COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Allison H. Eid, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules

DATE: December 12, 2025

I. Introduction

The Advisory Committee on Appellate Rules met on Wednesday, October 15, 2025, in Washington, DC. The draft minutes from the meeting accompany this report.

The Advisory Committee has no action items for the January 2026 meeting.

A proposed amendment to Rule 15, dealing with review of administrative agency decisions, has been published for public comment (Part II of this report).

Other matters under active consideration (Part III of this report) are:

- creating a rule dealing with intervention on appeal;
- addressing issues concerning reopening of the time to appeal under Rule 4(a)(6);
- amending Rule 8 to provide limits on administrative stays;
- adopting a uniform rule for bar admission across the courts of appeals;
- revisiting the treatment of tribes in the Appellate Rules;
- providing greater protection for Social Security numbers in court filings; and
- expanding electronic filing by self-represented litigants.

The Advisory Committee also considered a new suggestion regarding the destination of an appeal and removed it from the Advisory Committee's agenda (Part IV of this report).

II. Item Published for Public Comment

A. "Incurably Premature"—Rule 15 (24-AP-G)

This proposed amendment is designed 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, 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. The text of the proposed amendment, with accompanying Committee Note, is attached to this report.

At the time of the Advisory Committee meeting, no comments had been received. Since then, we have received one favorable comment. The Advisory

Committee will consider any comments received before the February 16, 2026, deadline. At this point, it anticipates seeking final approval at the June 2026 meeting of the Standing Committee.

III. Items Under Consideration

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

The Advisory Committee is continuing its work on the possibility of a new Federal Rule of Appellate Procedure governing intervention on appeal. There is currently no Appellate Rule governing intervention, other than Rule 15 which sets a deadline but no criteria for intervention in agency cases. In the past, the Advisory Committee decided not to pursue creating a new rule governing intervention on appeal, fearing that creating such a new rule would invite more motions to intervene on appeal.

The Advisory Committee is exploring both whether there is a sufficient problem to warrant rulemaking and whether it is possible to create a useful rule. The Federal Judicial Center (FJC) conducted extensive research into motions to intervene in the courts of appeals. Based on that report, the Advisory Committee believes that it is worth continuing to work on a new rule, and in June of 2026 it may ask the Standing Committee to publish a proposed new rule for public comment, but it has not yet decided to do so.

Here is the working draft:

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.

A few things to note about this working draft:

- The draft is limited to appeal from district courts. The Advisory Committee thinks, based on the FJC report, that intervention in agency review cases brought directly to the courts of appeals does not appear to present significant problems.

- Drawing on existing case law, intervention on appeal is limited to exceptional cases. The preferred way for a nonparty to be heard is as an amicus curiae, not as a party intervening on appeal.

- No fixed time to move to intervene is set, because of the wide variety of circumstances that might prompt intervention. But the motion must be filed as soon after docketing of the appeal as practical in the circumstances. And the proposed intervenor must also demonstrate a compelling reason why intervention was not sought at a prior stage of the litigation or, if it was sought previously, provide a compelling explanation of how circumstances have changed.

- A proposed intervenor must have a legal interest that may be affected in the appeal. The Advisory Committee considered specifying in some detail what kinds of legal interests support intervention, but at least at this point thinks that such specificity creates a cumbersome and dense rule while risking omitting something that should be included. But the Advisory Committee does think that it is worthwhile to specify that the precedential effect of a decision is not enough to support intervention.

- If the court of appeals grants intervention, the intervenor becomes a party for all purposes, unless the court orders otherwise. That is, the default is set as intervention for all purposes, giving the court discretion to allow a more limited intervention. This approach underscores the distinction between intervention as a party and participating as an amicus.

B. Reopening Time to Appeal—Rule 4 (24-AP-M) The Advisory Committee had geared up to consider a 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 Supreme Court granted certiorari in *Parrish*. 145 S. Ct. 1122 (2025). The Advisory Committee decided to await the decision in *Parrish* before proceeding further.

In June of 2025, 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).

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*. The Court closed by noting, "If the Rules Committee believes a second notice could be . . . useful in the context of reopening, it remains free to recommend a change." *Id*. at 1675.

The Advisory Committee sees no reason to recommend a change that would reject the Supreme Court's holding. It might be appropriate to do nothing and simply rely on the holdings of *Parrish*. The Court has answered not only the question of whether a notice of appeal always 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). But the Advisory Committee 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 language under consideration:

> 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.

The Advisory Committee is considering whether the second sentence ("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.") might be better placed in Rule 3. The principle it announces does not apply only in the reopening context. But the issue appears to arise most frequently in the reopening context. Perhaps placing the language in one Rule and a cross-reference in the other Rule would do the job. Or perhaps placing the language in both Rules would be worth it, particularly for incarcerated unrepresented litigants who may be the most affected.

C. Administrative Stays—Rule 8 (24-AP-L)

The Advisory Committee is continuing to consider a suggestion to amend Rule 8 to provide limits on administrative stays.

One possibility is to expressly authorize administrative orders providing temporary relief while the court receives briefing and deliberates on a party's motion, while making clear that an administrative stay can last no longer than necessary to enable the court to make an informed decision on the motion—and setting an outside limit on the length of an administrative stay (absent party consent).

But administrative stays can arise in a range of cases and circumstances, and the Advisory Committee thinks that more information would be useful to decide how serious the problem is, whether there should be a time limit on administrative stays, how long any such time limit should be, and whether agency cases and immigration cases should be excluded or treated differently.

Based on its experience with the FJC report regarding intervention, the Advisory Committee has asked for FJC research here. Preliminary indications are that the project is feasible, will involve looking at all stay motions in a filing cohort, and will likely take one or two years, although the funding lapse will add delay.

The Advisory Committee will consider this suggestion, informed by the FJC research.

D. Uniform Bar (25-AP-B)

The Advisory Committee has begun to consider a new suggestion by the National Women's Law Center to adopt 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.

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.

An earlier suggestion to establish a rule regarding admission to the district court bars is already under consideration by a joint subcommittee. (23-CV-E). The Advisory Committee considered the possibility of seeking representation on the joint subcommittee but believes that the issues are sufficiently different that doing so would not be effective.

Some members of the Advisory Committee (particularly circuit judges) think that the current system is working fine in the courts of appeals and see no need for change. In their view, it is important for lawyers practicing before a court of appeals to be admitted to that court's bar as an aid to any necessary discipline, and it is not hard to become a member of the bar of their court of appeals. Other members (particularly practicing lawyers), note that the current system is confusing because the circuits have different rules regarding who may be *on* a brief, who may *sign* a brief, and who may *argue* an appeal. While this may be an appropriate situation for allowing circuit variation, some circuits have burdensome requirements, such as requiring a certificate of good standing that is no more than 30 days old and requiring that all lawyers on a brief be admitted. Doing that for several associates who work on a brief, or several organizations who join in filing an amicus brief, can take time and money.

The Advisory Committee will keep the matter on its agenda.

E. Treatment of Tribes (25-AP-D)

The Advisory Committee has begun to consider a new suggestion (submitted as a belated comment on the amicus rule) from the National Tribal Air Association regarding the treatment of tribes. (Agenda book 335).

The Advisory Committee had decided, when considering the treatment of tribes in the amicus rule, to defer that issue because the treatment of tribes cuts across other rules. It has now formed a subcommittee to address the treatment of tribes in the Appellate Rules. It is aware that this issue has been considered in the past but believes that it is time to look at it again.

F. Social Security Numbers in Court Filings—Rule 25 (22-AP-E)

The Advisory Committee defers to the Secretary for the Standing Committee for the update regarding the joint project dealing with full redaction of social security numbers and other privacy matters, but adds the following:

The Advisory Committee thinks that it is appropriate to provide greater privacy protection on appeal. Whatever the needs in trial courts, it is hard to see why an unredacted social security number should be reproduced in a publicly available brief or appendix in a court of appeals. For that reason, the Advisory Committee is considering an amendment along the following lines:

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).

The Advisory Committee will consider whether some language change might be appropriate to deal with a filing made under seal that is later unsealed. Perhaps, the "unless" clause in Rule 25(a)(5)(C) could be revised to say something like, "Unless the filing is made and remains under seal. . . ."

G. Unrepresented Parties; Filing and Service

The Advisory Committee defers to the Reporter for the Standing Committee for the update regarding the joint project dealing with electronic filing and service by unrepresented parties.

IV. Item Removed from the Advisory Committee Agenda

A. Destination of Appeal—Rule 3 (25-AP-A)

The Advisory Committee considered a new suggestion from Anthony Mallgren regarding the destination of an appeal. Mr. Mallgren appears to suggest that Rule 3 be amended so that the district court clerk, rather than the appellant, be responsible for knowing the appropriate court of appeals. If one thinks only of appeals to the regional courts of appeals, this might seem sensible. But some appeals go to the Court of Appeals for the Federal Circuit, and some even go directly to the Supreme Court. It is not too much to ask that an appellant designate the appropriate appellate court, especially since 28 U.S.C. § 1631 allows for transfer from a court without jurisdiction to the appropriate court.

The Advisory Committee agreed unanimously to remove this item from the agenda.

Rule 15 as Published for Public Comment

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, 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.

Minutes of the Fall Meeting of the

Advisory Committee on Appellate Rules

October 15, 2025

Washington, DC

Judge Allison Eid, Chair, Advisory Committee on Appellate Rules, called the meeting of the Advisory Committee on Appellate Rules to order on Wednesday, October 15, 2025, at approximately 9:00 a.m. EDT.

In addition to Judge Eid, the following members of the Advisory Committee on Appellate Rules were present in person: Andrew Adler, Linda Coberley, George Hicks, Professor Bert Huang, and Justice Leondra Kruger. Judge Carl J. Nichols had a judicial obligation and joined the meeting after it began. Judge Richard Wesley and Judge Sidney Thomas attended via Teams. The Solicitor General did not attend or send a representative because of the lapse in funding.

Also present in person were: Judge James Dever III, Chair, Committee on Rules of Practice and Procedure (Standing Committee); Andrew Pincus, Member, Standing Committee and Liaison to the Advisory Committee on Appellate Rules; Carolyn Dubay, Secretary to the Standing Committee, Rules Committee Staff (RCS); Bridget M. Healy, Counsel, RCS; Sarah Sraders, Rules Law Clerk, RCS; Shelly Cox, Management Analyst, RCS; Tim Reagan, Federal Judicial Center (FJC); Professor Catherine T. Struve, Reporter, Standing Committee; and Professor Edward A. Hartnett, Reporter, Advisory Committee on Appellate Rules.

Judge Daniel Bress, Member, Advisory Committee on Bankruptcy Rules and Liaison to the Advisory Committee on Appellate Rules; Christopher Wolpert, Clerk of Court Representative; and Professor Daniel R. Coquillette, Consultant, Standing Committee, attended via Teams.

I. Introduction and Preliminary Matters

Judge Eid opened the meeting and welcomed everyone, including the members attending remotely. She particularly welcomed Judge Dever, the new Chair of the Standing Committee, Andrew Adler, a new member of the Advisory Committee, and Sarah Sraders, the new Rules Law Clerk, to their first meeting of this committee. She invited all participants, both in person and remote, to introduce themselves.

Carolyn Dubay directed attention to the rules tracking chart. (Agenda book 16). She noted that the Standing Committee had given final approval to the proposed amendments to Rule 29, dealing with amicus briefs, after making minor changes. In order to make it easier to trace the changes made by the Standing Committee, a new

feature of the report of the Standing Committee to the Judicial Conference has been added: an appendix detailing those changes. (Agenda book 70). The Standing Committee also approved the proposed amendments to Form 4. The Judicial Conference approved both proposed amendments.

Ms. Sraders referred to the pending legislation chart and noted one addition: a proposed Supreme Court Ethics, Recusal and Transparency Act that would require certain amicus disclosures. (Agenda book page 22).

Judge Eid noted the draft minutes of the meeting of the Standing Committee and the Report to the Judicial Conference. (Agenda book page 33).

II. Approval of the Minutes

The minutes of the April 2, 2025, Advisory Committee meeting were approved without dissent, subject to correction of typographical errors. (Agenda book page 91).

III. Discussion of Joint Committee Matters

A. Self-Represented Parties

Professor Struve provided a detailed report regarding electronic filing and service for self-represented parties. (Agenda book page 111). She thanked the Advisory Committee for its input so far.

There are two major aspects of the project. The first is to not require service of paper copies of filings made by non-electronic filers on ECF participants because ECF participants will get it via ECF. This aspect has gotten less airtime but is quite practical.

The second has involved more discussion and would alter the ground rules for self-represented litigants and flip the presumption regarding electronic filing. Civil, Criminal, and Appellate are okay with this change. Bankruptcy is dubious. But it has voted to opt in to the project, at least for purposes of publication. There are still some skeptics, and public comment may lead them to opt out. They are trying to participate but have concerns. In addition, self-represented litigants are least prevalent in bankruptcy.

Professor Struve then walked through the various sections of the report.

(A) At the spring meeting, a member had asked about how the "reasonable exceptions" provision relates to the "reasonable conditions and restrictions" provision. The latest draft is designed to make them complementary. The clerk liaison likes the structure. Alternative drafting suggestions are welcome.

(B) Is ECF sufficiently reliable that there is no need for a provision that service via ECF is not effective if a filer knows that a filing was not received? Or is the risk of a system outage sufficient reason to retain such a provision.

(C) Originally, it was thought not necessary to have a provision in the Appellate Rules for papers that are served but not filed. But there are such papers, so it is in the latest draft.

(D) The latest draft uses the phrase "notice of case activity" rather than "notice of filing," because there are a range of matters entered on the docket that are not filings.

(E) The current rules use the term "unrepresented"; an earlier draft used the term "self-represented." While some prefer the latter term, implementing it in the Appellate Rules would be cumbersome because of the number of rules where the former term is used. On the other hand, Civil is likely to use "self-represented" because there aren't other Civil Rules that would have to be amended. The latest draft includes this different usage in different rule sets. This seems to be a tolerable divergence, but we will see what the Standing Committee thinks.

(F) The current e-filing rules use the phrase "unrepresented person." But if the presumption regarding e-filing is flipped, some might argue that unrepresented non-parties could use electronic filing. For that reason, the latest draft uses the phrase "unrepresented party." Concededly, that would block an unrepresented person who seeks to intervene from using electronic filing. Drafting around that would be cumbersome. The current inclination is not to worry about unrepresented proposed intervenors. Ideas are welcome.

(G) The latest draft explicitly spells out some things in ways that some could view as obvious or redundant. The reason is to help unrepresented parties. Despite the usual preference of the style consultants for concision, they are okay with the extra words here.

(H) It might be worth updating the prison mailbox rule to address the timeliness of documents filed using an electronic filing program in an institution. But the latest draft does not attempt to do so; the thinking is that any such update should be handled as a separate project and treated as outside the scope of this project.

(I) Chris Wolpert has pointed out that we should address case-initiating documents filed in the courts of appeals. We might want to allow electronic filing of such documents but not allow dependence on service via ECF. This is an issue that the Advisory Committee might want to address even apart from this project. The latest draft would allow for a court of appeals, by

local rule, to provide that a paper filed under seal or one that initiates a proceeding in the court of appeals under Rule 5, 15, or 21 must be served by other means. We need to add Rule 6 as well.

(J) At this point, with Bankruptcy on board, there is no need for special rules to deal with bankruptcy appeals.

Professor Struve then turned to another issue that has arisen in the working group discussions: What happens when things go wrong with electronic filing? The current rules provide that a clerk must not refuse to file a paper solely because it is not in proper form, FRAP 25(a)(4), and that 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. FRAP 47(a)(2).

Should the current project expand to think about these rules? Someone might file using a method that is not permitted, or in a format that is not permitted, or use ECF but screw it up. Do any of these involve a matter of form? The case law is not uniform. We may want to be careful here. Clerks might be concerned about parties filing willy-nilly. But protecting those who act in good faith and meet a deadline (a deadline that perhaps is jurisdictional) would promote fairness. The Supreme Court has a rule that might serve as a model. Expanding the scope of this project might make clerk's offices worried. An expanded project would reach lawyers, too, some of whom are tech-challenged.

The Reporter read Supreme Court Rule 14.5 and asked if the Committee might be interested in an Appellate Rule along those lines.

Mr. Wolpert stated that it does seem like an elegant solution. But it would open a can of worms in the courts of appeals, which receive things in a wide variety of ways. We are currently considering a proposal that is quite significant. It is a good change that he supports. But it would be better to take on this new, related issue separately, at a later time, after we have first-hand experience with what is already being considered. Don't act in a vacuum or fly blind; it is hard to predict; let's deal with this informed by practical experience.

A judge member found this persuasive. It's a good idea but defer it. Keep it on the agenda for the future. An academic member tended to agree and asked if these were reasons to question the existing project.

Mr. Wolpert responded that the existing project is a major change. It is thoughtful and thorough and leaves enough discretion to craft solutions that work for individual courts. Most if not all his colleagues agree. A big financial challenge is processing paper, most of which comes from pro se litigants. It is important to reduce paper to the extent possible. We should move forward with it. We generally bar filing via email because of its relative unreliability, lack of an audit trail, and difficulties

with receipts and logging. We are trying to craft a separate system for pro se litigants, apart from ECF, but do not want email.

A lawyer member supported the idea of deferring until we have more experience. A filing may trigger a response, but most pro se filings in the Supreme Court need not be responded to. A liaison member added that it would be important to figure out when the time to respond begins to run. In the Supreme Court, it is not until docketing.

The Reporter asked about ECF for case-initiating documents. How is it possible to rely on ECF for service? Perhaps we should have a more general provision for case-initiating documents rather than rely on local rules.

Mr. Wolpert responded that they had a local rule that did it wholesale but had to walk it back for case-initiating filings. Sometimes filings included complete and accurate information about who should be served, but sometimes they didn't. In these cases, we don't have access to the district court docket to see who needs to be served. A liaison member noted that in the Rule 5 context, there is a district court docket, but not in agency review cases.

Professor Struve expressed her appreciation for the committee's support.

B. Privacy

Carolyn Dubay presented a report regarding privacy protections, noting that this joint committee project began in 2022 and that we are at the stage of turning matters over to individual Advisory Committees, with the hope of presenting something at the June 2026 Standing Committee meeting. Bankruptcy, which presents a unique context, is the only Advisory Committee to have met so far this cycle.

There are four major issues. Should complete redaction of social security numbers and tax identification numbers be required? Should EINs also be included? Should the protection of minors switch to the use of pseudonyms rather than initials? Should there be a provision that makes explicit that the requirements apply to exhibits and attachments, where most of the current violations occur.

The Reporter explained that the Appellate Rules piggyback on the privacy rules applicable below, so this committee need not do anything. (Agenda book page 212). However, at the last meeting, there was considerable support for an Appellate Rule that was more protective than the other rules, on the theory that whatever might be necessary below, it is not necessary to be filed publicly on appeal. If social security numbers are needed to identify debtors, they should be identified before any appeal is taken. There was support at the last meeting to get ahead of the other committees and seek publication this past summer, but Judge Bates suggested that

the Standing Committee would prefer to get everything at once. The Reporter added that there is no subcommittee of this Advisory Committee working on this project, and therefore particularly invited comment.

A judge member voiced support for independent protection in the Appellate Rules. A lawyer member asked for (and received) an explanation of the special treatment of Railroad Retirement Act cases in the existing Rule and had no problem with proceeding. An academic member agreed it was a good idea, but wondered what would happen under the draft if a filing were made under seal but later unsealed. The Reporter thought that redaction would be taken care of as part of deciding the unsealing motion.

The Reporter raised the question of what happens when a minor becomes an adult. Should the protection for minors apply only when the person is a minor at the time of filing (as a recent case from the Court of Appeals for the Third Circuit held under the existing rule), or should it apply to any filing for the duration of the litigation, or apply so long as the person was a minor at the time of the underlying events. No member of the Committee voiced a view.

Judge Eid noted that we had skipped over the Federal Judicial Center report and asked Tim Regan if he wanted to say anything. Mr. Regan pointed to the written report. (Agenda book page 212). He added that the report discusses not only what the FJC does for other advisory committees, but also what it does to promote education. Sometimes a committee thinks that education about the existing rules, rather than a rules amendment, is the better approach.

IV. Discussion of Matter Published for Public Comment

A. Premature Petitions—Rule 15 (24-AP-G)

Professor Huang presented the report regarding a proposed amendment to Rule 15 dealing with premature petitions. (Agenda book page 219). The proposed amendment was published for public comment with minor style changes made by the Standing Committee. (Agenda book page 221). We have not yet received any comments, but the comment period is open until February.

The proposed amendment responds to a suggestion by Judge Randolph and is designed to remove a trap for the unwary in the administrative agency context, similar to the way a prior amendment worked for Rule 4. In some circuits, notably the D.C. Circuit, a petition to review (or an application to enforce) can effectively disappear when a motion for reconsideration is filed before the agency, requiring a party to file a second petition or application. The amendment would provide for a premature petition or application to ripen when the time is right. However, if a party wants to challenge, not just the original decision, but the disposition of the motion for reconsideration, a new petition is required.

No member of the Advisory Committee had anything to add at this point.

The Committee took a break for approximately fifteen minutes and resumed at approximately 10:30.

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 227). There have been three developments considered by the subcommittee since the last meeting. First, the Federal Judicial Center completed its extensive research into motions to intervene in the courts of appeals and provided a report. Second, the Supreme Court broadly repudiated universal injunctions in *Trump v. CASA, Inc.* Third, the Supreme Court granted intervention in a case before it.

In addition, the subcommittee considered a student note responding to this subcommittee's work and arguing for a liberalized approach to intervention on appeal.

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 decision based on the way the case was shaped by the parties in the district court.

Nor did the subcommittee find much guidance in the Supreme Court's decision to permit intervention. There was no opinion (just an order); the motion was unopposed; and the case involved a constitutional challenge to a federal campaign finance statute that the Solicitor General, as respondent in the Supreme Court, urged the Court to find unconstitutional.

The subcommittee does think that *CASA* will reduce the number of cases where intervention on appeal is sought, but *CASA* will not make them go away. The FJC report confirms that there is some uncertainty and conflict in the courts of appeals regarding intervention on appeal. The subcommittee does not claim that a new rule is urgent but does think that it is worth continuing to discuss.

Based on the FJC report, the subcommittee does not think that there is a significant problem in agency cases, and therefore presents a working draft limited to cases on appeal from district courts.

Based on the feedback from the last Advisory Committee meeting, the subcommittee presented a working draft that is slimmed down from the last draft. It does not attempt to define categories of legal interests that can support intervention.

But because there might still be some interest in doing so, the subcommittee report includes a discussion of what such a provision might look like, itself somewhat simplified from the prior working draft.

The Reporter walked through the working draft. (Agenda book page 230). He asked if the Advisory Committee thinks that the working draft is on the right track. He specifically called attention to the question whether the court of appeals is in the best position to decide whether intervention should be for all purposes or should be more limited.

A lawyer member said that he appreciated having a rule. It would be helpful to have something in writing when dealing with motions to intervene.

A liaison member agreed that these issues aren't going away. The structure seems sensible. It is good to not try to specify what legal interests count; attempting to do so is a trap.

A lawyer member asked about the timing of a motion and whether the provision that describes intervention as for all purposes includes cert. The Reporter responded that intervention for all purposes would include petitioning for cert. and that some people move to intervene for the very purpose of seeking cert. He added that the subcommittee did not attempt to specify the timing more precisely because the need to intervene can arise at various stages, such as when an existing party changes position.

A judge member stated that she was open to listing the interests that support intervention. The subcommittee was unable to come up with a way that was in between, on the one hand, listing those interests specifically and, on the other hand, simply requiring a "legal interest." The subcommittee did, however, eliminate the most complicated kind of interest that had been included in the prior draft.

A liaison member responded that there are a bunch of interests recognized in the FJC report. Listing the interests risks leaving something out. How the list in the subcommittee report would apply to a case where there was universal vacatur under the APA is opaque. Let people spell out their interest and let the court decide.

A lawyer member stated that she likes the default position that intervention is for all purposes. It underscores the difference between being an amicus and a party. If there is a reason to narrow the scope of intervention, courts can do it.

A judge member agreed, noting that this is generally true in the district court and that it would be odd for it to be different in the court of appeals.

A liaison member agreed, noting that questions of standing can arise, and a party is susceptible to discovery.

Professor Struve noted that this is sensible but wondered whether the mandate would permit a district court to limit intervention once the court of appeals has granted intervention for all purposes. The liaison member added that the intervenor can ask the court of appeals to leave the issue open. In response to questions, he added that there might be issues such as standing that were not raised or adjudicated in the court of appeals that would not be precluded by the mandate.

Judge Dever asked about the language describing intervention on appeal as "reserved for exceptional cases." Other rules, such as Rule 40, describe something as "not favored." Cross-check the language with other rules. The Reporter responded that the language in the draft was not drawn from other rules, but from case law dealing with intervention on appeal. Professor Struve noted that Rule 8 refers to "an exceptional case"; in that context, it refers to time requirements that are impracticable.

Judge Dever asked about the timeliness requirement. The Reporter stated that the movant would have to explain the circumstances. A liaison member noted a concern that perhaps "exceptional cases" puts too much of a thumb on the scale.

The subcommittee will consider this feedback as it continues its work.

B. Reopening Time to Appeal—Rule 4 (24-AP-M)

Judge Nichols was formally appointed the chair of the reopening time to appeal subcommittee and presented its report. (Agenda book page 309). The subcommittee had begun work on this suggestion, but it was put on hold after the Supreme Court granted cert in the *Parrish* case.

In deciding *Parrish*, the Supreme Court held that a party need not file a duplicative notice of appeal after its motion to reopen the time to appeal has been granted. It also held that a single document can serve multiple purposes, such as a motion to reopen time to appeal and a notice of appeal.

The subcommittee saw three basic options. First, do nothing, and simply rely on the Court's decision in *Parrish*. Second, disagree with the Court and revise the rule accordingly. No one on the subcommittee took this position. Third, codify *Parrish*.

The subcommittee unanimously landed on the third option, suggesting the language that appears on page 316 of the agenda book, designed to codify with a little clarification.

A judge member voiced support for codification. It is mostly pro se and prisoners who do not get notice in time. He appreciates the brevity.

Professor Struve raised two concerns. First, she gets a little nervous about changes regarding notices of appeal, tending to be cautious and conservative on that score. She had her doubts about the Rule 3 project but has to say that it was beautifully done and enjoys reading appellate case law implementing it. Second, she likes the second sentence, but perhaps it belongs in Rule 3(c). The principal is not limited to the reopening context, is it? Is there a risk of a negative inference if the principal is stated here but not elsewhere?

Judge Nichols responded that the subcommittee had not thought about that. He would not want to suggest that the principal applies only here. But moving it risks losing the benefit of clarity.

Professor Struve suggested a cross reference to Rule 3. The Reporter suggested the possibility of including the statement in both Rule 3 and here. He added that the Supreme Court had specifically invited a rejection of its approach if the rule makers thought it appropriate; no member of the subcommittee did.

Mr. Wolpert suggested using the clause, "if it complies with Rule 3(c)(1)." Professor Struve added that Rule 3(c)(7) is relevant, too. A liaison member added that (c)(7) does not say anything about a paper serving multiple purposes. Judge Nichols noted that it is a good concept to say in Rule 3. A liaison member added that the concept should not be limited to the reopening context. An academic member suggested that perhaps the phrase "makes clear" should be replaced with "otherwise clear." A judge member observed that repetition would be better than a cross-reference so people will get the benefit from the rule.

Judge Dever said that the discussion reminded him of a discussion that the Evidence Committee had regarding whether to codify a Supreme Court decision regarding an exception allowing juror testimony regarding racial bias. This situation, however, adds the second sentence. The problem typically arises when a party is incarcerated. The party might bring a habeas petition but not get the decision because he has been moved. Expressing the idea of the second sentence in Rule 4 has value because that is the most common situation in which the problem arises.

C. Administrative Stays (24-AP-L)

The Reporter presented the report of the administrative stays subcommittee. (Agenda book page 309). The subcommittee thinks that some concerns raised at the last Advisory Committee meeting can be dealt with fairly easily. In particular, to deal with parties who are in no rush, the phrase "unless the parties agree otherwise" can be added. And concerns about release of criminal defendants can be dealt with by making clear that Rule 8(c), Rule 9, and Criminal Rule 38 deal with stays and release in criminal cases, not the new rule. Similarly, the new rule could make clear that it does not govern custody and release pending appeal in a habeas case, leaving that to Rule 23.

On the other hand, the subcommittee thinks that more information would be useful to decide how serious the problem is, whether there should be a time limit on administrative stays, how long any such time limit should be, and whether agency cases should be excluded. Immigration cases may present their own unique issues.

Based on the experience of the intervention subcommittee and the valuable FJC report in that area, the subcommittee thinks that FJC research here would also be valuable. Judge Eid has already asked the FJC to perform that research.

Mr. Regan stated that he spoke to the prior clerk representative and has begun to look at the data. He thinks the project is feasible. It will require looking at all stay motions, because administrative stays are typically issued sua sponte. It looks like there will be enough data to find unusual cases. He expects to use a 2024 filing cohort and envisions a 1-to-2-year project. This will be delayed if he gets furloughed due to the funding lapse.

A judge member said that he had raised this issue with staff in the Ninth Circuit who reacted with horror at the time limit. He doesn't see any foot dragging. The concerns arise in high profile cases. In the Ninth Circuit, the chief judge sends the stay motion to a merits panel right away. Things are done promptly. No one is complaining. Case by case decisions are appropriate. In environmental cases, it can take months to get the record. Be careful to not create a rule that does more damage. He can't speak for other circuits, but there is no foot dragging in the Ninth Circuit, which hears one-third of appeals and is geographically spread out—unlike the D.C. Circuit where you can walk down the hall. But he does not object to the FJC gathering information; he can provide data from the Ninth Circuit.

The Reporter asked if the Advisory Committee agreed with the subcommittee about the issues that can be managed.

A judge member said that immigration cases are totally separate and should be separated out. A different judge member seconded that.

Yet another judge member noted that there is disagreement among district judges whether they have inherent authority to grant administrative stays. If an Appellate Rule codifies the practice in the courts of appeal, perhaps that could have a negative implication regarding the district courts.

Mr. Regan sought and obtained clarification that the requested FJC research is about administrative stays, understood as stays involving the processing of the case, not stays in cases reviewing administrative agencies—temporary stays or temporary administrative stays. The Reporter added that we have been using "stay" as shorthand and mean to include injunctions pending appeal; plus, some parties do ask for administrative stays as part of their motion for a stay pending appeal. Mr.

Regan acknowledged that as awareness of administrative stays grows, some are asking for them.

VI. Discussion of Recent Suggestions

A. Destination of Appeal (25-AP-A)

The Reporter presented a recent suggestion from Anthony Mallgren regarding the destination of an appeal. (Agenda book page 325). Mr. Mallgren seems to suggest that Rule 3 be amended so that the district court clerk, rather than the appellant, be responsible for knowing the appropriate court of appeals. If one thinks only of appeals to the regional courts of appeals, this might seem sensible. But some appeals go to the Court of Appeals for the Federal Circuit, and some even go directly to the Supreme Court. It is not too much to ask that an appellant designate the appropriate appellate court, especially since 28 U.S.C. § 1631 allows for transfer from a court without jurisdiction to the appropriate court.

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

B. Uniform Bar (25-AP-B)

The Reporter presented a recent suggestion from the National Women's Law Center suggesting the adoption of a uniform rule for bar admission across the courts of appeals. (Agenda book page 329). There is a joint subcommittee working on a suggestion for a uniform rule for bar admission in the district courts. That subcommittee surveyed circuit clerks regarding the operation of Appellate Rule 46, and the overall response was that it was working well. The Advisory Committee might consider seeking representation on the joint subcommittee. Or it might consider its own subcommittee to address the suggestion, which focuses on varying requirements across the courts of appeals regarding which attorneys on a brief must be admitted to the court's bar and differing pro hac vice requirements. One possible approach would be the one taken by the Supreme Court: Counsel of record must be a member of the bar of the relevant court.

A lawyer member stated it is confusing because the circuits have different rules regarding who may be *on* a brief, who may *sign* a brief, and who may *argue* an appeal. Perhaps this is an appropriate situation for circuit federalism. We saw that with the filing deadline adopted by the Court of Appeals for the Third Circuit. Joining the existing joint subcommittee would not be effective.

Professor Struve agreed with the latter point. One possibility discussed in the joint subcommittee would be making changes along the lines of what is now in Appellate Rule 46. The issues are different than the ones raised here. In particular, some districts require bar admission in the state where the district court is located.

Judge Eid stated that the circuit judges in the Tenth Circuit would have disparate views on this question. Mr. Wolpert added that there might be some objection because the Court of Appeals for the Tenth Circuit requires that anyone on a brief must be a member of the bar. The brief isn't rejected. Instead, the clerk sends the form and asks the person to pay up. The court wants them to be subject to the court's disciplinary authority. The one exception is an attorney general of a state who relies on assistant attorneys general.

Another judge member concurred. Being admitted is a straightforward procedure. He chairs his court's disciplinary committee.

Another judge member agreed. A court can't discipline a lawyer who is not a member of the bar.

Professor Coquillette also agreed. Different state bar associations will have different views of model rules. Federal courts have their own disciplinary jurisdiction. Someone can get disbarred in one and not in another.

The Reporter, noting the sense of the room, wanted to point out the concerns of the organization making the suggestion. It takes time and money to get every lawyer on a brief—perhaps an amicus brief by a nonprofit organization— admitted to the court's bar. A lawyer member added that it is an issue for for-profit organizations, too. Younger associates want to see their names on briefs; getting four or five people admitted takes time and money.

A judge member suggested thinking about some middle ground. Perhaps parties can be distinguished from amici. Perhaps counsel of record can be distinguished from other lawyers.

Professor Coquillette stated that Rule 46 is already a middle ground. It is easy to get admitted to a court of appeals. By contrast, some district courts require a person to pass the bar in that state. That's a big deal.

A judge member noted that there have been cases where a person applied who had not been admitted anywhere or was disbarred.

Another judge member said that the application for admission to the Court of Appeals for the Second Circuit is one page with four questions. He does four or five a day. He's not trying to keep people out, but some people do inappropriate things. Let each circuit do its thing.

The Reporter suggested either a motion to remove the matter from the agenda or the appointment of a subcommittee. Professor Struve responded that other committees are considering the issue and might think differently.

A lawyer member stated that, in some circuits, a certificate of good standing is required. Maybe there could be some uniformity there? Some are more strenuous than others; we can look at that.

In response to a question, the Reporter clarified that if no motion is made to remove the item from the agenda and no subcommittee is appointed, it simply stays on the agenda.

A different lawyer member suggested perhaps that signatories and counsel of record could be treated differently than everyone else simply on the brief.

Professor Struve added a note of caution. Rule 46(c) authorizes a court to discipline an attorney who practices before it, even if not a member of that court's bar. A judge member responded that this doesn't work.

Mr. Wolpert stated that the Court of Appeals for the Tenth Circuit does not require a certificate of good standing if a member of its own bar serves as a movant.

A judge member reiterated that in his court it is two pages and four questions. Wouldn't associates want to be admitted?

A lawyer member responded that it isn't that easy in all circuits. In the Federal Circuit, a certificate of good standing, no more than 30 days old, is required. A different lawyer member stated that in the Fifth Circuit, a certificate of good standing is required for one lawyer from each organization on a brief.

A judge member stated that the District Court for D.C. requires a person to appear in person to be sworn in. He has objected to this onerous requirement.

The item will remain on the agenda, but no subcommittee was appointed.

C. Treatment of Tribes (25-AP-D)

The Reporter presented a recent suggestion from the National Tribal Air Association regarding the treatment of tribes. (Agenda book 335). It had been submitted as a belated comment regarding the proposed amendments regarding amicus briefs, so it was docketed as a separate suggestion.

The Advisory Committee had decided, when considering the treatment of tribes in the amicus rule, to defer that issue because the treatment of tribes cuts across other rules.

Judge Eid recalled that years ago, when she was a member of the Advisory Committee, it had considered the treatment of tribes in the Appellate Rules and

determined to look again in (as she recalled) five years. Those five years have long passed.

In response to a question, the Reporter noted that the tribes are concerned both about their dignity as sovereigns and about cases in which their interests are affected but they are not heard.

A judge member suggested the formation of a subcommittee. Two other judge members agreed. Judge Eid appointed Justice Kruger, Judge Thomas, Judge Wesley, and Professor Huang.

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 343). 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 Dever thanked the team at the AO. We live in challenging times. The staff does great work and we appreciate it.

The next meeting will be held on April 16, 2026, in Charlotte, NC.

The Committee adjourned at approximately 12:30 p.m.