, stating,

> Until recently, [the] Acting Secretary for the Cabinet for Health and Family Services, has defended [the statute] in this litigation. Now, [he] has reversed course. He has informed the Attorney General that he will not seek rehearing en banc or file a petition for a writ of certiorari from the Court's panel decision.

Five days later, the attorney general tendered a petition for rehearing en banc. On June 24, the merits panel denied intervention by a vote of two to one. The majority and dissenting opinions comprised nineteen pages. On March 3, 2022, the Supreme Court concluded that intervention should have been granted: "Respect for state sovereignty must . . . take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court." 595 U.S. 267, 277. On July 21, the court of appeals granted intervention and remanded the case for reconsideration in light of the Supreme Court's June 24 decision in *Dobbs v. Jackson Women's Health Organization* finding no constitutional right to abortion.

Intervention Granted in Agency Cases

Doe v. SEC, 3d Cir. 22-ag-1652

An April 8, 2022, petition challenged the Securities and Exchange Commission's denial of a whistleblower award to a pseudonymous petitioner. The court of appeals denied the petition on March 23, 2023, in a sealed opinion, finding that the petitioner had not followed requisite whistleblower procedures. On April 27, journalists filed a motion to intervene and seek the unsealing of the court's opinion. On May 19, the merits panel granted intervention and unsealed the opinion, which the court designated not precedential.

National Family Farm Coalition v. EPA, 9th Cir. 19-ag-70115

A January 11, 2019, petition by several organizations challenged the Environmental Protection Agency's "extending the conditional registration for the new uses of the herbicide dicamba for use on genetically engineered cotton and soybean that have been engineered to resist dicamba in thirty-four states." On May 15, a deputy clerk granted the manufacturer's January 24 motion to intervene. On June 3, 2020, the court vacated the agency's decision. 960 F.3d 1120. Two other herbicide manufacturers filed motions to intervene on June 12, stating that they did not know that the court's decision would apply to herbicides manufactured by companies other than the manufacturer named in the petition. Three days later, the merits panel ordered briefing on the intervention motions. The panel granted intervention four days after that. On June 20, the three manufacturers moved for rehearing en banc. Rehearing was denied on August 17. On March 17, 2022, the merits panel ruled that the award of attorney fees should be based on where the attorneys practiced—Portland—and not on customary rates in San Francisco, where the case was heard. 29 F.4th 509.

Intervention Denied in Civil Cases

Al-Hela v. Biden, D.C. Cir. 19-cvus-5079

A March 29, 2019, civil appeal challenged denial of a writ of habeas corpus by the District of Columbia's district court to a Guantánamo Bay detainee. The court of appeals affirmed denial of the writ on August 28, 2020. 972 F.3d 120. Another detainee moved to intervene on October 23 to seek rehearing en banc of a decision he said conflicted with an earlier decision in his own litigation concerning whether

the due-process clause applies to Guantánamo Bay detainees. A two-judge motion panel denied intervention on November 20. En banc, the court denied reconsideration of the intervention motion and granted en banc rehearing on April 23, 2021. A 312-page motion to intervene and participate in oral argument was filed on June 17, with 303 pages of attachments. Supplements with 1,114, 2,088, 483, 144, and 872 pages were filed over the next two weeks. On July 6, the en banc court denied intervention and enjoined further filings by the movant in the case. With four out of nine participating judges opining that Guantánamo Bay detainees are not entitled to due process, the court ruled on April 4, 2023, that the detainee had received due process. A public opinion following a classification review was issued on April 12. 66 F.4th 217.

Humane Society of the United States v. Department of Agriculture, D.C. Cir. 20-cvus-5291

A September 24, 2020, civil appeal challenged the District of the District of Columbia's dismissal of an action that alleged insufficient regulation of horse soring, a practice intended to improve a horse's gait but that allegedly caused inhumane pain. On July 22, 2022, by a vote of two to one, the court of appeals reversed dismissal for insufficient notice and comment before an agency repealed a rule. 41 F.4th 564. A horse association moved to intervene on August 5 in opposition to the court's decision, stating, "The Department of Justice has told the Association that no decision has been made yet on whether the Federal Defendants will seek further review." Following briefing on the motion, the merits panel denied intervention on December 5 by a vote of two to one. 54 F.4th 733. In the same opinion, the panel denied rehearing of the case.

Casa de Maryland v. Biden, 4th Cir. 19-cv.us-2222

A November 4, 2019, civil appeal challenged a District of Maryland preliminary injunction that postponed the effective date of a new immigration rule. The rule made likelihood to become a public charge grounds for denying admission to the United States. By a two-to-one vote, the court of appeals reversed the injunction on August 5, 2020, finding that the new rule is a permissible interpretation of the governing statute. 971 F.3d 220. En banc rehearing was granted on December 3. 981 F.3d 311. On March 11, 2021, early in the next president's administration, the court dismissed the case as settled. That same day, fourteen states moved to intervene. The clerk of court issued an order denying intervention on March 18.

Hirschfield v. ATF, 4th Cir. 19-cv.us-2250

A November 7, 2019, civil appeal challenged the Western District of Virginia's dismissal of an action challenging a federal proscription against selling handguns to persons under twenty-one. 417 F. Supp.3d 747. By a two-to-one vote, the court of appeals reversed the dismissal in July 2021. 5 F.4th 407. A nineteen-year-old and a gun dealer moved to intervene in the district court on July 24 and in the court of appeals on July 27, observing that one of the original plaintiffs was over twenty-one and the other nearly was. On September 22, the court of appeals concluded that the case was moot and denied intervention. 14 F.4th 322, *cert. denied*, 596 U.S. ___, 142

S. Ct. 1447 (2022). The intervention motion was filed in the district court on the day before the second plaintiff turned twenty-one, but the district court did not have jurisdiction over the case then. By the time the intervention motion was filed in the court of appeals, the case was moot.

Janvey v. GMAG, 5th Cir. 17-pcf-11526

On May 24, 2019, in a challenge to the Northern District of Texas's civil judgment in favor of a defendant investor, the court of appeals granted panel rehearing and certified a question of state law to the Supreme Court of Texas in a case alleging fraudulent transfer to avert losses in a bank's Ponzi scheme. 925 F.3d 229. The bank's chair filed a pro se motion to intervene on August 15, challenging federal-court jurisdiction over the case. A motion judge denied intervention on August 27. The merits panel denied reconsideration on September 10. The court declined to take action on several additional motions filed by the chair. On October 8, 2020, the court granted judgment in favor of the plaintiff:

> This case requires us to determine whether the Texas Uniform Fraudulent Transfer Act's—or TUFTA's—good faith affirmative defense allows Defendants-Appellees to retain fraudulent transfers received while on inquiry notice of a Ponzi scheme. We initially held it does not. We then vacated that decision so that the Supreme Court of Texas could clarify whether good faith requires a transferee on inquiry notice to conduct an investigation into the fraud, or, alternatively, show that such an investigation would have been futile. Having received an answer to our question, we once again hold that the Defendants-Appellees' good faith defense must fail. We therefore REVERSE the district court's judgment and RENDER judgment in favor of Plaintiff-Appellant.

977 F.3d 422, 425, *cert. denied*, 595 U.S. ___, 142 S. Ct. 708 (2021).

NetChoice v. Paxton, 5th Cir. 21-pcf-51178

A December 7, 2021, civil appeal by Texas's attorney general challenged a Western District of Texas preliminary injunction against a Texas law that constrained social media's controls over content. The merits panel stayed the injunction on May 11, 2022. On May 31, the Supreme Court vacated the stay. 596 U.S. ___, 142 S. Ct. 1715. The court of appeals resolved its case on September 16 by vacating the injunction, reasoning that censorship by social-media platforms is not speech. 49 F.4th 439. On November 29, the merits panel denied a pro se motion to intervene filed on November 2. On July 1, 2024, the Supreme Court vacated the appellate decision and remanded the case for reanalysis. 603 U.S. ___, 144 S. Ct. 2383. On November 7, the court of appeals remanded the case to the district court for possible development of a factual record justifying an injunction.

Frank v. Evers, 7th Cir. 16-cv-3003 and 16-cv-3052, and One Wisconsin Institute v. Thomsen, 7th Cir. 16-cv-3083 and 16-cv-3091

A July 22, 2016, civil appeal and a July 28, 2016, cross-appeal challenged the Eastern District of Wisconsin's preliminary injunction that required Wisconsin to allow voters who cannot obtain an identification document with reasonable effort to receive a ballot by executing an affidavit. An August 2, 2016, civil appeal and an August 3, 2016, cross-appeal challenged the Western District of Wisconsin's

permanent injunction that also required an effective safety net for prospective voters who cannot obtain identification documents with reasonable effort. On June 29, 2020, the court of appeals reversed the Eastern District's affidavit injunction and reversed the Western District's injunction in part, remanding the cases for assignment to a single judge to "eliminate the sort of inconsistent treatment that has unfortunately occurred in the photo-ID parts of the multiple suits." 963 F.3d 665, 681.

Wisconsin's legislature moved to intervene on July 3 in the remanded actions and in future appeals, stating that "the current Wisconsin Department of Justice administration has recently confirmed that it refuses to defend the state's election laws." On July 6, the merits panel denied intervention: "Because the Wisconsin Legislature does not seek any relief in this court, the subject is more appropriately considered by the district courts on remand."

EEOC v. Walmart Stores East, 7th Cir. 20-cv-1419

A March 16, 2020, civil appeal challenged the Western District of Wisconsin's summary judgment in favor of an employer in an action the Equal Employment Opportunity Commission brought on behalf of an employee sho sought relief from an obligation to work on Saturdays. The court of appeals affirmed the judgment on March 31, 2021. 992 F.3d 656. The court denied rehearing on June 1. Two days later, the employee moved to intervene so that he could seek Supreme Court review. On the next day, a motion judge denied the intervention motion as untimely: the employee "had opportunity to intervene before the case was argued to the panel many months ago." The Supreme Court denied the employee's motion to intervene to seek a writ of certiorari on October 12. But the Supreme Court did grant the employee's certiorari petition to review the denial of intervention by the court of appeals, and it remanded the case for reconsideration on March 21, 2022, in light of *Cameron v. EMW Women's Surgical Center*, 595 U.S. 267 (2022), which held that the Sixth Circuit's court of appeals should have granted intervention to a new attorney general to petition for rehearing en banc. 595 U.S. ___, 142 S. Ct. 1357. On remand, the employer and the employee agreed to a settlement.

Cook County v. Wolf, 7th Cir. 20-cv-3150

On November 3, 2020, the federal government appealed from a Northern District of Illinois decision that vacated a new rule by the Department of Homeland Security prohibiting immigration by anyone with any chance of ever relying on public assistance. 498 F. Supp. 3d 999 (2020). Following the inauguration of a different President, the government voluntarily dismissed the appeal on March 9, 2021. Two days later, fourteen states moved to intervene in defense of the rule. Four days after that, the clerk issued a decision on behalf of the court denying intervention.

New York Hotel Trades Council v. Impax Laboratories, 9th Cir. 19-cv-16744

A September 5, 2019, civil appeal challenged the Northern District of California's dismissal of a securities action. The court partially reversed the dismissal on January 11, 2021. An investor had filed a class action on behalf of purchasers of a company's stock, but later a pension fund was named lead plaintiff. On February 8, a second

pension plan moved to intervene as a substitute lead plaintiff, stating that the first pension fund's claims could be mooted by aspects of the appellate court's decision. On March 21, the court of appeals declined to rehear its merits decision and denied the intervention motion "without prejudice to seek leave to intervene on remand."

Various State and Local Governments v. Federal Immigration Agencies, 9th Cir. 19-cv-17213, 19-cv-17214, and 19-cv-35914

Two October 31, 2019, civil appeals challenged a Northern District of California preliminary injunction issued in three related cases proscribing a substantial expansion of "public charge" as a reason for immigration exclusion. 408 F. Supp. 3d 1057 (2019). Another October 31 appeal challenged a similar preliminary injunction issued by the Eastern District of Washington. 408 F. Supp. 3d 1191 (2019). On December 2, 2020, the court of appeals partially affirmed the injunctions. 981 F.3d 742. The government filed a petition for certiorari on January 21, 2021 (U.S. 20-962). Eleven states moved to intervene in the appellate cases on March 10 so that they could seek Supreme Court review of the decision. Another state moved to join the intervention on the following day. A thirteenth state moved to join the intervention on March 29. By a vote of two to one, the merits panel denied intervention on April 8. 992 F.3d 742. On October 29, the Supreme Court agreed to review the denial of intervention. 595 U.S. ___, 142 S. Ct. 417. But the court dismissed the writ of certiorari as improvidently granted on June 15, 2022. 596 U.S. 763.

Kerr v. Polis, 10th Cir. 17-cv-1192

A June 5, 2017, civil appeal was resolved by a Tenth Circuit decision on July 22, 2019, that reversed the District of Colorado's dismissal of a suit for lack of standing. 930 F.3d 1190. The dismissed suit, filed by Colorado officeholders and subdivisions, challenged Colorado's Taxpayer Bill of Rights. On October 14, 2020, the court agreed to rehear the case en banc. 977 F.3d 1010. On January 26, 2021, the Colorado General Assembly moved to intervene as a plaintiff to mitigate standing concerns. The en banc court denied intervention on February 1: "Should the General Assembly wish to participate as amicus curiae, it may seek to do so in accordance with the applicable rules." On December 13, the court affirmed dismissal of the complaint, holding that the plaintiffs failed to state a valid claim. 20 F.4th 686.

Cheatum v. Ramey, 8th Cir. 20-pr-3623
(intervention category: pro se)

A pro se December 17, 2020, civil appeal challenged the Western District of Missouri's dismissal without prejudice of a pro se habeas action for failure to make prompt filings. On February 26, 2021, the court denied the appellant a certificate of appealability. On March 8, the clerk of court granted the appellant an extension until March 22 to file a petition for rehearing. Alleging insufficient access to a law library, the appellant moved on March 22 for another extension. Four days later, another person filed a pro se motion to intervene on behalf of the appellant, stating that the appellant was insufficiently learned. The appellant filed a rehearing motion on March 29. A motion judge granted the extension on March 30, and a motion

judge denied intervention on March 31. On April 19, a motion judge denied rehearing.

Intervention Denied in Criminal Cases

United States v. Mcintosh, 2d Cir. 14-cr-1908

On January 31, 2022, the court of appeals remanded a Hobbs Act conviction for resentencing. A sealed motion to intervene in the case was filed on February 3, and a sealed order filed four days later denied intervention. On April 14, the merits panel denied reconsideration and granted withdrawal of the intervention motion. On further review, the Supreme Court ultimately held that a forfeiture sentence does not necessarily require a presentence order of forfeiture. 601 U.S. 330 (2024).

United States v. Scurry, D.C. Cir. 18-2255-3067

A September 20, 2018, criminal appeal challenged the denial of habeas corpus relief by the District of Columbia's district court to a defendant convicted on a guilty plea before evidence against codefendants was suppressed. 318 F. Supp. 3d 365 (D.D.C. 2018). On February 19, 2021, the court of appeals determined that the habeas claim lacked merit, but because of a conflict of interest between the defendant and his attorney—the most promising ground for relief was ineffective assistance of counsel when the defendant pleaded guilty—the court remanded the case for appointment of conflict-free counsel. 987 F.3d 1144. The attorney moved to intervene in the appeal on March 31 to protect her interests. The merits panel denied intervention on April 5 and issued an amended opinion. 992 F.3d 1060. The attorney filed another motion to intervene on April 13, which the merits panel denied on April 28.

Intervention Question Moot in Civil Cases

Suarez v. Camden Property Trust, 4th Cir. 19-cv.pri-1367

An April 9, 2019, civil appeal challenged the Eastern District of North Carolina's summary judgment awarded to defendants in an action seeking relief from fees charged for late rent. The district court denied a motion for class certification as moot. The court of appeals granted the plaintiff some relief on June 19, 2020. On July 27, the court granted the parties' request to stay the mandate pending mediation. On September 10, two renters moved to intervene as substitute class representatives, stating that the defendants were negotiating an individual settlement with the plaintiff. Without resolving the intervention motion, the clerk issued the mandate on September 29. The district court approved a class settlement on July 30, 2021.

Gary B. v. Snyder, 6th Cir. 18-cv-1855 and 18-cv-1871

Civil appeals filed on July 30 and August 1, 2018, challenged the Eastern District of Michigan's dismissal of a suit alleging inadequate public education. On April 23, 2020, the court of appeals partially reversed the judgment, recognizing a basic minimum education as a fundamental right. 957 F.3d 616. On May 7, Michigan's senate and house of representatives moved to intervene to seek rehearing en banc,

stating that it was unsure whether other state defendants would do so. With their motion, they tendered a petition for en banc rehearing. On May 19, the court sua sponte ordered en banc rehearing. En banc, the court ordered the case dismissed as settled on June 10, denying other pending motions as moot.

TAB 6C

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Reopening Subcommittee

Re: Amendment to Rule 4 (24-AP-M)

Date: September 16, 2025

FRAP 4 permits a district court to reopen the time to appeal in limited circumstances. In particular:

> The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
>
> (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
>
> (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and
>
> (C) the court finds that no party would be prejudiced.

FRAP 4(a)(6). *See also* 28 U.S.C. 2107(c).

In *Winters v. Taskila*, 88 F.4th 665 (2023), a habeas petitioner did not receive notice of the district court's decision denying him relief until more than two months after it was entered. He filed a notice of appeal two weeks later, far more than 30 days after the entry of judgment. The court of appeals dismissed the appeal, but left open the possibility that the district court could reopen the time to appeal.

The district court construed the notice of appeal as a motion and granted it. So construed, the motion to reopen was timely.

With Chief Judge Sutton writing, the court of appeals held that, because the notice of appeal was not barebones, but also explained the reason for the delay and functionally satisfied the requirements for a motion to reopen, the district court acted within its discretion in treating the notice of appeal as a motion to reopen. *Id*. at 671.

The court of appeals also concluded that the petitioner did not need to file a new notice of appeal, reasoning that the premature notice of appeal ripened once the district court granted the motion to reopen the time to appeal.

Because the case involved the denial of habeas relief, the court of appeals also construed the notice of appeal as a request for a certificate of appealability.

Chief Judge Sutton then added:

> A final point. One could fairly wonder when it might be appropriate to draw the line on how many functions a single pleading may serve. A critic of our approach might characterize our forgiving assessment of this two-sentence pleading in this way: (1) It looked like a notice of appeal but we did not treat it as one because it was late; (2) it then looked like a motion for an extension of time (given the excuse in it) but we did not treat it as one because that too would have been late; (3) it then became a motion to reopen, which was not late; and (4) it then served as a request for a certificate of appealability. We appreciate the point. We appreciate as well that the courts of appeal are not all in tune on these issues. *Compare, e.g., Poole*, 368 F.3d at 269 (3d Cir. 2004), with Sanders v. United States, 113 F.3d 184, 187 (11th Cir. 1997) (per curiam) (construing notice of appeal as motion to reopen); *Parrish v. United States*, 74 F.4th 160, 163 (4th Cir. 2023) (one document cannot serve as both a notice of appeal and a motion to reopen), with *United States v. Withers*, 638 F.3d 1055, 1062 (9th Cir. 2011) (one document can serve as both a notice of appeal and a motion to reopen). As it happens, there is a body whose charge it is to review issues of precisely this sort (the Advisory Committee on the Federal Rules of Appellate Procedure) and a statute (the Rules Enabling Act, 28 U.S.C. §§ 2071–77) that is designed to create a process for improving the rules where needed. That may be a profitable next stage for this debate.

Id.

Subsequent to the *Winters* decision, the United States Court of Appeals for the Fourth Circuit denied a petition for rehearing en banc in the *Parrish* case noted by Chief Judge Sutton. Judge Niemeyer agreed with the denial of rehearing en banc, and explained that the court of appeals had construed the plaintiff's initial notice of appeal as a motion to reopen and remanded to the district court to consider that motion. The district court granted the motion, giving the plaintiff 14 days after its entry to file his appeal. "Despite the clear language of the district court's order, Parrish never filed an appeal within the time specified. In such circumstances, we were required to dismiss the appeal for lack of jurisdiction." *Parrish v. United States*, 2024 WL 1736340 at *1 (April 23, 2024).

Six judges voted to grant rehearing en banc, and Judge Gregory (joined by three others) stated:

> Both 28 U.S.C. § 2107(c) and the Federal Rules of Appellate Procedure are silent regarding whether an untimely notice of appeal may be validated by a district court's subsequent grant of a Rule 4(a)(6) motion. They also fall short in answering whether a single filing may serve as both a motion to reopen the appeal period and a notice of appeal. As our sister circuit acknowledged, guidance from the Advisory Committee on the Federal Rules of Appellate Procedure appears necessary. *See Winters v. Taskila*, 88 F.4th 665, 671 (6th Cir. 2023) (collecting cases and stating that comment from the Advisory Committee "may be a profitable next stage for this debate"). Absent such guidance from the architects of the rules, however, it is no wonder that circuit courts and judges are split regarding the most appropriate course of action under the circumstances. The Fourth Circuit is no exception. Even a cursory review of our prior cases presenting this issue illustrates that our Court's treatment has not been uniform.

Id. at *2 (Gregory, J., dissenting).

At the fall 2024 meeting, a subcommittee was formed in response to the suggestion by Chief Judge Sutton, echoed by Judge Gregory, that the Advisory Committee look into reopening the time to appeal under Rule 4(a)(6). See *Winters v. Taskila*, 88 F.4th 665 (2023); *Parrish v. United States*, 2024 WL 1736340 at *1 (April 23, 2024).

The subcommittee paused its work when the Supreme Court granted certiorari in *Parrish*. In June, the Supreme Court decided *Parrish* and reversed. *Parrish v. United States*, 145 S. Ct. 1664 (2025). It held:

> A notice of appeal filed after the original deadline but before reopening is late with respect to the original appeal period, but merely early with respect to the reopened one. Precedent teaches that a premature notice of appeal, if otherwise adequate, relates forward to the date of the order making the appeal possible. So a notice filed before reopening relates forward to the date reopening is granted, making a second notice unnecessary.

Id. at 1668. It interpreted 28 U.S.C § 2107(c) against a common law background, under which "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court." *Id*. at 1671 (cleaned up). Accordingly, "an adequate but premature notice of appeal 'relates forward to the entry of the document that renders an appeal possible.'"

Id. (quoting 16A C. Wright, A. Miller, E. Cooper, & C. Struve, Federal Practice and Procedure § 3950.5, p. 453 (5th ed. 2019)).

The Court pointedly rejected the idea that "once Parrish's filing had been construed as a motion to reopen, it could not simultaneously retain its function as a notice of appeal." *Parrish*, 145 S. Ct. at 1673. The Court observed that it "has repeatedly emphasized . . . that a single filing can serve multiple purposes in just such fashion." *Id*.

It also held that the "Rules of Appellate Procedure . . . are entirely consistent with the relation-forward principle." *Id*. It pointed to the 1993 amendment to Rule 4 eliminating certain prohibitions on relation forward. *Id*. at 1673-74. It emphasized the lack of prejudice, explaining:

> To reopen the appeals period, a would-be appellant must file either a request to reopen, or (as here) a notice of appeal that is construed as such a request. Assuming the filings are otherwise adequate, either one would put the other side on notice of the filer's intent to appeal. Other parties thus have nothing to gain from being served a second notice after reopening is granted.

Id. at 1675. It contrasted this situation with the one addressed in FRAP 4(a)(4)(B)(ii), which requires a second (or amended) notice of appeal if a party "wishes to appeal not only the original judgment, but also the substance of an order resolving the post-trial motion," because there "the second notice serves a real purpose." Id.

The Court closed by noting:

> If the Rules Committee believes a second notice could be similarly useful in the context of reopening, it remains free to recommend a change. Indeed, the Committee is apparently considering that issue presently. So long as Rule 4(a)(6) does not speak to relation forward, however, the default rule applies. That means Parrish's appeal can go forward under the Rules as well as the statute.

Id.

The subcommittee considered the option mentioned by the Supreme Court and requiring a second notice of appeal. But it saw no reason to do so.

The subcommittee considered recommending that the Advisory Committee take no action. The Court has answered not only the question of whether a notice of appeal has to be filed after the motion to reopen has been granted (no) but also whether a single document can be construed to serve multiple purposes (yes).

The subcommittee considered codifying *Parrish* but saying nothing about when it is appropriate to construe a document as a notice of appeal. *Parrish* reiterated what was said in *Becker* almost 25 years ago. "[I]mperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment to which appellate court." *Becker v. Montgomery*, 532 U.S. 757, 767 (2001); *Parrish*, 145 S. Ct. at 1671. And FRAP 3(c)(7) provides:

> An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

Although *Parrish* resolves the circuit split, the subcommittee thinks that courts and litigants (especially incarcerated litigants with greater access to the Rules themselves than to cases interpreting them) would benefit from some clarification of both issues in the text of Rule 4 itself.

Here is the proposed language:

> If the court grants the motion to reopen, a party who has already filed an otherwise-adequate notice of appeal need not file a new notice of appeal. A document—even if it serves other purposes—may be construed as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court.

And here is what the proposed amendment would look like in the context of Rule 4:

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

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

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.

(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.

(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.

(5) **Motion for Extension of Time.**

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.**

(A) The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

~~(A)~~(i) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

~~(B)~~(ii) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

~~(C)~~(iii) the court finds that no party would be prejudiced.

(B) If the court grants the motion to reopen, a party who has already filed an otherwise-adequate notice of appeal need not file a new notice of appeal. A document—even if it serves other purposes—may be construed as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court.

(7) **Entry Defined.**

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or

(ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or

- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

* * *

Committee Note

Rule 4(a)(6) is amended to clarify two issues.

First, if the court grants a motion to reopen the time to appeal, a party who has already filed an otherwise-adequate notice of appeal need not file a new notice of appeal. If the only problem with the prior notice of appeal was that it was late, and the court has reopened the time to appeal, no purpose is served by requiring a duplicative notice of appeal. *See Parrish v. United States*, 145 S. Ct. 1664 (2025).

Second, a document may be construed as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court. See *Becker v. Montgomery*, 532 U.S. 757, 767 (2001); Fed. R. App. P. 3(c)(7). This remains true even if that document also serves other purposes, such as a motion to reopen the time to appeal, a brief, or a request for a certificate of appealability. *See Parrish*, 145 S. Ct. at 1673.

There is one other matter that subcommittee considered: the Court's response to the dissent by Justice Gorsuch.

Justice Gorsuch would have dismissed certiorari as improvidently granted, relying on the rules process:

> Respectfully, I would have dismissed this case as improvidently granted. The Advisory Committee on Appellate Rules has already launched a study to consider whether changes to Federal Rule of Appellate Procedure 4(a)(6) may be warranted to treat premature notices of appeal as relating forward to the first day of the 14-day window 28 U.S.C. § 2107(c) prescribes. Brief in Opposition 16; *see also Winters v. Taskila*, 88 F.4th 665, 671–672 (CA6 2023). Surely, too, a change to the rules could have solved the problem presented by this case. . . . Rather than take up problems the Rules Committee can solve and has announced its interest in solving—and, in doing so, risk the possibility that the Committee (understandably) may suspend its own activities and delay their resolution—I believe the wiser and more efficient course is to let the Committee get on with its work. That body is charged with "review[ing] issues of precisely this sort." *Winters*, 88 F.4th at 672; *see also Kemp v. United States*, 596 U.S. 528, 540–542 (Gorsuch, J., dissenting).

Parrish, 145 S. Ct. at 1676–77 (Gorsuch, J., dissenting).

The majority's footnoted response to Justice Gorsuch may raise concerns:

> The dissent would have dismissed this case as improvidently granted because, in its view, the Rules Committee could have resolved the question presented. Yet " '[it] is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction.' " *Hamer v. Neighborhood Housing Servs. of Chicago*, 583 U.S. 17, 19 (2017). Accordingly, the Rules Committee could not change the Fourth Circuit's jurisdictional holding about § 2107(c).

Parrish, 145 S. Ct. at 1673.

If that footnote is read for all it's worth, it could call into question various FRAP provisions that deal with similar problems. But the subcommittee does not think that this footnote creates too many worries.

One reason is that Justice Gorsuch responded to this point by noting: "Even if § 2107(c) requires a notice to be filed during a certain window, the Rules Committee could provide that a premature notice shall be treated as filed at a later date. Already, the Committee has done exactly that in other appellate rules, including Rules 4(a)(2) and 4(a)(4)." *Parrish*, 145 S. Ct. at 1676–77 (Gorsuch, J., dissenting).

More importantly, the majority does not directly contest Justice Gorsuch's point that rulemaking could treat an earlier filed notice of appeal as filed later. And the majority's extended above-the-line discussion embraces those various FRAP rules that have dealt with similar problems. *See Parrish*, 145 S. Ct. at 1673-75 (discussing FRAP 4(a)(2) and 4(a)(4)).

Although the subcommittee is not concerned that *Parrish* might be read to call into question other Federal Rules of Appellate Procedure, it does want to alert the Advisory Committee to this issue.

TAB 6D

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Administrative Stays Subcommittee

Re: Administrative stays (24-AP-L)

Date: September 16, 2025

At the meeting of the Advisory Committee last spring, this subcommittee presented a proposed amendment to Appellate Rule 8 that would govern administrative stays. The Advisory Committee raised several concerns. There are some that the subcommittee thinks can be readily addressed. For others, it thinks that research by the FJC would be useful before proceeding further.

Party consent. At the spring meeting, the Advisory Committee noted that there are cases where the parties are in no rush. The subcommittee thinks that this concern could be dealt with by adding a phrase along the lines of "unless the parties agree otherwise."

Release of Criminal Defendants. In some cases, the district court orders a criminal defendant released and the government seeks a stay, but the record may not be available yet. This concern could be dealt with by making clear that the proposed amendment to Appellate Rule 8 does not govern release in criminal cases.

Existing Appellate Rule 8(c) already provides that Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case. Criminal Rule 38 refers back to Appellate Rule 8 for stays of fines, costs, restitution, and creation of disabilities—remedies that are closer in kind to civil remedies. But it does not refer back to Appellate Rule 8 for stays of imprisonment.

It is Appellate Rule 9 that is addressed to release in a criminal case. That Rule includes a provision that release decisions must be made in accordance with 18 U.S.C. §§ 3142, 3143, and 3145(c).

Similarly, Appellate Rule 23 governs custody and release pending review of a habeas corpus proceeding. An amendment to Appellate Rule 8 could make clear that the amendment does not apply to the issue of custody or release pending appeal in a habeas petition. (It might apply to the extent that habeas is used to challenge conditions of confinement.)

There are several other issues that the subcommittee believes would benefit from research by the FJC.

Seriousness of the problem. The subcommittee has the sense that the issue of administrative stays is a significant one, and that in some cases it is a big problem.

Others think that problems in this area arise largely in cases that go to the Supreme Court and that so few cases go to the Supreme Court that administrative stays are not a serious problem.

Time limit. On the one hand, a major reason for an amendment regarding administrative stays is to impose a time limit so that courts don't use administrative stays to effectively avoid the need to decide a motion for a stay pending appeal under the criteria that govern such motions. From this perspective, an amendment that does nothing to impose a time limit has little point.

On the other hand, cases vary. In some, time to produce the record might be necessary. In others, time to hear oral argument might be appropriate. And even without any time limit stated in terms of days, codifying the principle that an administrative stay may last no longer than necessary to enable the court to make an informed decision on the motion may have some value.

Perhaps any time limit could run from when the record is complete, but that could lead to foot-dragging. Perhaps responsibility for completing the record should be placed on the party seeking the stay. Perhaps it would be appropriate for a rule to impose a presumptive time limit that could be extended if the court made certain findings.

Review of Administrative Decisions. Appellate Rule 18 governs stays pending review of agency decisions. Perhaps, like criminal cases, review of agency cases might be excluded from a proposed amendment. Agency cases, unlike civil appeals, involve review of executive action, not judicial action, so stays in such cases do not simply operate on the judicial proceeding.

But perhaps agency cases are similar enough to civil cases in the district courts that they should be covered. And immigration cases may present their own unique issues.

Based in part on the experience of how the research of the FJC contributed to the work of the subcommittee dealing with intervention on appeal, this subcommittee thinks that FJC research could be of use here.

Among the topics that might be investigated are:

- How frequently are administrative stays sought? Granted? Granted without a request for an administrative stay?
- Are there any patterns, such as types of cases, where they are sought or granted more or less frequently?
- How long do administrative stays last? We might find that the mean length is quite small, but that there are a small number of

outliers. Or we might find that it varies significantly depending on the type of case.

- How long do administrative stays last, measured from the time that the court has all of the information it needs to decide the stay motion itself? This might be too hard to determine, however, if there is uncertainty about what information is necessary to decide the stay motion.

Because requests for administrative stays would almost always arise at the outset of an appeal, the subcommittee thinks that the relevant cohort of appeals for the FJC to survey might be fairly small and recent. It observes that one challenge might be dealing with administrative stays that are in place at the time of the study so that the clock is still ticking on their length.

TAB 7

TAB 7A

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett

Re: New Suggestion; Destination of Appeal (25-AP-A)

Date: September 15, 2025

Anthony Mallgren suggests that the rules be amended "so that a notice of appeal is appealed to the court within the jurisdiction it is contained within."

I think what he is getting at is that FRAP 3(c)(1)(C) requires that a notice of appeal "name the court to which the appeal is taken," and he is suggesting that this requirement be replaced by a provision that would direct the appeal to the appropriate appellate court.

It would be possible to write a rule that eliminated the requirement of designating a particular court of appeals, leaving it to the clerks to know the correct court of appeals.

But that would mean that clerks would be responsible for deciding which cases go to the regional courts of appeals and which go to the Court of Appeals for the Federal Circuit. 28 U.S.C. § 1295. In addition, some provision would have to be made for district court decisions that are directly appealed to the Supreme Court of the United States. *See* 28 U.S.C. § 1253.

And it doesn't seem to be asking too much that an appellant designate the appropriate appellate court. That is especially true in light of 28 U.S.C. § 1631, which provides that when an appeal is "noticed for" a federal court "and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such . . .. appeal to any other such court . . . in which the . . . appeal court have been brought at the time it was . . . noticed."

I recommend removing this suggestion from the Committee's agenda.

TAB 7B

From: Anthony B. Mallgren
Sent: Saturday, March 1, 2025 10:09 AM
To: RulesCommittee Secretary
Subject: Update Appeal Rules

Can you update the appeal rules so that a notice of appeal is appealed to the court within the jurisdiction it is contained within? Seems inefficient/non-sensical. How many appeals from district court are cross circuit? Even if it's the majority, still make sense to default a court.

I think this may cause issues in SDNY. I guess we may see though, in the next few months.

Sent with Proton Mail secure email.

TAB 7C

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett

Re: New Suggestion; Uniform Bar (25-AP-B)

Date: September 15, 2025

The National Women's Law Center suggests the adoption of a uniform rule for bar admission across the courts of appeals. It points to varying requirements in the circuits regarding which attorneys on a brief must be admitted to the court's bar, noting that the local rules often do not make these requirements clear. It also observes that courts of appeals differ regarding pro hac vice admission.

An earlier suggestion to establish a rule regarding admission to the district court bars is already under consideration. (23-CV-E).

Unlike the other sets of rules, the Federal Rules of Appellate Procedure already have a national rule governing admission to the bar of a court of appeals. FRAP 46. This suggestion, then, effectively calls for FRAP 46 to be amended to address more details than it currently does.

If the Committee is interested in pursuing this idea, it might consider seeking representation on the joint subcommittee working on this issue. That joint subcommittee includes members from the Criminal, Civil, and Bankruptcy Rules Committees. The joint subcommittee is aware of FRAP 46 and surveyed the circuit clerks about its operation. It reported the results of that survey to the Standing Committee. "The overall picture that emerges from these responses is that the Appellate Rule 46 system works well for the courts of appeals." Standing Committee Agenda Book at 113, 116 (January 2025). A footnote adds, "On the other hand, two respondents did suggest that it would be better if Rule 46's eligibility criteria required state bar admission rather than permitting the alternative of eligibility based on federal bar admission." *Id*. at n.11.

Alternatively, the Committee might consider adding a provision to FRAP 46 like Supreme Court Rule 9, which provides:

> An attorney seeking to file a document in this Court . . . must . . . be admitted to practice before this Court . . . . The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added. If the name of more than one attorney is shown on the cover of the

document, the attorney who is counsel of record shall be clearly identified.

Such an amendment would solve one of the concerns raised by the National Women's Law Center, the concern dealing with which attorneys on a brief must be admitted to the bar of that court of appeals. And by making clear that only counsel of record need be a member of the bar of that court of appeals, it would reduce—but not eliminate—the concern about pro hac vice admission requirements.

TAB 7D

1350 I STREET NW
SUITE 700
WASHINGTON, DC 20005
202-588-5180
NWLC.ORG

March 7, 2025

Via email: RulesCommittee_Secretary@ao.uscourts.gov

Committee on Rules of Practice and Procedure
c/o Rules Committee Staff
Judicial Conference of the United States
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

Submission of a Proposal to Adopt a Rule for Unified Bar Admission for All Federal Circuit Courts of Appeal; and
Comment on Proposal to Adopt a Rule for Unified Bar Admission for All Federal District Courts, Submitted February 23, 2023, and Pending
Considered on January 7, 2025, at San Diego, CA

Dear Committee Members:

I am writing on behalf of the National Women's Law Center ("NWLC") to propose a change to the rules for appellate attorney admissions across the federal circuit courts. I understand the Committee on Rules of Practice and Procedure ("Committee") is already considering a proposal (23-CV-E) to adopt a uniform rule for bar admission across the federal district courts. I am writing to urge that you expand this important project to include the courts of appeals.

NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially women of color, LGBTQIA+ people, and low-income women and families. For over forty years, NWLC has routinely participated in lawsuits in cases involving gender-justice issues in state and federal courts across the United States.

Like many litigating nonprofits, our practice is nationwide. Each filing brings new challenges as we attempt to comply with the disparate admission and appearance rules across the district and circuit courts. And those rules are indeed disparate: for example, some circuits, like the Tenth, require all attorneys on a brief (even an amicus brief) to be

admitted to that court and file an appearance, while others, like the Eighth and the Sixth, only require the attorney filing the brief to be admitted—and still others, like the Fifth, require at least one attorney from each organization involved to be admitted. Moreover, these nuances are frequently not disclosed in the respective local rules of each court, so we find ourselves scrambling to call each clerk's office before filing to try to get the answers we need. At least once, we have received conflicting information from different clerks in the same courthouse about whether all attorneys on an amicus brief needed to be admitted pro hac vice. These myriad rules create confusion and frustrate the idea of a unified system of federal appellate courts.

Also, since the Committee is already considering standardizing admission in the federal district courts—a move that NWLC strongly supports—we wanted to share an issue we have encountered there for the Committee's consideration. With our nationwide practice, we are frequently in the position of needing to seek admission pro hac vice in jurisdictions that are new to us. This is another area where courts have multiple inconsistent requirements. For example, some want a certificate of good standing ("CGS") from one jurisdiction per attorney; others want one for *each* jurisdiction in which the attorney is barred; and still others don't require one at all. The requirements also differ widely as to how long the CGS is valid, varying from as little as 30 days to 90 days or longer. And many states (and the District of Columbia) charge fees to obtain CGSs, so the expense of obtaining multiple CGSs multiple times in a single year adds tremendous costs. It seems entirely reasonable, and not all that difficult, for the Committee to adopt a standard rule in this area that would provide needed clarity and simplicity for attorneys.

We thank the Committee sincerely for its hard work on these issues and for its time and consideration. For the convenience of the Committee, any questions or communications may be addressed to me at etheran@nwlc.org.

Respectfully submitted:

Elizabeth E. Theran
Senior Director of Litigation for Education & Workplace Justice
National Women's Law Center
1350 I St. NW, 7th Floor
Washington, DC 20005
(202) 588-5180
etheran@nwlc.org

TAB 7E

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett

Re: New Suggestion; Treatment of Tribes (25-AP-D)

Date: September 15, 2025

On July 1, 2025, the National Tribal Association submitted a comment regarding the proposed amendments to FRAP 29 dealing with amicus briefs. In particular, it argued that tribes are domestic sovereigns appropriately treated as government entities exempt from the consent or motion requirement for amicus briefs. Because this comment was received after the comment period had closed—indeed, after both the Advisory Committee and the Standing Committee had given final approval to the proposed amendments to FRAP 29—this has been docketed as a new suggestion.

The Advisory Committee considered this question during its deliberations regarding FRAP 29. It decided that it would be better to consider the treatment of tribes across the Appellate Rules rather than simply regarding amicus briefs.

It might be appropriate to appoint a subcommittee to address this broader issue. The Advisory Committee considered the amicus issue before, including the fall of 2017. *See* Fall 2017 Agenda Book at 131 https://www.uscourts.gov/sites/default/files/2017-11-9-appellate-agenda-book_0.pdf

TAB 7F

National Tribal
AIR ASSOCIATION

July 1, 2025

Honorable John D. Bates
Chair, Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle Northeast
Washington, D.C. 20544

RE: Request to Permit Indian Tribes to Submit Amicus Curiae Briefs Without Prior Consent under FRAP 29

Dear Judge Bates,

The National Tribal Air Association (NTAA) submits this letter to provide comments on the proposed revisions to the Federal Rule of Appellate Procedure (FRAP) 29 published in Rulemaking Docket USC-RULES-AP-2024-0001.

The NTAA is a member-based organization with 161 Member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaskan Natives. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand that interactions with the organization do not substitute for Nation-to-Nation consultation, which can only be achieved through direct communications between the federal government and American Indian Tribal Governments and Alaskan Natives.

The NTAA offers no opinion on the proposed amendments to FRAP 29 suggested by the Advisory Committee on Appellate Rules. Instead, we write to request that, as a matter of comity, federally recognized Indian Tribes be added to the list of entities that are exempt from the leave of court filing requirement for submission of an amicus curiae brief.[1] The unique status of Indian Tribes as sovereign entities and key stakeholders in matters that frequently come before the federal appellate courts calls for a more accessible process for their participation. This change is of

[1] A similar request was submitted by the Native American Rights Fund, the National Congress of American Indians, and the Northern Plains Indian Law Center in response to Rulemaking Docket USC-RULES-AP-2024-0001 via Regulations.gov on February 17, 2025. *See* Comment ID USC-RULES-AP-2024-0001-0403, available at https://downloads.regulations.gov/USC-RULES-AP-2024-0001-0403/attachment_1.pdf.

particular importance considering the proposed changes to FRAP 29, which would require leave of court for any non-governmental entity to file an amicus brief and add greater disclosure requirements regarding amicus parties.

The amendment of FRAP 29 is important to NTAA's Member Tribes because issues regarding air quality management policies and programs are often the subject of litigation within the Circuit Courts. Reducing the burden to Tribal participation in these cases is essential to ensure the unique concerns and perspectives of all impacted sovereign governments are considered during adjudication. Denying Tribes the ability to participate as amici curiae unless procedural hurdles are overcome runs counter to the principle of equal access to justice. As governments with inherent sovereign interests, the NTAA's Member Tribes are entitled to engage in the legal process on equal footing with other parties directly involved in litigation. Liberalizing the rules surrounding amicus submissions would foster more transparent and comprehensive deliberations, ultimately enhancing the quality of judicial outcomes.

Tribes are Domestic Sovereigns Appropriately Treated as Exempt Government Entities Under FRAP 29.

The United States' and the individual States' unique interests in participating as amici curiae is recognized under FRAP 29. These governmental parties are not subject to the leave of court and consent requirements that apply to "non-governmental amicus briefs" based on respect for their sovereignty and their exercise of governmental authority.[2] Though Indian Tribes also exercise governmental authority based on their inherent sovereignty, they are not provided the same consideration under FRAP 29.

Indian Tribes are distinct, self-governing sovereign entities with government-to-government relationships with the United States. The judicial decisions of federal circuit courts have profound impacts on Tribal rights, treaty interpretations, and self-determination. Circuit Court cases defining the contours of Tribal governmental authority and rights frequently do not include Tribes as parties.[3] And these cases often implicate foundational constitutional law principles.[4]

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[2] Congress has long recognized that Tribes have inherent authority comparable to the states, and thus including Indian Tribes in the list of entities that do not require leave of the court to file is consistent with the treatment of Tribes by other branches of government. *See* FN1 *supra*, Comment ID USC-RULES-AP-2024-0001-0403 at 2-4.

[3] Significant concepts regarding foundational Indian law have arisen from cases where no tribe was a party. *See e.g., Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 542 (1823) (determining validity of Indian land transfers); *see also Worcester v. Georgia*, 31 U.S. (6 Pet.) at 515 (adjudicating key questions regarding Cherokee Nation's treaty rights and jurisdiction). Further, tribal treaty rights have been adjudicated by the Circuit Courts in matters where a tribe is not a party. *See e.g., United States v. Dion*, 762 F.2d 674 (8th Cir. 1985), *rev'd in part,* 476 U.S. 734 (1986) (assessing hunting rights under 1858 treaty signed by the United States and by representatives of the Yankton Tribe).

[4] *See, e.g., Brackeen v. Haaland*, 994 F.3d 249 (5th Cir. 2021), aff'd in part, vacated in part, rev'd in part, 599 U.S 255 (2023) (addressing constitutional questions related to the bounds of congressional authority and anti-commandeering); *see also Winters v. United States,* 148 F. 684 (9th Cir. 1906), aff'd 207 U.S. 564 (1908) (adjudicating Indian reservation water rights without any tribe as a party); *see also Elk v. Wilkins*, 112 U.S. 94 (1884) (interpreting the 14th and 15th Amendments).

As a matter of comity, the addition of Indian Tribes to the list of government entities that FRAP 29 exempts from its leave-of-court requirement is reasonable and necessary to ensure that Tribes have every opportunity to be heard as part of the Circuit Courts' consideration of important issues affecting their sovereign interests.

Indian Tribes' Have Extensive Interests Associated with Air Quality that are Affected by Litigation in Every Circuit.

As sovereign governments and co-regulators of the shared air resource under the Clean Air Act (CAA), Indian Tribes have significant interests and important insights regarding issues arising in federal litigation regarding air quality programs and policies.

There are 574 federally recognized Indian Tribes across the nation that have air quality interests adjudicated before the federal circuit courts. Since the passage of the 1990 Clean Air Act (CAA), which includes a provision at Section 301(d) allowing Tribes to be "treated in a manner similar to states" (TAS), 72 Tribes have received approved TAS eligibility determinations. There are currently 23 Tribes implementing CAA programs either through approved Tribal Implementation Plans, approved Title V programs, or through the delegation of federal implementation plans. And in 2024, 119 Tribes were recipients of State and Tribal Air grants. Over one hundred Tribes conduct air quality monitoring, and 72 Tribes have developed air emissions inventories. Between 2018 and 2024, these Tribal-led air quality efforts helped reduce the number of nonattainment areas for Tribes from 166 to 114.

Because of this broad Tribal engagement in air quality programs across the country, litigation relevant to NTAA's Member Tribes' interests may arise in any federal circuit court. The NTAA Member Tribes possess specialized knowledge regarding natural resource management, treaty obligations, cultural preservation, and law enforcement on Tribal lands. By permitting Indian Tribes to freely submit amicus briefs providing their technical insights and additional perspectives, the courts would gain access to informed, firsthand expertise that not only supports judicial efficiency but also promotes decisions that are more attuned to nuanced intergovernmental relationships.

Adding Indian Tribes to the List of Exempt Government Entities Will Not Burden the Courts.

In its discussion of the concerns regarding leave of the court and consent of parties to amicus briefing governed by FRAP 29(a) the Advisory Committee focused on the potential of recusals triggered by the "unconstrained filing of amicus briefs in the court of appeals."[5] However, Tribal governments are not corporations or non-profit entities in which judges are likely to have an interest in that would be grounds for recusal. The addition of Indian Tribes to the list of exempt governmental entities will not burden the court by causing recusal issues, and to the extent that a

[5] May 13, 2024 Report of the Advisory Committee on Appellate Rules (revised August 15, 2024) at p. 26.

Tribal government's participation as amicus establishes grounds for recusal, the equities favor allowing Tribal participation based on the importance of ensuring that their sovereign interests are heard.

The revisions NTAA requests would recognize Indian Tribes' unique interests in participating as amici curiae out of respect for their inherent sovereignty and/or their exercise of governmental authority. The changes are reasonable and necessary because cases defining the contours of Tribal governmental authority and obligations frequently do not include Tribes as parties even though they may implicate foundational constitutional law principles. Tribes should be fully heard as part of the Court's consideration of those issues.

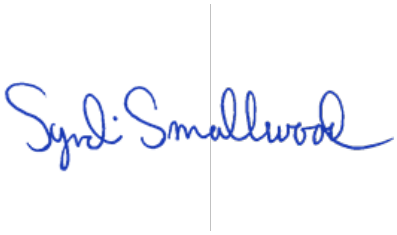
As co-regulators of the shared air resource, the NTAA Member Tribes work tirelessly to develop the capacity of Tribal Air Programs and to effectively provide for economic development while providing for a healthy and prosperous environment for Tribal citizens and community members of American Indian Tribes and Alaskan Natives. An important part of that work involves sharing their unique experiences and expertise with the courts as amici during the course of litigation that impacts their interests.

The Advisory Committee states in its report on the proposed revisions to FRAP 29 that it "seeks to improve the integrity and fairness of the federal judicial process" and notes that it "has been careful to avoid placing unnecessary burdens on amici, their members, and their contributors, and kept in mind their First Amendment interests."[6] However, by removing the ability for a Tribe to file by consent of the other parties, the proposed revisions create an additional and unnecessary burden to Tribes seeking to participate. The amendment proposed by NTAA does not seek to undermine the integrity of the appellate process; rather, it aims to strengthen the courts by reducing an unnecessary burden to Tribes, broadening the diversity of perspectives available to the bench, and ensuring that Tribal interests are accurately presented, particularly on matters affecting Indian Tribes. By allowing Tribes to submit amicus curiae briefs without prior court consent, the judicial system would embrace a more inclusive stance that respects Tribal sovereignty, enhances judicial insight, and ultimately fosters a more equitable legal process.

For the reasons discussed above, the NTAA respectfully requests that FRAP 29 be revised to remove the leave of court requirement for amicus curiae briefs prepared by federally recognized Indian Tribes.

Respectfully,

[6] *Id.* at p. 13.



Syndi Smallwood
Chair
National Tribal Air Association

Cc: Tabitha Langston, National Tribal Caucus Chair
Sharri Venno, R1 RTOC Tribal Co-Chair
Shavonne Smith, R2 RTOC Tribal Co-Chair
Dana Adkins, R3 RTOC Tribal Co-Chair
Jerry Cain, R4 RTOC Tribal Co-Chair
Brandy Toft, R5 RTOC Tribal Co-Chair
Sage Mountainflower, R6 RTOC Tribal Co-Chair
Alisha Bartling, R7 RTOC Tribal Co-Chair
Jason Walker, R8 RTOC Tribal Co-Chair
Roman Orona, R9 RTOC Tribal Co-Chair
Raymond Paddock, III, R10 RTOC Co-Chair
Pat Childers, Senior Tribal Program Coordinator, OAR
Miranda O'Neill, Program Manager, NTAA

National Tribal Air Association
NTAATribalAir.org
P.O. Box 15004 Flagstaff, AZ 86001-5004
928.532.9701 Office
928.523.1266 Fax

TAB 8

Effective Date	Rule	Summary
December 2018	8, 11, 39	Conforms the Appellate Rules to a proposed change to Civil Rule 62(b) that eliminates the antiquated term "supersedeas bond" and makes plain an appellant may provide either "a bond or other security."
	25	Amendments to Rule 25 are part of the inter-advisory committee project to develop coordinated rules for electronic filing and service.
December 2019	3, 13	Changes the word "mail" to "send" or "sends" in both rules, although not in the second sentence of Rule 13.
	26.1, 28, 32	Rule 26.1 amended to change the disclosure requirements, and Rules 28 and 32 amended to change the term "corporate disclosure statement" to "disclosure statement" to match the wording used in amended Rule 26.1.
	25(d)(1)	Eliminated unnecessary proofs of service in light of electronic filing.
	5.21, 26, 32, 39	Technical amendment that removed the term "proof of service."
December 2020	35, 40	Amendment clarifies that length limits apply to responses to petitions for rehearing plus minor wording changes.
December 2021	3	Amendment addresses the relationship between the contents of the notice of appeal and the scope of the appeal. The structure of the rule is changed to provide greater clarity, expressly rejecting the expressio unius approach, and adds a reference to the merger rule.
	6	Amendment conforms the rule to amended Rule 3.
	Forms 1 and 2	Amendments conform the forms to amended Rule 3, creating Form 1A and Form 1B to provide separate forms for appeals from final judgments and appeals from other orders.
December 2022	25	Treats remote electronic access to Railroad Retirement Act cases like Social Security cases.
	42	Requires dismissal of appeal if parties agree.

December 2023	2, 4	Rules for Future Emergencies
	26, 45	Add Juneteenth as holiday
December 2024	32, 35, 40, appendix of length limits	Amendments consolidate the provisions for panel rehearing and rehearing en banc into a single rule.