
**ADVISORY COMMITTEE
ON
APPELLATE RULES**

April 16, 2026

ADVISORY COMMITTEE ON APPELLATE RULES
Meeting of April 16, 2026
Charlotte, NC

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Next meeting: October 6, 2026, Washington, DC

TAB 1

TAB 1A

ADVISORY COMMITTEE ON APPELLATE RULES

Chair	Reporter
Honorable Allison H. Eid United States Court of Appeals Denver, CO	Professor Stephen Sachs Harvard Law School Cambridge, MA

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Fort Lauderdale, FL

Linda Coberly, Esq.
Winston & Strawn LLP
Chicago, IL

George W. Hicks, Jr., Esq.
Kirkland & Ellis LLP
Washington, DC

Professor Bert Huang
Columbia Law School
New York, NY

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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

Liaisons

Honorable Daniel A. Bress
(*Bankruptcy*)
United States Court of Appeals
San Francisco, CA

Andrew J. Pincus, Esq.
(*Standing*)
Mayer Brown LLP
Washington, DC

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: 2024 Chair: 2024	---- 2027
Andrew Lee Adler	ESQ	Federal Public Defender Florida (Southern)	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*	DOJ	Washington, DC	----	Open
Sidney R. Thomas	C	Ninth Circuit	2023	2028
Richard C. Wesley	C	Second Circuit	2020	2026
Stephen Sachs Reporter	ACAD	Massachusetts	2026	2031

Rules Committee Staff Counsel: Bridget Healy, 202-502-1820

* *Ex officio* representative on behalf of the Solicitor General

**ADVISORY COMMITTEE ON APPELLATE RULES
SUBCOMMITTEES
(effective October 2025)**

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

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

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Administrative Office of the U.S. Courts
Office of the General Counsel – Rules Committee Staff
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Professor Daniel J. Capra
Fordham University School of Law
New York, NY

RULES COMMITTEE LIAISON MEMBERS

Liaisons for the Advisory Committee on Appellate Rules	<p>Andrew J. Pincus, Esq. <i>(Standing)</i></p> <p>Hon. Daniel A. Bress <i>(Bankruptcy)</i></p>
Liaison for the Advisory Committee on Bankruptcy Rules	Dean Troy A. McKenzie <i>(Standing)</i>
Liaisons for the Advisory Committee on Civil Rules	<p>Hon. D. Brooks Smith <i>(Standing)</i></p> <p>Hon. Catherine P. McEwen <i>(Bankruptcy)</i></p>
Liaison for the Advisory Committee on Criminal Rules	Hon. Paul J. Barbadoro <i>(Standing)</i>
Liaisons for the Advisory Committee on Evidence Rules	<p>Honorable Thomas M. Durkin <i>(Criminal)</i></p> <p>Hon. Edward M. Mansfield <i>(Standing)</i></p> <p>Hon. M. Hannah Lauck <i>(Civil)</i></p>

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Bridget M. Healy, Esq.
Counsel

Shelly Cox
Management Analyst

Sarah A. Sraders, Esq.
Counsel

Rakita Johnson
Administrative Analyst

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Staff**

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Director

Committee on Rules of Practice & Procedure
Tim Reagan, Ph.D., J.D.
Senior Research Associate

Appellate Rules Committee
Tim Reagan, Ph.D., J.D.
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Division Director

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

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

TAB 1B

Appellate Rules Advisory Committee
Agenda Items, Spring 2026 Meeting

Legend:

(gray background indicates items not under active consideration)

x	recently removed from agenda	2	approved by Advisory Committee, submitted to Standing Committee for publication	5	reapproved by Advisory Committee, submitted to Standing Committee for final approval
0	deferred to future meeting	3	out for public comment	6	approved by Standing Committee
1	pending before Advisory Committee prior to public comment	4	pending before Advisory Committee after public comment	7	approved by SCOTUS, sent to Congress
				8	allowed by Congress to take effect

Status	FRAP Item	Proposal	Source	Current Status
8	16-AP-D	Rule 3(c)(1)(B) and the Merger Rule	Neal Katyal	Effective 12/2021
8	17-AP-G	Rule 42(b)– dismissal of appeal on consent of all parties	Christopher Landau	Effective 12/2022
8	18-AP-E	Privacy in Railroad Retirement Act cases	Railroad Retirement Board	Effective 12/2022
8	None assigned	Rules for Future Emergencies Rules 2 and 4	Congress (CARES Act)	Effective 12/2023
8	None assigned	Add Juneteenth to Rule 26	Congress	Effective 12/2023
8	18-AP-A	Rules 35 and 40 – Comprehensive review	Department of Justice	Effective 12/2024
8	21-AP-D	Costs on Appeal; Rule 39	Alan Morrison	Effective 12/2025
8	None assigned	Appeals in Bankruptcy Cases; Rule 6	Bankruptcy Committee	Effective 12/2025

Status	FRAP Item	Proposal	Source	Current Status
6	20-AP-D (19-AP-C 21-AP-B)	Form 4: IFP Forms	Sai	Initial consideration F20, referred to IFP subcommittee Discussed at S21 meeting Discussed at F21 meeting Discussed at S22 meeting Discussed at F22 meeting, 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
4	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)	Rule 29: 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 Withdrawn by Standing Committee March 26
4	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 Discussed at F25 meeting
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

Status	FRAP Item	Proposal	Source	Current Status
	(20-AP-C)	(Pro Se Electronic Filing)	(Usha Jain)	Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting Discussed at S25 meeting Discussed at F25 meeting (Initial consideration F20 and tabled pending consideration by Civil Rules Committee Referred to reporters F21 Consolidated with 21-AP-E)
1	22-AP-E (24-AP-B) (24-AP-C) (25-AP-C)	Social Security Numbers in Court Filings (Use of pseudonym for minors) (Comment on 24-AP-B) (Privacy)	Senator Widen (DOJ) (Am. Ass'n for Justice) (Am. Ass'n for Justice)	Initial consideration S23 Discussed at S23 meeting Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting Discussed at S25 meeting Discussed at F25 meeting (Initial consideration S24 Consolidated with 22-AP-E) (Initial consideration F24 Consolidated with 22-AP-E) (Initial consideration F25 Consolidated with 22-AP-E)
1	22-AP-G (23-AP-C)	Rule 7.1: Intervention on Appeal (Intervention on Appeal)	Stephen Sachs (Judith Resnik)	Initial consideration and subcommittee formed S23 Discussed at F23 meeting Discussed at S24 meeting Discussed at F24 meeting Discussed at S25 meeting Discussed at F25 meeting (Initial consideration and subcommittee formed S23 Consolidated with 22-AP-G)
1	24-AP-L	Administrative stays	Will Havemann	Initial consideration and subcommittee formed F24 Discussed at S25 meeting Discussed at F25 meeting
1	24-AP-M	Rule 4: Reopening time to appeal	Judge Sutton Judge Gregory	Initial consideration and subcommittee formed F24 Discussed at S25 meeting Discussed at F25 meeting

Status	FRAP Item	Proposal	Source	Current Status
1	25-AP-B	Bar admission	National Women's Law Center	Initial consideration F25
1	25-AP-D	Treatment of Tribes	National Tribal Association	Initial consideration and subcommittee formed F25
1	25-AP-E	Rule 32: Double-sided printing	Paula Anthony	Initial consideration S26
1	25-AP-F	Rule 28: Introduction section in briefs	Judge Newsom & Judge Pryor	Initial consideration S26
1	26-AP-1	Rule 4: Reopening time to appeal	Devin N. Wesenberg	Initial consideration S26
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 (To be discussed F26)
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
x	24-AP-E	Rule 28; standards of review	Jonathan Cohen	Initial consideration and removed from agenda F24
x	24-AP-F	Comment on costs on appeal	Sai	Initial consideration and removed from agenda F24
x	24-AP-H	Name styling	Sai	Initial consideration and removed from agenda F24
x	24-AP-I	Common local rules as Federal Rules	Sai	Initial consideration and removed from agenda F24
x	24-AP-J	New federal common rules	Sai	Initial consideration and removed from agenda F24
x	24-AP-K	Standardize word and page equivalents	Sai	Initial consideration and removed from agenda F24
x	24-AP-N	Computing Time	Jack Metzler	Initial consideration and removed from agenda S25
x	25-AP-A	Destination of Appeal	Anthony Mallgren	Initial consideration and removed from agenda F25

TAB 1C

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective December 1, 2025, unless otherwise noted

Current Step in REA Process:

- Effective December 1, 2025

REA History:

- Transmitted to Congress (Apr 2025)
- 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	

Revised March 16, 2026

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- 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
	chapters of the Code, not merely electronic payments in chapter 13 cases. The amended form went into effect December 1, 2024.	
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

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2026

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2025) (except see [2025 U.S. Supreme Court Package](#) to view the March 10, 2026 request to withdraw proposed amendments to Appellate Rules 29 and 32 and the Appendix of Length Limits).

REA History:

- Approved by Standing Committee (June 2025 unless otherwise noted)
- 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 amend Rule 29(a) relating to amicus filings during a court’s initial consideration of a case into renumbered Rule 29(a)-(e) and expand the disclosure obligations. Rule 29(f) (formerly Rule 29(b)) would relate to amicus filings during the rehearing stage. The length limit for amicus briefs at the initial stage as set forth in Rule 29(a)(5) would be amended to set a specific word limit of 6,500 words.	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.	

Revised March 16, 2026

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Current Step in REA Process:

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REA History:

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

PROPOSED AMENDMENTS TO THE FEDERAL RULES

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

Revised March 16, 2026

PROPOSED AMENDMENTS TO THE FEDERAL RULES

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
	<p>pretrial disclosures as to whether testimony at trial will be offered in person or by remote means.</p> <p>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.</p> <p>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.”</p>	
CV 81	<p>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.</p>	
EV 609	<p>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.”</p>	
EV 707	<p>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.</p>	

TAB 1D

**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
Prohibiting Political Prosecutions Act of 2026	<p><u>H.R. 7575</u> <i>Sponsor:</i> Goldman (D-NY)</p> <p><i>Cosponsors:</i> Norton (D-DC) Gomez (D-CA) Larson (D-CT)</p>	CR 6, 16, 48	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr7575/BILLS-119hr7575ih.pdf</p> <p>Summary: Would amend Criminal Rules 6 (to require the government to inform the grand jury of exculpatory evidence and things that may impact a witness’s credibility), 16 (to require the government to inform the defendant of the grand jury vote) and 48 (to allow dismissal based on politically-motivated prosecution).</p>	<ul style="list-style-type: none"> • 2/13/2026: Introduced in House and referred to Committee on the Judiciary
Litigation Funding Transparency Act of 2026	<p><u>S. 3826</u> <i>Sponsor:</i> Grassley (R-IA)</p> <p><i>Cosponsors:</i> Tillis (R-NC) Kennedy (R-LA) Cornyn (R-TX)</p>	CV 26	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s3826/BILLS-119s3826is.pdf</p> <p>Summary: Would require disclosure of third-party funding in MDL, class action, and other large litigations (100+ consolidated or coordinated cases). Disclosure of the identity of the funder and the agreement must be made to the court and the parties. Would also prohibit funders from exerting control over the litigation or viewing materials produced in discovery, unless ordered otherwise by the court.</p>	<ul style="list-style-type: none"> • 2/11/2026: Read twice and referred to the Committee on the Judiciary
Protecting TPLF From Abuse Act	<p><u>H.R. 7015</u> <i>Sponsor:</i> Issa (R-CA)</p> <p><i>Cosponsors:</i> Fitzgerald (R-WI) Baumgartner (R-WA)</p>	CV 26	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr7015/BILLS-119hr7015ih.pdf</p> <p>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.</p>	<ul style="list-style-type: none"> • 1/12/2026: Introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
<p>Sunshine for Regulatory Decrees and Settlements Act of 2025</p>	<p>H.R. 6622 <i>Sponsor:</i> Cline (R-VA)</p> <p><i>Cosponsor:</i> Tiffany (R-WI)</p>	<p>CV 24, 41</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr6622/BILLS-119hr6622ih.pdf</p> <p>Summary: Would impose additional requirements for consent decrees or dismissals pursuant to settlement agreements in agency actions. Would also create additional considerations for the court for motions to intervene in agency actions.</p>	<ul style="list-style-type: none"> 1/8/2026: Ordered to be Reported (Amended) 1/8/2026: Committee Consideration and Mark-up Session Held 12/11/2025: Introduced in House; referred to Judiciary Committee
<p>Back the Blue Act of 2025</p>	<p>S. 3366 <i>Sponsor:</i> Cornyn (R-TX)</p> <p><i>Cosponsors:</i> 38 Republican Cosponsors</p>	<p>§ 2254 Rule 11</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s3366/BILLS-119s3366is.pdf</p> <p>Summary: Would amend Rule 11 of the Rules Governing Section 2254 Cases by adding: “Rule 60(b)(6) of the Federal Rules of Civil Procedure shall not apply to a proceeding under these rules in a case that is described in section 2254(j) of title 28, United States Code.”</p>	<ul style="list-style-type: none"> 12/4/2025: Introduced in Senate; referred to Judiciary Committee
<p>Protecting Our Courts from Foreign Manipulation Act of 2025</p>	<p>H.R. 2675 <i>Sponsor:</i> Cline (R-VA)</p> <p><i>Cosponsors:</i> 19 bipartisan cosponsors</p>	<p>CV 26</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr2675/BILLS-119hr2675ih.pdf</p> <p>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 litigation funding by foreign states and sovereign wealth funds.</p>	<ul style="list-style-type: none"> 11/20/2025: Ordered to be Reported (Amended) 11/20/2025: Committee consideration and mark-up session held 11/18/2025: Committee consideration and mark-up session held 4/7/2025: H.R. 2675 introduced in House; referred to Judiciary Committee
<p>Litigation Transparency Act of 2025</p>	<p>H.R. 1109 <i>Sponsor:</i> Issa (R-CA)</p> <p><i>Cosponsors:</i> 24 Republican cosponsors</p>	<p>CV 5, 26</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf</p> <p>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.</p>	<ul style="list-style-type: none"> 11/19/2025: Committee consideration and mark-up session held 11/18/2025: Committee consideration and mark-up session held 2/7/2025: H.R. 1109 introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
<p>Protecting Our Courts from Foreign Manipulation Act of 2025</p>	<p>S. 3180 <i>Sponsor:</i> Kennedy (R-LA)</p>	<p>CV 26</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s3180/BILLS-119s3180is.pdf</p> <p>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 litigation funding by foreign states and sovereign wealth funds.</p>	<ul style="list-style-type: none"> • 11/18/2025: Introduced in Senate; referred to Judiciary Committee
<p>Protecting Our Democracy Act</p>	<p>S. 2838 <i>Sponsor:</i> Schiff (D-CA)</p> <p><i>Cosponsors:</i> 9 Democratic and Independent Cosponsors</p>	<p>CV – New Rule(s)</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s2838/BILLS-119s2838is.pdf</p> <p>Summary: Would require the Judicial Conference to create rules of procedure to ensure expeditious treatment of civil actions brought by Congress to enforce compliance with a subpoena.</p>	<ul style="list-style-type: none"> • 9/17/2025: S. 2838 introduced in Senate; referred to Committee on Homeland Security and Governmental Affairs
<p>Lawsuit Abuse Reduction Act of 2025</p>	<p>H.R. 5258 <i>Sponsor:</i> Collins (R-GA)</p> <p><i>Cosponsors:</i> Gill (R-TX) Tiffany (R-WI) Hageman (R-WY)</p>	<p>CV 11</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr5258/BILLS-119hr5258ih.pdf</p> <p>Summary: Would amend Civil Rule 11 to require the court to issue sanctions for Rule 11 violations, which shall consist of an order to pay the amount of the reasonable expenses incurred as a direct result of the violation.</p>	<ul style="list-style-type: none"> • 9/10/2025: H.R. 5258 introduced in House; referred to Judiciary Committee
<p>Restoring Artistic Protection Act of 2025</p>	<p>H.R. 4678 <i>Sponsor:</i> Johnson (D-GA)</p> <p><i>Cosponsors:</i> 20 Democratic cosponsors</p>	<p>EV 416</p>	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr4678/BILLS-119hr4678ih.pdf</p> <p>Summary: Would create a new Evidence Rule (416, Limitation on Admissibility of Defendant’s Creative or Artistic Expression) that would make a defendant’s creative or artistic expression inadmissible unless the government proves by clear and convincing evidence that one of several exceptions applies.</p>	<ul style="list-style-type: none"> • 7/23/2025: H.R. 4678 introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Rape Shield Enhancement Act of 2025	H.R. 3596 <i>Sponsor:</i> Mace (R-SC)	EV 412; CV 26; CR 16	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr3596/BILLS-119hr3596ih.pdf</p> <p>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.</p>	<ul style="list-style-type: none"> 5/23/2025: H.R. 3596 introduced in House; referred to Judiciary Committee
Supreme Court Ethics, Recusal, and Transparency Act of 2025	S. 1814 <i>Sponsor:</i> Whitehouse (D-RI) <i>Cosponsors:</i> 27 Democratic and Independent cosponsors	AP 29	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s1814/BILLS-119s1814is.pdf</p> <p>Summary: Would require the Judicial Conference to prescribe rules of procedure requiring certain amicus disclosures and for prohibiting the filing of or striking an amicus brief that would result in the justice, judge, or magistrate judge’s disqualification.</p>	<ul style="list-style-type: none"> 5/20/2025: S. 1814 introduced in Senate; referred to Judiciary Committee
Sunshine in the Courtroom Act of 2025	S. 1133 <i>Sponsor:</i> Grassley (R-IA) <i>Cosponsors:</i> Klobuchar (D-MN) Durbin (D-IL) Blumenthal (D-CT) Markey (D-MA) Cornyn (R-TX)	CR 53	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/s1133/BILLS-119s1133is.pdf</p> <p>Summary: Would permit court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.</p>	<ul style="list-style-type: none"> 3/26/2025: Introduced in Senate; referred to Judiciary Committee
Trafficking Survivors Relief Act of 2025	H.R. 1379 <i>Sponsor:</i> Fry (R-SC) <i>Cosponsors:</i> 17 bipartisan cosponsors	CR 29	<p>Most Recent Bill Text: https://www.congress.gov/119/bills/hr1379/BILLS-119hr1379ih.pdf</p> <p>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.</p>	<ul style="list-style-type: none"> 2/14/2025: H.R. 1379 introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
<p>Alexandra’s Law Act of 2025</p>	<p><u>H.R. 780</u> <i>Sponsor:</i> Issa (R-CA)</p> <p><i>Cosponsors:</i> Kiley (R-CA) Obernolte (R-CA)</p>	<p>EV 410</p>	<p>Most Recent Bill Text: <u>https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf</u></p> <p>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.</p>	<ul style="list-style-type: none"> • 1/28/2025: H.R. 780 introduced in House; referred to Judiciary and Energy & Commerce Committees
<p>Protect the Gig Economy Act of 2025</p>	<p><u>H.R. 100</u> <i>Sponsor:</i> Biggs (R-AZ)</p>	<p>CV 23</p>	<p>Most Recent Bill Text: <u>https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf</u></p> <p>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.”</p>	<ul style="list-style-type: none"> • 1/3/2025: H.R. 100 introduced in House; referred to Judiciary Committee

TAB 1E



Date: March 13, 2026

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

Completed Research for Rules Committees

Intervention on Appeal

At the request of the Appellate Rules Committee, the Center examined motions to intervene on appeal (www.fjc.gov/content/394353/intervention-federal-courts-appeals). Intervention at the beginning of a case was studied in a two-year filing cohort, and intervention at the end of a case, such as after argument or judgment, was examined in a four-year termination cohort.

Current Research for Rules Committees

Deepfakes and Authenticity

The Evidence Rules Committee is exploring whether the authenticity standard should be made more stringent than it now is for potentially fabricated evidence created by artificial intelligence. The committee asked the Center to survey all federal judges to ascertain their experiences and views.

Temporary Administrative Stays in the Courts of Appeals

The Appellate Rules Committee has requested research on courts of appeals' issuing temporary administrative stays following motions for stays pending appeals.

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

Allocating District-Court Case-Weighting Credit for Motions Arising Under 18 U.S.C. § 3582(c)

At the request of the Judicial Resources Committee, the Center developed new case weights for motions to modify prison sentences. The Center periodically conducts empirical research to prepare quantitative weights for case types, which are used in the computation of weighted caseloads, which in turn are used when assessing the need for judgeships. The interim weights were approved by the Judicial Conference in September to be used until the next comprehensive district-court case-weighting study is conducted.

Current Research for Other Judicial Conference Committees

Harm to Cooperators

At the request of the Court Administration and Case Management Committee, the Criminal Law Committee, and the Committee on Defender Services, the Center is updating its 2016 research on harms and threats of harm to government cooperators in criminal prosecutions (www.fjc.gov/content/310414/survey-harm-cooperators-final-report).

Evaluation of a Pilot Program in Which Comparative Sentencing Information Is Included in 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.

Case Weights for Bankruptcy Courts

The Center has completed 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.

JUDICIAL GUIDES

Completed

Benchbook for U.S. District Courts

The Center has published a seventh edition of its compilation of information that federal judges have found useful for immediate bench or chambers reference in civil and criminal proceedings (www.fjc.gov/content/397447/benchbook-us-district-courts-seventh-edition). The benchbook contains sections on such topics as assignment of counsel, taking guilty pleas, standard voir dire questions, sentencing, and contempt.

Reference Manual on Scientific Evidence

The Center collaborated with the National Academies of Science, Engineering, and Medicine to prepare a fourth edition of the *Reference Manual on Scientific Evidence* (www.fjc.gov/content/396456/reference-manual-scientific-evidence-fourth-edition). The reference manual includes chapters on the admissibility of expert testimony and how science works and reference guides on forensic feature comparison evidence, human DNA identification evidence, eyewitness identification, statistics and research methods, multiple regression and advanced statistical models, survey research, estimation of economic damages, exposure science and exposure assessment, epidemiology, toxicology, medical testimony, neuroscience, mental health evidence, engineering, computer science, and artificial intelligence.

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).

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).

HISTORY

Resources for Public Speaking

These materials were developed for judges and court staff who wish to speak to groups about various aspects of federal-court history (www.fjc.gov/history/public-speaking-resources). The following units were added in 2026: “Defining the Boundaries Between Article III and Non-Article III Courts,” “Differences Between Federal and State Courts,” “Judicial

Administration,” “Legal Interactions Between Federal and State Courts,” “The Judiciary During the Gilded Age,” “The Judiciary During the U.S. Civil War,” “U.S. Bankruptcy Judges,” and “U.S. Magistrate Judges.”

Evaluating Historical Evidence

The Center offered judges a six-part interactive online series that provided tools for managing cases with significant historical evidence. Historians discussed historical methodology and provided practical tips for evaluating historical evidence, whether presented in the form of expert witnesses, amicus briefs, or litigant arguments.

EDUCATION

Specialized Workshops

Employment Law Workshop 2025

This two-day workshop, comprising small group discussions and presentations featuring federal judges and seasoned management-side and employment-side attorneys, included information on expeditious and fair case handling and remedies and an update on Supreme Court employment-law developments.

Immigration Law for U.S. District Courts

In this two-day seminar, judges discussed the rapidly changing area of immigration law.

Distance Education

Conducting Judicial Mediations and Settlement Conferences: Ethical Considerations for Bankruptcy Judges

Bankruptcy judges often are asked to mediate in the cases of other judges, and some judges conduct settlement conferences in their own cases. This program discussed navigating the intersection of these roles and activities with the Code of Conduct for U.S. Judges and other relevant sources.

Supreme Court Term in Review for Bankruptcy Judges

A September 2025 webcast discussed some of the most significant Supreme Court decisions, including key bankruptcy cases.

Court Web

This periodic webcast included as recent episodes “Federal Sentencing Update” (featuring Northern District of Ohio Judge Benita Pearson and U.S. Sentencing Commission Education Director Alan Dorhoffer) and “Supreme Court: October Term 2025” (featuring Erwin Chemerinsky and Paul Clement).

Term Talk

Each term, the Center presents video podcasts with the nation's top legal scholars discussing what federal judges need to know about the Supreme Court's most impactful decisions (www.fjc.gov/education/fjc-videos-podcasts?category=Supreme-Court).

Consumer Case-Law Update for Bankruptcy Judges

This quarterly webcast features consumer-bankruptcy case-law updates by retired Western District of Tennessee Bankruptcy Judge William H. Brown.

Business Case-Law Update for Bankruptcy Judges

This quarterly webcast features Professor Bruce Markell (a retired bankruptcy judge).

A Review of Ninth Circuit Bankruptcy Decisions

This annual webcast features judges on the Ninth Circuit Bankruptcy Judges Education Committee discussing significant decisions by the Supreme Court, the Ninth Circuit's court of appeals, and the Ninth Circuit's bankruptcy appellate panel.

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.

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 Eleventh Circuit.

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

January 6, 2026

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in Washington, D.C., on January 6, 2026. The following members were present:

Judge James C. Dever III, Chair
Judge Paul J. Barbadoro
Elizabeth J. Cabraser, Esq.
Louis A. Chaiten, Esq.
Judge Colm F. Connolly
Judge Joan N. Ericksen

Judge Stephen Higginson
Justice Edward M. Mansfield
Dean Troy A. McKenzie
Andrew J. Pincus, Esq.
Judge Allison J. Rushing (attended remotely)
Elizabeth J. Shapiro, Esq.¹
Bart H. Williams, Esq.

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

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 Criminal Rules:
Judge Michael W. Mosman, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

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

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

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

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: Bridget M. Healy, Esq., and Sarah A. Sraders, 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; Judge Robin L. Rosenberg, Director, and Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC). Chief Judge Michael A. Chagares, on behalf of the Executive Committee of the Judicial Conference, attended remotely.

1. OPENING BUSINESS

A. Welcome and Opening Remarks

Judge James C. Dever III, Chair of the Standing Committee, called the meeting to order and welcomed the members, participants, and observers, including those attending remotely. Judge Dever noted that Judge D. Brooks Smith was unable to attend the meeting.

Judge Dever then welcomed the new members of the Committee: Judge Allison Rushing, who has served on the Fourth Circuit since 2019; Judge Colm Connolly, who has served as a district judge in the District of Delaware since 2018; and Bart Williams, a partner with the law firm Proskauer Rose in its Los Angeles office. He also welcomed two new Advisory Committee chairs: Judge Sarah Vance, the new chair of the Civil Rules Committee, from the Eastern District of Louisiana; and Judge Michael Mosman, the new chair of the Criminal Rules Committee, from the District of Oregon.

Judge Dever also informed the Committee that Sarah Sraders, who had been the Rules Law Clerk, had moved into a counsel position in the Rules Office and would be staffing the Civil Rules Committee. He also recognized Bridget Healy, counsel to the Bankruptcy Rules Committee and Appellate Rules Committee, for her twenty years of service in the judiciary. He concluded the welcoming remarks by noting that a recognition ceremony for Professor Catherine Struve, Joe Spaniol, and Professor Edward Hartnett would take place at the end of the meeting.

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 June 10, 2025 meeting.

C. Comments on 2025 Strategic Plan for the Judiciary

Judge Dever informed the members of the request of Chief Judge Michael Chagares, on behalf of the Executive Committee of the Judicial Conference and in his capacity as Planning Coordinator, to identify up to three of the Judiciary's five priorities listed in the 2025 Strategic Plan for the Judiciary to be prioritized over the next two years. The 2025 Strategic Plan for the Judiciary is included in the agenda book beginning at page 56.

Judge Dever suggested that the Standing Committee identify the following goals: (1) providing fair and impartial justice; (2) efficiently and effectively managing public resources; and (3) realizing technology's full value and managing its risks. Judge Dever then invited comments from Chief Judge Michael Chagares, who appeared remotely. Judge Chagares noted that Priority 1.3, ensuring that court rules,

processes, and procedure meet the needs of lawyers and litigants in the judicial process, goes to the core of the Committee's jurisdiction.

After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee approved identifying the three goals set forth in the 2025 Strategic Plan as described by Judge Dever.

D. Status of Rule Amendments

Carolyn A. Dubay, Chief Counsel and Secretary to the Standing Committee, gave a brief report on the status of proposed rule amendments, referencing the chart of proposed amendments to the federal rules included in the agenda book beginning on page 90. Ms. Dubay drew the Committee's attention to the upcoming hearings on proposed rule amendments that the Standing Committee approved for publication and public comment at its June 2025 meeting. She further noted that final rule amendments approved by the Standing Committee at the June 2025 meeting were approved by the Judicial Conference and delivered to the Supreme Court in October 2025 for its review.

E. Legislative Update

Sarah Sraders, Counsel to the Civil Rules Committee, provided an update on pending legislation that directly or effectively amends the federal rules, referencing the chart of legislative proposals in the agenda book beginning on page 97. Ms. Sraders drew the Committee's attention to several bills involving third-party litigation funding, noting that the Protecting Our Courts from Foreign Manipulation Act had recently been reported favorably by the House Judiciary Committee. She also highlighted the Litigation Transparency Act, noting that no action has been taken on this bill since it was introduced.

F. Federal Judicial Center Update

Judge Robin R. Rosenberg, Director of the Federal Judicial Center, provided the Committee with an update on the FJC's activities relating to the work of the Rules Committees. The FJC Report is included in the agenda book beginning on page 120.

Judge Rosenberg began her report by highlighting a project for the Appellate Rules Committee to examine motions to intervene on appeal, both at the beginning and end of the case's time in the court of appeals. Judge Rosenberg also noted that the FJC has ongoing research regarding temporary administrative stays and attorney admissions, and is developing a collection of resources on complex criminal litigation at the suggestion of the Criminal Rules Committee.

Judge Rosenberg next provided an overview of other FJC projects. This includes projects involving case weights, a review of local rules relating to redaction of private information in public court filings, supplemental research on the prevalence of unredacted social security numbers in public court filings, and appeals of *sua sponte* remand orders after Class Action Fairness Act (CAFA) removals.

Other projects Judge Rosenberg described included a pilot program on comparative sentencing information for pre-sentence investigative reports, the privacy study regarding unredacted private personal information, a bankruptcy court case weights study, and the second edition of the FJC's publication on

consumer bankruptcy law. Judge Rosenberg noted a large number of inquiries for resources on artificial intelligence (AI), and that the FJC is working on a website of AI resources for judges, and an AI chapter in the new manual for scientific evidence. The FJC is also preparing a new edition of the Manual for Complex Litigation, which has not been updated since 2004. With respect to criminal cases, the FJC is preparing the seventh edition of its manual on recurring issues in criminal trials, and a new bench book for district court judges and magistrate judges.

Judge Rosenberg also noted the work of the FJC's History Division, which had developed an online series on managing cases with significant historical evidence, and had developed a program in partnership with the American Bar Association to provide professional development for teachers focusing on three famous historical trials. With respect to education efforts, Judge Rosenberg briefly noted the FJC's ongoing judicial education programs.

Judge Rosenberg concluded her remarks by thanking Judge Chagares for his work on the Judiciary's 2025 Strategic Plan and emphasized the importance of adhering to the core values and priorities outlined in the plan.

Judge Dever thanked Judge Rosenberg for her remarks and for the invaluable support the FJC provides to the Rules Committees.

2. JOINT COMMITTEE BUSINESS

Judge Dever then turned to Joint Committee Business.

A. Electronic Filing by Self-Represented Litigants

Professor Catherine Struve, Standing Committee Reporter, provided an update on the project on self-represented litigants. Professor Struve's memorandum appears on page 127 of the agenda book.

Professor Struve explained the two goals of the project: (1) eliminate the requirement for paper service of documents (after the initial filing) on litigants who already receive notice of case activity through the electronic filing system; and (2) adopt a rule that would presumptively permit self-represented litigants to file electronically, unless a court order or local rule bars them from doing so. On this last issue, the proposed rule would provide that if a court adopts a local rule that generally bars self-represented litigants from using the court's electronic filing system, it must include reasonable exceptions or allow the use of some other electronic method for filing.

Professor Struve informed the members that after considerable discussions among the four relevant Advisory Committees, which benefited greatly from the work of the Reporters, Advisory Committee members, FJC, and the clerk liaisons, the Advisory Committees are prepared to develop rule amendments for potential presentation to the Standing Committee in June 2026 for approval to publish for public comment. Professor Struve noted that among the relevant Advisory Committees, the Bankruptcy Rules Committee raised the most concern regarding the project because of the specifics of bankruptcy practice and would like the benefit of public comment before deciding whether to ultimately seek approval of such a rule.

The members then discussed the project for electronic filing for self-represented litigants.

A judge member expressed his enthusiasm for the project and offered three points. First, he was not clear as to the default consequence if a filing is non-conforming. Second, he was not clear as to what happens if a recipient does not receive a document and whether it is considered not filed. Third, he expressed his view, in opposition to the Department of Justice's position, that this project should not be limited to parties and should address electronic filing by unrepresented non-parties, particularly victims and subpoena recipients.

Professor Struve answered the first question, noting that the question as to the default consequence for a non-conforming filing has been considered. There was some sentiment in the Advisory Committee meetings in the fall that this was an issue outside the scope of the current project, and that the Advisory Committees did not want to take on that issue at this time. However, some participants expressed interest in trying to work it into the current project, so the issue is still pending for discussion. As to the question (whether to retain existing rule provisions providing that electronic service is not effective if the filer learns that it did not reach the person to be served), Professor Struve responded that the project probably should maintain the approach taken by the current rules. Finally, as to the third question, Professor Struve noted that the question of non-parties has a different valence among the different sets of rules, and project participants would give the question close attention.

Judge Dever thanked the judge member for his comments and encouraged the members of the Committee to provide feedback on any of the items presented.

B. Report of Joint Subcommittee on Attorney Admission

Professor Struve next provided an oral report on the work of the Joint Subcommittee on Attorney Admission. The subcommittee was formed in late 2023 in response to a proposal by Associate Dean Alan Morrison and others with respect to the attorney admissions practices of the federal trial courts. At present, the subcommittee is in the information gathering process.

Dean Morrison's proposal pointed out that a number of federal district courts require, as a condition of admission to the district court bar, that the attorney be admitted to the bar of the encompassing state. Among such states, four require, as a condition of admission to the state bar, that the attorney seeking admission take the bar exam. The proposal suggested that a rule could be adopted providing that admission to any federal district court entitles a lawyer to practice before any other district court, or as an alternative, barring a district court from requiring as a condition of admission to the bar that the applicant reside in or be a member of the bar of the state in which the district court is located.

Professor Struve reported that the subcommittee had also been thinking about the Appellate Rule 46 model, which is considerably more open than the approach taken by the more restrictive district courts – but that the subcommittee has noted the differences between appellate and trial-level practice.

With no questions or comments from the members, Judge Dever thanked Professor Struve for her report. Judge Dever further noted that Judge Paul Oetken had been the chair of the subcommittee but his term on the Bankruptcy Rules Committee had ended. Judge Leigh May, who replaced Judge Oetken on the

Bankruptcy Rules Committee, will join the subcommittee. The subcommittee also lost another member (from the Criminal Rules Committee), so a replacement will be added.

C. Privacy Rules and Redaction

Ms. Dubay provided an oral report on the privacy rules project, which focuses on two issues: (1) full redaction of social security numbers or other taxpayer identifying numbers in public court filings; and (2) use of pseudonyms instead of initials when referencing minors in public court filings. Ms. Dubay informed the members that each of the relevant Advisory Committees had considered a rule amendment to address the unique context of their proceedings, and planned to consider proposed language at their spring meetings, with the ultimate goal to present those proposed amendments to the Standing Committee in June 2026 for approval to publish for public comment.

With no questions or comments from the members, Judge Dever proceeded to the Advisory Committee reports.

3. ADVISORY COMMITTEE REPORTS

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

Judge Eid presented the report of the Advisory Committee on Appellate Rules, which last met on October 15, 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 130.

1. Status of Public Comments on Draft Amendments to Rule 15

Judge Eid reported on the status of the proposed amendments to Rule 15 regarding review of administrative agency decisions, which were published for public comment in August 2025. Judge Eid noted that two comments – both favorable– had been received and expressed hope that more comments would be received before the February 16, 2026, deadline.

Judge Eid explained that the proposed amendments were intended to address the “incurably premature doctrine,” which arises if a motion to reconsider an agency decision renders the decision unreviewable and requires dismissal of the only petition for review. This sequence of events is a trap for the unwary of the kind that the 1993 amendments to Rule 4 addressed in the context of district court decisions. Judge Eid noted that, for some reason, the 1993 amendments did not include a similar fix for petitions for review of agency decisions. The amendment to Rule 15, if it becomes final, will parallel the fix from Rule 4. The hope is that the amendment to Rule 15 will be presented to the Standing Committee for final review at its June 2026 meeting.

2. Status of Proposals Under Consideration

Judge Eid next discussed the Advisory Committee’s ongoing study of various issues, beginning with intervention on appeal.

Judge Eid explained that there is no current rule on intervention on appeal, and in the past, the Advisory Committee has been reluctant to draft a rule because members thought it would encourage intervention. In other words, if there is a rule, people will want to use it. Judge Eid stated that the Advisory Committee had moved past that concern and is working on a draft Rule 7.1, found on page 132 of the agenda book. Judge Eid then requested feedback on this draft, taking into account the draft's features as highlighted on page 134 of the agenda book.

Judge Eid described additional proposals under consideration. These include: (1) potential amendments to address reopening the time for appeal under Rule 4(a)(6) in light of the Supreme Court's decision in *Parrish v. United States*, with draft language appearing on page 138 of the agenda book; (2) ongoing study of administrative stays under Rule 8, with research assistance from the FJC; (3) ongoing study of a Uniform Rule of Bar Admissions to the Court of Appeals, with practitioners on the Advisory Committee noting difficulties posed by differing bar admission standards amongst the circuits; (4) the treatment of tribes under the appellate rules; (5) privacy amendments relating to redaction of social security numbers and reference to minors; and (6) expanding e-filing for self-represented litigants.

Judge Eid then invited Professor Hartnett to share anything he wished to add. Professor Hartnett noted two things. First, with regard to the possibility of a rule on intervention on appeal, he stated that it would be particularly valuable to receive feedback from the Standing Committee on two issues: (1) general feedback on whether the Advisory Committee is on the right track, and (2) whether the rule should specify the kinds of legal interests that count for intervention. On this issue, Professor Hartnett noted that greater specificity is helpful, but there is a risk that greater specificity risks considerable confusion and leaving out some important interests. Second, Professor Hartnett emphasized the interest in receiving feedback on the privacy amendments, found on page 142 of the agenda book. The general approach is to apply the rule applied in the district courts, but an extra layer of protection may also be appropriate in the courts of appeals because once on appeal, whatever good reasons there were for not redacting at the trial level (as to social security numbers, tax identification numbers, and the like) may not apply to a public filing in the court of appeals.

Judge Eid then noted that Professor Hartnett would be leaving his role as Reporter for the Advisory Committee to assume the role of Reporter for the Standing Committee. Judge Eid remarked on how amazing Professor Hartnett had been as the Appellate Reporter, with an incredible ability to take moving parts and get them to line up and make sense.

a. Proposed Rule 7.1 and Intervention on Appeal

Following Judge Eid's report, the members discussed intervention on appeal. A judge member expressed support for the efforts of the Advisory Committee and raised several questions relating to intervention on appeal. Specifically, the judge member asked if the Advisory Committee had drawn from Civil Rule 24 case law to draft the proposed rule, and suggested addressing the may/must distinction (with Rule 24 using the term "must permit" intervention if the criteria are met and the proposed Appellate Rule 7.1 using the term "may permit" intervention). This raises the issue of whether intervention would be as of right, or whether the appellate court would still have discretion (permissive intervention). The judge member also asked (1) would government motions be treated differently, and (2) what is the scope of the unfair

prejudice prong (subsection F in proposed Rule 7.1(b)(1)). On this latter issue, under Civil Rule 24, that determination goes to timeliness, but in proposed Rule 7.1, it is included as a factor. The judge member also pointed to line 19, page 133 of the agenda book with the proposed language in Rule 7.1(b)(1)(D), which as drafted states as a consideration that existing parties “will not” adequately protect the intervenor’s interest, and suggested that this could be rephrased to loosen the language, such as “are not likely to protect” or “may not protect.” Finally, the judge member raised the issue of the word “exceptional” in the language in Rule 7.1(a), found at line 4 on page 132 of the agenda book. On this point, the judge member asked if the Advisory Committee contemplated other words, such as “rare,” which would still suggest that granting a motion would not be frequent, but would give more flexibility than the word exceptional.

Professor Hartnett addressed these questions. As to the word “exceptional,” Professor Hartnett explained that the Advisory Committee is considering whether to stay with that “exceptional” language or to soften that a bit. As to Civil Rule 24, Professor Hartnett confirmed that it was considered, but in terms of the overall framing of the proposed rule, the draft language was driven by the case law in the courts of appeals that emphasizes how rare and exceptional intervention should be (although there is some dispute about whether every circuit articulates that point). On the unfair prejudice language, Professor Hartnett noted that phrasing undue prejudice broadly allows the rule to encompass other types of prejudice beyond that caused by untimeliness. Though the Advisory Committee had not found examples of such other types of prejudice, it did not want to close the door to those possibilities.

Another judge member raised a question about the draft language in Rule 7.1(b)(2), found on page 133 of the agenda book, relating to government intervention. Specifically, the judge member pointed to the language in proposed Rule 7.1(b)(2)(A), which permits a government to move to intervene to defend any “action it or one of its agencies or officers has taken,” and Yes. noted that this may be broader than existing Civil Rule 24. Civil Rule 24 is framed in terms of government intervention where a claim or defense is based on a statute or executive order. Professor Hartnett explained that at the very least, the proposed language covers the United States’s statutory right to intervene to defend the constitutionality of a federal statute. The proposed rule was drafted with the idea that there is no particular reason to not let the government defend its actions if the claim or defense raises a statutory rather than constitutional challenge to government action, but the Advisory Committee would look at that issue more closely.

A lawyer member noted that there was a lot of concern from the judges on the Advisory Committee that this rule could open the floodgates to intervention motions unless it was made clear that permission to intervene was the exception to the rule. This discussion is the source of the “exceptional” language. The unfair-prejudice prong is designed to provide a broad way to address the problem of non-parties coming in and raising arguments that were not raised below because they had failed to protect their interest in the district court.

Another judge member asked what problem the proposed rule was trying to solve and whether appellate courts could simply decide this according to case law and common sense. Professor Hartnett explained that one reason for drafting the rule is that these motions are being made frequently, as indicated in the FJC report. The Supreme Court has also noted the absence of a rule on intervention on appeal. Also, a rule would help lawyers to advise clients not to pursue intervention because they could point to the

standard set forth in the rule. Professor Hartnett also noted that while there is momentum towards a rule, the DOJ was not represented at the fall 2025 meeting because of the government shutdown and its position is not clear. At this point, Ms. Shapiro, on behalf of DOJ, confirmed that their representative could not attend the fall meeting because of the lapse in appropriations, but also noted that DOJ is extremely skeptical that a rule is necessary, and is particularly concerned about opening the floodgates to intervention whenever people are unhappy with an agency action that is on appeal.

The lawyer member added that part of the impetus for the rule was situations in which a federal or state government litigant changed its position and decided not to defend a rule on appeal. This issue arose in a Supreme Court case involving a state rule.

A judge member, noting his disagreement with the DOJ, added that the biggest need for intervention, and for administrative stays on the emergency interim docket, was in agency cases. He further pointed out language on page 134 of the agenda book noting that based on the FJC report, the Advisory Committee did not think that the intervention rule should pertain to agency review cases. The judge member noted his strong disagreement with that conclusion, and disagreement with excluding agency actions from the administrative-stay project as well, discussed in the Advisory Committee minutes on page 158 of the agenda book.

A lawyer member clarified that the Advisory Committee was drawing a distinction between agency cases coming from the district courts and agency cases on direct review in the courts of appeals. He noted that there is a robust settled practice for dealing with intervention in connection with a petition in the court of appeals for review or enforcement of an agency order, and that the Advisory Committee wished to avoid unsettling that practice.

b. Rule 25(a)(5)(C) and Privacy Considerations

The members then discussed the proposed amendments on privacy. A judge member asked whether amendments to Rule 25(a)(5)(C) would address redactions relating to minors, or whether that issue would have its own separate rule. Professor Hartnett explained that the proposed amendment would carry forward current Rule 25(a)(5)'s approach, which is generally to incorporate by reference whatever privacy provision applied below. Accordingly, provisions in the Criminal, Civil, and Bankruptcy Rules concerning pseudonyms for minors will carry forward on appeal. The Advisory Committee does not think there is a need for a special appellate rule on minors or a differing rule on appeal. The judge member responded that the privacy of minors is often overlooked, and it is worth considering the additional layer of privacy with respect to identification of minors on appeal. She further noted that appellate decisions are read by more people, and these opinions are more accessible, and she is in favor of making sure that we protect the minors as much as possible.

Professor Sara Sun Beale, Reporter for the Criminal Rules Committee, noted that Criminal Rules has taken the lead on these privacy provisions, and commented that it appears that all of the Advisory Committees agree on the move from initials for minors to pseudonyms. The disagreement has to do with social security numbers. Given the expectation that the Bankruptcy Rules will not be amended to require full redaction of Social Security numbers, the draft Appellate Rule 25 amendment is designed to require such redaction on appeal. The judge member responded that in criminal cases in the district courts, there

can be submissions from victims that are filed, and the name of the minor might not be caught given the speed and emotion that goes into filings in the district court. For this reason, she supports addressing the issue of minors so that oversights in the district court do not get repeated in the appellate record.

c. Rule 4 and Reopening Time for Appeal

The members then discussed the issue of reopening time for appeal. A lawyer member noted that his firm represented Mr. Parrish in *Parrish v. United States*, but that he did not think this precluded him from commenting on the proposed amendment. He proposed omitting the second sentence in proposed Rule 4(a)(6)(B) relating to whether a document should be construed as a notice of appeal. Rule 3 tells litigants how to file a notice of appeal, and courts already take a more liberal attitude with filings by *pro se* litigants. Interpretation of the notice of appeal is an issue for the courts rather than the litigants.

With no further discussion or questions from the members, Judge Dever proceeded to the next Advisory Committee report.

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

Judge Connelly presented one action item and several information items from the Advisory Committee on Bankruptcy Rules, which last met on September 25, 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 on page 164.

1. Retroactive Technical Amendment to Official Form 410C13-NR

Judge Connelly first presented the Advisory Committee’s request that the Committee approve technical amendments to Official Form 410C13-NR, retroactive to December 1, 2025. Judge Connelly explained that this form was part of a package of six new forms that were approved in connection with changes to Bankruptcy Rule 3002.1 and went into effect on December 1, 2025. Rule 3002.1 has a very active history and has been amended numerous times, including the recent amendment that included the addition of six new official forms.

To provide background on the need to correct Official Form 410C13-NR, Judge Connelly explained that Bankruptcy Rule 3002.1 applies only in Chapter 13, which is why the form has “C13” in its title. Judge Connelly then explained that one of the rights of a Chapter 13 debtor is to file a bankruptcy case, reinstate a mortgage that is in default, and use a three- to five-year time period to cure mortgage arrears. That cure occurs by making payments to a Chapter 13 trustee, who disburses those payments to a mortgage holder or mortgage servicer. During this three- to five-year period, however, there may be changes to the servicer, changes to the payments, or inconsistencies regarding timing. As a result, at the end of this three- to five-year period, the mortgage holder or servicer’s records may show that the arrears were not cured, but the debtor’s and trustee’s records show that they were. The amendments to Rule 3002.1 provide more transparency and notice in order to avoid these problems at the end of the case.

As part of the Rule 3002.1 amendments, the Bankruptcy Rules Committee changed an official form regarding the notice that the trustee submits to the mortgage holder or servicer and the form response by

the holder or servicer. The reason these are done as official forms is because of the volume and because management of these mortgage claims is usually handled at the mortgage-holder level, not the attorney level. Having a form that is uniform, that can be automated, and that can be managed by non-attorney staff is critical to compliance. And the mortgage holder or servicer will need to input it into a software program.

Official Form 410C13-NR was approved to go into effect December 1, 2025—along with all of the other forms, and along with the changes to Rule 3002.1. After this approval, one of the mortgage services caught a scrivener’s error. Official Form 410C13-NR, which the mortgage holder or servicer would file in response to the trustee’s notice of the disbursements that the trustee made on the mortgage claim, referred erroneously to the information as of the date of this “notice” in two places. The form was clearly meant to indicate that the respondent was sending its information as of the date of its “response” and not the date of the “notice.”

The servicer brought this to the attention of a member of the Bankruptcy Rules Committee, and the Advisory Committee was able to address this at its September 2025 meeting and approved changes to official Form 410C13-NR to change the word “notice” to “response” in two places. The approved, revised form appears in the agenda book at page 170. The Advisory Committee approved the changes with the expectation that it would come before the Standing Committee today to seek approval retroactive to December 1. The Advisory Committee determined that it was important for the changes to go into effect December 1, consistent with how the form should be used and applied, so that servicers and courts would have the correct form.

The Advisory Committee referred to authority that the Judicial Conference had issued in March of 2016, which specifically delegates authority to the Bankruptcy Rules Committee to make non-substantive, technical, and conforming changes to official bankruptcy forms, with any such changes subject to retroactive approval by the Standing Committee and notice to the Judicial Conference.

Judge Connelly, on behalf of the Bankruptcy Rules Committee, requested approval of the changes to Official Form 410C13-NR, retroactive to December 1, 2025. With no questions or comments from the members, and upon motion and a second, with no opposition, the Standing Committee approved the requested technical amendments.

2. Status of Proposals Under Consideration

Judge Connelly next presented information on the status of proposals under consideration by the Advisory Committee on Bankruptcy Rules.

a. Rule 9037 and Rule 8011 and Privacy Protections

Judge Connelly first addressed the privacy amendments focused on complete redaction of social security numbers. She explained that for many reasons, the Bankruptcy Rules Committee has determined that full redaction of social security numbers is not practicable at this time in bankruptcy cases, and that the Bankruptcy Rules should continue to permit filings to contain the last four digits in a social security number. For example, when a bankruptcy case gets filed, notice to those who are affected by the

bankruptcy is absolutely essential, including notice to creditors who must be able to identify the debtor accurately. For this reason, use of the last four digits of the social security number of the debtor in court filings is still necessary for the stakeholders to be able to identify the party who is in bankruptcy. The same issue of appropriate notice applies in bankruptcy cases involving an employer identification number (EIN), or an individual taxpayer identification number (ITIN). For those reasons, the Advisory Committee at this time will not pursue an amendment to Rule 9037 with respect to complete redaction of the social security numbers or other taxpayer identifying information.

The Bankruptcy Rules Committee supports changing the denotation of minors from initials to pseudonyms. As for what rule would apply when a bankruptcy case is appealed, the Bankruptcy Rules Committee believes that the appellate rule should be consistent for both bankruptcy appeals and non-bankruptcy appeals and that the need for the last four digits of the social security number does not continue at the appellate level. Judge Connelly anticipates that proposed amendments to Bankruptcy Rule 9037 (to address pseudonyms for minors) and Bankruptcy Rule 8011 (the appellate rule) will be presented to the Standing Committee at its June 2026 meeting.

b. Rule 2003 and Meetings of Creditors

Judge Connelly next raised potential amendments to Bankruptcy Rule 2003, related to meetings of creditors. Upon the filing of the case, a meeting of creditors is convened in which a trustee conducts an examination of the debtor and creditors are given the opportunity to attend. Rule 2003 contains language regarding the timing and place of holding the meeting and specifies it has to be in the district where the bankruptcy case is pending. Two suggestions have been received regarding changing that rule to reflect the current practice of holding these meetings remotely and that in such cases, it may not matter where the trustee is located. The proposals also raised the concern that the current number of days referenced in the statute has created some administrative problems for certain trustees. Judge Connelly further noted that a bankruptcy judge does not conduct these meetings or have authority over them – the DOJ Office for U.S. Trustees is primarily involved with appointing trustees and managing these meetings of creditors (or, in some states, there is a bankruptcy administrator involved). Because changing Rule 2003 would have an impact on how the Office for U.S. Trustees and the bankruptcy administrators manage these meetings, before going forward with a proposed amendment to Rule 2003, the Advisory Committee is awaiting the outcome of discussions between the Office for U.S. Trustees and representatives from trustee organizations to try to achieve a consensus.

c. Rule 9031 and Use of Special Masters

Judge Connelly then turned to potential amendments to Bankruptcy Rule 9031, which currently provides that Civil Rule 53 relating to the appointment of special masters does not apply in cases under the Bankruptcy Code. After the Advisory Committee received suggestions to authorize Bankruptcy Judges to appoint special masters, the FJC conducted research to help the Advisory Committee determine if there is a perceived need for the use of special masters in bankruptcy cases, and the FJC research indicated that there is. With that feedback, the Advisory Committee is in the process of drafting a proposed rule change to incorporate the applicable provisions of Rule 53 in bankruptcy cases. Judge Connelly commended Professor Elizabeth Gibson, Reporter for the Bankruptcy Rules Committee, for her extraordinary work on

this issue. The goal is to bring the proposed amendment to the Standing Committee in June 2026 for approval to publish for public comment. The next issue under consideration by the Advisory Committee is potential amendments to Bankruptcy Rule 8017, which parallels Appellate Rule 29 on amicus briefs. With the proposed amendments to Appellate Rule 29 in the process of final approval, there is a need for a conforming amendment to Rule 8017, as well as Rule 8015 regarding the certificate of compliance. The Advisory Committee plans to present the Standing Committee at its June 2026 meeting with a package of proposed amendments to Rule 8017 and Rule 8015 for approval to publish for public comment.

Judge Connelly concluded her report by noting that the Advisory Committee has decided not to proceed with potential amendments to Rule 9006's time-computation provision. This decision parallels the decision of the Appellate Rules Committee to remove a similar proposal from its agenda.

The members then discussed the use of special masters in bankruptcy proceedings.

A judge member asked why the Advisory Committee has decided to support the use of special masters when it had previously chosen not to make that change, especially in light of past allegations of cronyism in the appointment of special masters. Judge Connelly responded that the renewed consideration of the issue was driven by two suggestions made to the Advisory Committee simultaneously proposing this change. The Advisory Committee looked at the issue very deliberately and slowly, including gathering research, and asking for the FJC's assistance to hear from bankruptcy judges on the issue. Given that study, the Advisory Committee felt that the proposed amendment could benefit from public comments. Professor Gibson added that the American Bar Association submitted one of the suggestions, which is very unusual and that she believed the impetus comes from mass tort bankruptcy cases with lawyers experienced in multi-district litigation, in which special masters are available. Professor Gibson also noted that the FJC survey reported respondents' mixed feelings, but also that a significant number of judges said they would have used a special master if available.

The judge member suggested that it would be good to hear from creditors who would have to pay the expense of the special masters. He further suggested that the draft language should address the use of special masters as limited to rare and unusually complex cases. Professor Gibson added that publication for public comment would also allow creditors or other people concerned about the costs to provide feedback.

The academic member added some historical and contemporary context on the use of special masters in bankruptcy cases. The driving force behind the latest round of proposals is the complexity and sprawl of some mass tort cases and other types of broad disputes that end up in bankruptcy court, where the participants in the case could benefit from the flexibility to appoint a special master. Historically, the fear of cronyism in the bankruptcy context goes back to the change from the title bankruptcy referee to bankruptcy judge. The Bankruptcy Rules as promulgated in the early 1970s used the term "judges" for referees. This change raised concerns about whether cronyism could be an issue in the tight-knit bankruptcy community. The academic member concluded, however, by stating that this past concern should not inhibit the use of effective procedural tools that could be used in bankruptcy, especially in enormously complex types of matters.

C. Advisory Committee on Civil Rules – Judge Sarah S. Vance, Chair

Judge Vance began her report by welcoming Sarah Sraders as Counsel to the Civil Rules Committee and then proceeded to present the report of the Advisory Committee on Civil Rules, which last met on October 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 on page 194. Judge Vance also reminded the Committee that a number of proposed amendments had been published for publication (Rule 7.1, Rule 26, Rule 41, Rule 45 and Rule 81) and that a public hearing on those proposed amendments would take place on January 27, 2026.

1. Request for Approval of Publication for Public Comment – Rule 55

Judge Vance explained that the proposed amendments to Rule 55 are based on information learned in a comprehensive FJC study on default procedures in the district courts. The goal of the amendments is to conform the rule to actual practices in many districts. A draft of the proposed amendments to Rule 55 appears on page 218 of the agenda book.

The proposed amendment to Rule 55(a) governing entry of default by the clerk would change the term “must enter the party’s default” to “may enter the party’s default,” and also expressly adds that the clerk “may refer the matter to the court for directions.” This amendment addresses both the difficulties that clerks sometimes encounter in determining whether the requirements for a default have been met and the findings of the FJC study that such consultation with the court on default matters occurs in a number of districts.

The Advisory Committee also proposes amending Rule 55(b)(1) governing the clerk’s entry of a default judgment. The amendments parallel the changes to Rule 55(a). They would change the term “must” to “may” enter judgment (on claims for a sum certain or a sum that can be made certain by computation), and would expressly provide the clerk the option to refer the matter to the court for directions.

The proposed amendments recognize that since Rule 55 was adopted in 1938, litigation has become more complicated and, consequently, determining whether a claim is for a sum certain or capable of being made certain can be a challenging determination for clerks to make, especially when calculating interest and attorney’s fees. The FJC study further revealed that the reality is that the entry of default judgments by clerks is rare and they frequently exercise discretion to refer these applications to the district court. The FJC study also found considerable variation in other default procedures among the districts, some requiring notice of default, some requiring specific showings to be included in applications for defaults or default judgments, and at least one imposing a meet-and-confer requirement. The Advisory Committee was not persuaded that a nationwide rule amendment that would alter all of these local practices was warranted. Judge Vance also expressed the view of the Advisory Committee that default judgments do not play nearly as important a role in federal courts as they do in state courts, with default judgments in federal courts making up only two percent of all civil case terminations.

Judge Vance additionally noted two small revisions to the existing language in Rule 55. First, the proposed amendment to Rule 55(b)(2) changes the reference to “the party” to “a party” in the first line of

the rule. This change is for greater clarity and is not intended as a substantive change. Second, the draft adopts the Standing Committee Style Consultants' recommendation to add the word "either" after the word "may" in both places where "must" was changed to "may" in Rules 55(a) and (b)(1). (The addition of "either" is shown at page 321 of the agenda book.)

The members then discussed the proposed amendments to Rule 55.

A judge member raised concerns about the proposed language giving the clerk the ability to refer a matter to the court for directions. First, the change could be a way for a party to bypass the obligation to specifically request action from the court under current Rule 55(b)(2). Second, the language to seek "directions" from the court is vague. The judge member asked whether the Advisory Committee was open to removing the clerk's ability to enter default judgments, as mentioned in the Advisory Committee minutes.

Judge Vance explained that the Advisory Committee considered the option to refer all default-judgment requests to the court but determined that it would unsettle practices in some districts and that providing discretion to refer the matter was preferable. She noted that in a number of districts (about 32), all default judgments go to the district court under current practices, and in other districts (about 18), the clerk always get consultation or direction from the court. In light of this research, the Advisory Committee decided after discussion to add the option of referral to the court for direction. Professor Marcus added that there was a strong majority, maybe unanimity, among members of the Advisory Committee that abrogating Rule 55(b)(1) would forbid the current practice in certain districts. Additionally, "refer to the court for directions" is language that captures the various methods for getting default matters before the judge. During public comment, the Advisory Committee may also receive comments suggesting abrogation of Rule 55(b)(1) or raising questions about "refer to the court for directions." In many districts, under their local rules, clerks already refer matters to the court for directions (especially in complicated matters).

The judge member commented that none of the local rules cited state that the clerk may refer the matter to the court for directions. For example, the Northern District of New York and the District of Vermont have specific requirements that seem helpful. In Vermont, the clerk can "confer" with the district judge as opposed to an actual referral. Judge Vance added that sometimes a clerk may confer with chambers staff, such as a law clerk, which indicates there is a lot of variation in judges' preferences on how to handle default judgments.

As a historical reference, Professor Marcus added that there was an initial proposal before the Advisory Committee that would not have included those words "refer to the court" and would have only changed "must" to "may." An attorney member had reacted that merely changing "must" to "may" would have left the clerk's duty unclear. By saying that the clerk must "either" enter the judgment or refer the matter to the court, the draft rule provides both guidance and flexibility.

The judge member next asked the difference between the situation under the proposed revision to allow the clerk to refer the matter to the court for directions, and the process under Rule 55(b)(2) when the request for a default judgment comes directly to the court. Professor Marcus explained that presumably there is no difference, particularly since there are local rules in some places to say what happens when you ask the court to enter default judgment. There are also likely not many cases in which there really is

a sum certain or a sum that can be made certain by computation; all other cases would be addressed under Rule 55(b)(2).

The judge member predicted that public comment might raise the topic of the statutory protections concerning default judgments against military service members. Professor Marcus indicated that while the Advisory Committee discussed that issue at some length, the consensus was the downsides of adding the statutory reference would exceed the benefits. Judge Vance added that some districts have provisions for dealing with service members, that the Bar was aware of the service-member issue, and that adding a reference to that statute could cause a problem if references to other relevant statutes that were not put in the rule. More generally, the practice in rule-making is that it is not a good idea to refer to statutes in a rule because including a statutory reference in one rule might erroneously suggest that the statute does not apply under other rules that fail to refer to it.

A lawyer member wondered if using the term “consult” is better than “refer” because “refer” sounds like the judge is going to make the ultimate decision. What the amendment contemplates is that the clerk consults with the judge to get advice on what should be done, as opposed to referring it to the judge for the judge to act on the request.

Professor Marcus responded that the question actually shows the flexibility of the language in the proposal. Judges who are referred these matters can determine what they want to do with them. One judge might direct the clerk to enter the default, and another judge might direct the clerk to set it for hearing.

Another judge member raised concerns about using the word “consult” because it would suggest that the clerk can disregard whatever the district court judge says, and that “refer” was preferable. Professor Marcus agreed.

With no further questions or comments from the members, and upon motion and a second, with no opposition, the Standing Committee approved for publication and public comment on the proposed amendments to Rule 55, as shown in the agenda book at pages 218-221, with the addition of the edits from Professor Garner as reflected in Judge Vance’s email (agenda book page 321).

2. Status of Proposals Under Consideration

a. Rule 43 and Remote Trial Testimony

Judge Vance first directed members to the issue of remote testimony, which is discussed at pages 202 to 203 of the agenda book. Judge Vance stated that the Rule 43/45 Subcommittee, chaired by Judge Hannah Lauck, is seriously considering amendment of Rule 43(a) on remote trial testimony to relax the requirement that remote testimony be permitted only in compelling circumstances. The subcommittee is also considering whether a similar amendment to Rule 43(c) is in order since it authorizes the use of affidavits, oral testimony, or depositions on motions but does not state whether oral testimony may be provided remotely.

Judge Vance explained that Rule 43(a) was amended in 1996 to permit remote trial testimony but only for “good cause in compelling circumstances and with appropriate safeguards.” The amendment being

considered would delete “compelling circumstances” but would leave “good cause and with appropriate safeguards” in the rule. At the time of the 1996 amendments, the Advisory Committee noted that the justification for allowing remote trial testimony only in compelling circumstances was that the use of video depositions was superior to remote testimony for presenting absent witnesses. Since 1996, technology such as Zoom and Teams has changed the remote testimony landscape, and courts’ experience during the pandemic has demonstrated that remote proceedings can be conducted efficiently and effectively. Judge Vance further noted that in response to these developments, the Bankruptcy Rules have been amended to relax the constraints on remote testimony in contested matters, although not in adversary proceedings.

To consider the proposed amendment to Rule 43(a), the Rule 43/45 Subcommittee heard the views of lawyer groups, as well as the experience of a number of judges with remote proceedings during the pandemic, and they all are of the view that the current rule is too restrictive and that remote proceedings should be liberalized for trial testimony. The Advisory Committee also considered a discussion draft presented at its October 2025 meeting, found on page 201 of the agenda book, and expressed no opposition to eliminating the “compelling circumstances” requirement for remote trial testimony. Some members did express a view, however, that the draft committee note may be too cautious about the use of remote testimony and that more latitude should be given to the court to allow it. Some members also suggested that perhaps similar provisions authorizing remote testimony for motion hearings should be added to Rule 43(c). Since the October 2025 meeting, the subcommittee has met again, and its emerging view is that while in-person trial testimony should remain the norm, the “compelling circumstances” requirement for remote trial testimony is too restrictive and that a relaxed standard should likewise apply to permit remote testimony at motion hearings.

Professor Marcus added that this is an ongoing effort, but a proposed amendment may be presented at the June 2026 Committee meeting as a proposal for publication for public comment. If it is published, Professor Marcus expects a great deal of public comment.

The members then discussed the potential amendment of Rule 43(a) and Rule 43(c) to remove the “compelling circumstances” language.

A judge member referenced line 51 on page 201 and line 100 on page 202 of the agenda book and suggested adding a comma after “good cause,” because the “good cause” is separate from the “safeguards.” Professor Garner noted that commas are discretionary, with the open style and the closed style of punctuation. The rules committees’ style would be not to put a comma there.

The judge member also noted an inconsistency between reference in Rule 43(c) to “witness” testimony and subsection (a)’s reference to “oral” testimony. Professor Marcus thanked the judge member for pointing out that disjunction for the Advisory Committee’s consideration.

Another judge member raised the concern that the reference to COVID-19 in the committee note, when entire trials were held remotely, could be read in conjunction with the proposed Rule 43 changes to allow an entire trial to happen remotely. The judge member also noted that there could also be constitutional or evidentiary objections to remote testimony, but that her primary concern is the potential use of this rule to increase the instances of entire trials being held remotely. Judge Vance responded that the proposed

amendments were not intended to do that, and would not, for example, apply to trial proceedings such as voir dire. Judge Vance would suspect, however, that if there is good cause to allow more than one witness to testify remotely in a very long trial, this would be available for the judge's consideration. The amendment just removes "compelling circumstances," which seems to suggest that it needs to be a rare occurrence when in practice remote testimony does occur in a lot of complex litigation.

A lawyer member then commented on his experiences with both witnesses testifying remotely and whole trials being done remotely, and that he was not a fan of either. He noted that remote testimony really does impact the ability of a trier of fact to assess witness credibility, and so anything that facilitates remote participation of a witness is not a good thing and should be carefully assessed by a court before the court permits it. Additionally, remote testimony can have a profound impact on cases, and removing the "compelling circumstances" language would increase the prevalence of remote testimony. For example, with such a change, anytime it is inconvenient for the witness, the lawyer can ask for remote testimony and state there is good cause and we can have appropriate safeguards.

Another judge member agreed with the lawyer member and expressed concern that deleting the words "compelling circumstances" will create mischief because good cause is a relatively low standard. He also anticipated being besieged by requests to have witnesses testify remotely. Further, removing "compelling circumstances" is entirely inconsistent with the views of the Advisory Committee (as indicated in the minutes on page 228 of the agenda book) that live in-person testimony should remain the norm. For this reason, there needs to be something more to give guidance to judges as to when a request should be allowed. Finally, the judge member noted that in his experience, the existing language did not unduly limit the use of technology to present trial testimony. Judge Vance thanked the judge member for his comments, but added that others believe that remote testimony is effective. The judge member clarified that it is not that credibility cannot be assessed with remote testimony, but that in-person testimony should be the general rule. In response to a suggestion by the judge member that the problem is with the committee note rather than the text of the Rule, Professor Marcus observed that the rules process does not allow for amendments to committee notes without amendments to the rule itself.

Another practitioner member commented that while she shares the concerns about potential expanded use of remote testimony, she endorses and encourages the proposed amendment to go forward for public comment to get the perspectives of practitioners and judges. This may yield improvements or refinements to the rule text and committee notes. But her bottom line is that we are in a world where remote testimony is being used increasingly, sometimes of necessity, other times for convenience, and adopting a rule on the topic would be timely and consistent with the goals of Rule 1.

A practitioner member raised one additional, practical concern that occurs when a remote witness may have materials to review that are off screen. One safeguard that was applied by a court was to suggest that the lawyer ask questions, such as "is there anything in front of you on the desk? Is your phone on or off?" In that case, however, the practitioner had genuine questions about whether the expert witness who appeared remotely was continuing to communicate with the lawyers on the other side via text or some other device during the testimony. While the quality of the video may be good for credibility assessment, the practitioner also found that there are all sorts of other credibility-related concerns that arise with remote appearances.

Another judge member added that his sense is that jurors may not like remote testimony. For example, jurors may ask why they are required to be present but the witness is not. He asked whether the rule should distinguish between instances when a party opts to accept that potential risk and instances when it is the witness who is asking to appear remotely. Judge Vance noted that one argument in favor of permitting remote testimony is that sometimes the alternative would be to put in the witness's deposition testimony, and jurors do not like hearing deposition testimony or watching video depositions. Professor Hartnett suggested that the Advisory Committee might consider building into the text of the rule guidance on the choice between remote live testimony or use of depositions.

A judge member then added, in response to the concerns raised by a practitioner about appropriate safeguards during remote testimony, that there could be a requirement to allow the opposing party to have someone present with the remote witness. For example, when you have a video deposition, the other side is represented, and this is something that could be suggested in a committee note. Another judge member added that a brief search for case law distinguishing "good cause" from "compelling circumstances" did not yield much. But he would still like to hear the empirical basis that this is a problem (e.g., that judges are not allowing remote testimony under the current rule) and if there is a way to distinguish between compelling versus good cause and how that change would play out.

Professor Coquillette added for the benefit of the members that as a matter of rule-drafting philosophy, any language relating to compelling circumstances should be in the rule, not in the note. Further, case law should not go in the committee notes. Many people do not read the notes carefully. If an issue is important, it ought to be in the text of the rule.

b. Third-Party Litigation Funding

Judge Vance next provided a report on the Advisory Committee's consideration of amendments related to third-party litigation funding (TPLF), discussed on pages 203 and 204 of the agenda book. Judge Vance noted that the TPLF subcommittee, chaired by Judge David Proctor, was formed in 2024, but this issue has been on the Advisory Committee agenda for some time. It is an area of increasing interest to lawmakers, academics, lawyers, and litigants. The subcommittee has spent the last year educating itself on these issues. Judge Vance reminded the Committee members that Ms. Srader's legislative report had noted a number of TPLF-related bills under consideration in both houses of Congress. The Advisory Committee continues to hear from proponents and opponents of a disclosure rule. Most recently, members of the subcommittee, as well as Judge Dever, attended a conference held by George Washington University Law Center on this issue, which was attended by industry participants and parties who favored and opposed a disclosure rule.

Judge Vance explained that in general, the subcommittee's questions include: How would a rule define the financing arrangements that trigger disclosure? What would be disclosed and to whom? What would the court do with the information disclosed? Should judges be concerned about the ethical implications if funders control settlement decisions? Does third-party funding prompt the filing of unvetted claims? And will disclosure lead to time-consuming discovery? Judge Vance then invited any views of the Standing Committee on these issues.

A judge member with experience in TPLF issues offered to make himself available to the Advisory Committee if they had questions about the standing orders he has issued. Judge Vance expressed her appreciation for the offer.

c. Cross-Border Discovery

Judge Vance then proceeded to the work of the cross-border discovery subcommittee, chaired by Judge Manish Shah. The subcommittee was formed in 2023 to study the complex issues that sometimes arise in obtaining discovery outside the U.S. for use in federal courts. As discussed in the agenda book, the subcommittee engaged in substantial outreach to get an understanding of these issues and whether rules amendments would be helpful. This outreach revealed a lack of enthusiasm for rulemaking in this area. To a significant extent, lawyers felt that they could work out problems, as they come up, under the existing rules. Judge Vance reported that ultimately, the cross-border discovery committee recommended that this topic be dropped from the Advisory Committee's agenda and the Advisory Committee voted to approve that recommendation. Judge Dever added for the benefit of new members in particular that it is not uncommon for a subcommittee to study a proposal for rulemaking and then to decide not to go forward with a change.

d. Rule 26(a) and Filing Under Seal

Judge Vance then provided a report on the Advisory Committee's consideration of the issue of filing under seal, discussed at pages 205 to 208 of the agenda book. As background, Judge Vance explained that for several years, the discovery subcommittee, chaired by Judge David Godbey, had been considering a proposal to recognize in the rules that granting a motion for a protective order does not of itself justify the filing of the discovery material in the record under seal. The proposal also included proposed amendments to impose national procedural standards for handling sealing motions.

At the October 2025 Advisory Committee meeting, the discovery committee discussed the alternatives it had been considering for addressing sealing issues, and these were (1) whether to amend Rule 26(c) and Rule 5(d) to provide when filing under seal could be ordered or (2) whether it would be sufficient to amend only Rule 26(c) to call attention to the divergent standards for protective orders and sealing court records or (3) whether no amendment was necessary given the general recognition that the standard for issuing a protective order is less stringent than the common law and First Amendment limits on sealing court records. The subcommittee reached the unanimous conclusion that the rules need not be amended and recommended that this item be removed from the Committee's agenda because national procedural directives would ignore real differences in dockets across districts and would raise undue difficulties in some districts. The subcommittee concluded that it was unnecessary to recite in the rules what was already recognized in the law – that the standard for sealing documents is more stringent than the good cause standard for the issuance of a protective order. Further, various circuits have their own statements of the common law and First Amendment standards for sealing court records, and the subcommittee sought to avoid unsettling this established case law by stating grounds for sealing in the rules. The Advisory Committee voted to accept the subcommittee's recommendation that this item be dropped from the agenda.

A judge member asked if the issue was being dropped entirely or whether it would remain on a study agenda. If not fully forever dropped, the judge member referenced the work of Professor Volokh pointing to a smaller issue that could still be valuable regarding requiring a waiting period. In other words, people file a motion to seal and then there is a waiting period such as courts these days have for transfers out of the district. A waiting period would give the media or the government a chance to object to the requested sealing on the ground of public rights of access. Professor Marcus responded that the original proposal from Professor Volokh had a waiting period (it provided that no motion to seal may be acted upon until seven days after it is posted publicly). Professor Marcus recalled that a number of the lawyers said that a waiting period would be unworkable because, in the meantime, they could be facing a filing deadline while not knowing what they could include in their filing. Professor Marcus noted that the difficulties with filing under seal are numerous; the Advisory Committee has not shut and locked the door on considering sealing-related issues in the future, but it decided that the specific proposal it had received did not seem worth pursuing further. The judge member responded that the appellate courts see many sealed documents that take a great amount of energy to unseal because the sealing was done by joint agreement and district court approval, with a large amount of information that should not have been sealed. Judge Vance noted that local provisions address sealing matters, and the judge member agreed that courts have internal operating procedures on the topic.

e. Rule 23 Proposals

Judge Vance then turned to the status of proposals to amend Rule 23, discussed at pages 208 to 211 of the agenda book. She noted that the Rule 23 issues are not yet under study by a specific subcommittee.

The first Rule 23 issue concerns incentive or service awards to class representatives for work they have done on behalf of the class. In 2020, a divided panel of the Eleventh Circuit held that such awards were prohibited by two 19th Century Supreme Court cases. Before that, the circuits were unanimous in permitting these awards, and since the Eleventh Circuit decision, no court of appeals has followed suit. Four circuits have issued published opinions that continue allowing service awards in appropriate cases. The Advisory Committee is considering whether rulemaking is worthwhile to address an outlier decision, whether the Advisory Committee has authority under the Enabling Act to resolve this issue, and whether this is a policy-driven question that it would not ordinarily address.

The second Rule 23 issue concerns the Rule 23(b)(3) superiority requirement. This topic was brought to the Advisory Committee by the Lawyers for Civil Justice. The superiority prong of Rule 23(b) provides that a court should evaluate whether a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The proponent submits that this reference to adjudication has been interpreted as excluding consideration of private remedial initiatives, such as recall campaigns and product refunds, and it submits that the rule should permit consideration of these alternatives in the superiority analysis. The Advisory Committee is considering that, on one hand, ensuring that a judge has discretion to consider these additional alternatives could provide faster or more effective relief to class members, but it may be, on the other hand, extremely difficult for the court to evaluate these alternatives at the early point in the litigation when class certification has to be decided, and some courts have taken

non-litigation alternatives into account under the adequacy prong of Rule 23, which could call into question whether a rule in this area is necessary.

The third Rule 23 issue concerns whether court approval should be required for the settlement or voluntary dismissal of claims by class representatives before class certification. Before 2003, most courts required judicial review for the pre-certification settlement or dismissal of a case filed as a class action, but as amended in 2003, Rule 23 includes no such requirement. The Advisory Committee is considering whether judicial scrutiny is needed in this area. The current approach has been criticized as possibly inviting a form of strike suits where cases are settled for no real relief to the class but accompanied by a payoff to counsel or the class representative. Something like this was involved in a case that Judge Easterbrook decided in 2024, and he pointed out the inability for the court to consider under the class action rules whether the payments to the class representatives were appropriate. This was a federal securities case governed by the Private Securities Litigation Reform Act and there was an ability to use Rule 11 to get at this issue in that case, but he did point out that Rule 23 did not provide for court scrutiny of settlements of cases not yet certified as class actions and he suggested that perhaps the rulemakers should take a look at this. Also cited is potential prejudice to putative class members who are relying on the suit but receive no notice of its settlement or dismissal. The Advisory Committee noted these concerns but also noted potential obstacles to restoring judicial review. For example, the customary evaluation of a class settlement under Rule 23(e) may not be well suited to evaluate individual settlements by class representatives, and another consideration is that Rule 23(e) requires notice to class members of settlements in certified classes. If notice is required for settlements before certification, who would pay for it, and would the benefits of notice be outweighed by the cost? And there's also a question of whether, if reliance is an issue, the court can already use Rule 23(d) to order some form of notice.

The Advisory Committee has concluded preliminarily that all three of these Rule 23 topics warrant continued study, but the Committee is very much aware that any new Rule 23 project would be a significant and resource-intensive undertaking. Judge Vance then invited Professor Bradt to add any additional observations.

Professor Bradt added that it is unclear whether any or all of these three issues could be handled discretely or whether they would open the door to a much broader reconsideration of much of Rule 23, which would be a consequential decision for the Advisory Committee.

Committee members were then invited to offer feedback on the Rule 23 issues.

A lawyer member suggested that there are other Rule 23 issues that may be a higher priority, such that addressing these narrow Rule 23 concerns without looking more broadly into Rule 23 would be difficult. Another lawyer member added that the Rule 23 issues presented did not seem to warrant a rule amendment.

f. Random Case Assignment

Judge Vance then proceeded to the last information item to update the Committee on the issue of random case assignment, which the Advisory Committee has been considering since 2023. In March 2024, the Judicial Conference issued its guidance that districts should apply district-wide assignment to civil cases

seeking injunctions barring or mandating nationwide enforcement of federal law or statewide enforcement of state law, and last summer the Supreme Court decided *Trump v. CASA*, 606 U.S. 831 (2025), which also affects this issue. The Advisory Committee is continuing to monitor the developments in this area.

D. Advisory Committee on Criminal Rules – Judge Michael W. Mosman

Judge Mosman presented the report of the Advisory Committee on Criminal Rules, which last met (virtually, due to the government shutdown) on November 6, 2025. The Advisory Committee’s report and the draft minutes of its last meeting are included in the agenda book beginning on page 242. Judge Mosman opened his remarks by noting that as a new Chair, he is grateful to attend the Committee meeting with Professors Beale and King, who are a tremendous help.

3. Status of Proposals Under Consideration

a. Rule 49.1 and Privacy Concerns

Judge Mosman began his report with the proposal to amend Rule 49.1 to require reference to minors by pseudonyms rather than initials as provided in the current rule. There still will be a sealed filing that will contain all the information that a litigant might need. Judge Mosman noted several issues that have been raised. One is, can someone who is a minor when the case starts age out of the rule’s protection as the case goes on? The discussion and experience among members of the Advisory Committee was that both by case-by-case protective orders and by general practice in criminal cases, individuals do not tend to age out of the current rule’s protection. This change would not alter that practice. Another question that came up was whether this change would cover not just victims in criminal cases, but witnesses. Judge Mosman stated that this subject is not currently a part of the effort that is being undertaken on Rule 49.1. There are statutes that do cover witnesses in criminal cases who are minors and grant them some protections, but these protections are not uniform across all criminal cases. Finally, the proposal currently on the table makes a point of referencing exhibits and attachments because experience shows that most the violations of this protection arise in that context and not indictments or other filings.

Professor Beale added in reference to an earlier question (during the Appellate Rules Committee’s report on the privacy project) from a judge member about the inadvertent inclusion of a minor’s name, that the FJC study on redaction of social security numbers highlighted that most often unredacted information appears in attachments or exhibits. The Criminal Rules Committee is coordinating with and will share drafts with all the other Advisory Committees addressing privacy.

Judge Mosman then turned to the proposal to amend Rule 49.1 to require complete redaction of social security numbers and other taxpayer identifying information. The Advisory Committee’s consideration of this started with a recommendation from Senator Ron Wyden to consider changing the current rule (which permits inclusion of the last four digits of social security numbers in public filings) to require complete redaction of social security numbers. The Rule 49.1 Subcommittee started with that proposal, and there is widespread support for the idea (except in the bankruptcy context).

Judge Mosman also reported that the Advisory Committee undertook to determine if other taxpayer identifying numbers (ITINs, ATINs, and EINs - Individual Taxpayer Identification Numbers, Adoption

Taxpayer Identification Numbers, and Employer Identification Numbers) have the same risk of fraudulent use as social security numbers. This research indicated that fraud involving ITINs shows up fairly frequently, while the other two are less common – at least in criminal cases. Even so, the idea was that the Advisory Committee would, once on the path of increasing the protection for social security numbers, take a look at these numbers also. Judge Mosman noted that the Advisory Committee is still discussing what to do with these identifying numbers in a descending order of frequency, the least frequent being the ATIN, which is a number given to someone to effectuate adoption that disappears immediately when they are adopted and obtain a social security number. Judge Mosman also recognized that the DOJ had raised the concern that redaction runs counter to the general idea of a presumption of public availability of information. Judge Mosman expressed uncertainty as to whether that presumption attaches to private information the way it does to other information in indictments, for example, but the current recommendation of the Rule 49.1 Subcommittee is to treat all three of these other categories the same way we treat social security numbers and to not include them in public filings, with the caveat that they can be included as necessary in the court filing but not in the public filings.

Judge Mosman also stated that one other concern raised by the DOJ and others is the desire for some uniformity among the various Advisory Committees that are looking at this issue. That may not be possible with the Bankruptcy Rules Committee, but the Advisory Committees should at least look at whether different rules for different settings are appropriate.

Professor Beale added that the Style Consultants have been enormously helpful in working on the draft as well and that the Advisory Committee and Rule 49.1 Subcommittee is very well aware of the importance of uniformity that has traditionally been part of all of these rules, although the Bankruptcy Rules Advisory Committee has already decided that it is necessary to keep the last four digits of social security numbers in bankruptcy filings.

Professor Beale also addressed adding EINs, noting that the Advisory Committee began with the idea that even for EINS at least some of those are held by individuals (such as people who have household service providers) who would object to that number being in a public filing. While EINs are used by large corporations and may be public for other reasons, the Advisory Committee started from the idea that if there is no need for an EIN then it should be redacted, and on the criminal side it seems (subject to further consultation with the DOJ) that EINs are not needed, and there is some recognition that EINs are private. At the spring 2026 meeting, the Advisory Committee will take up the underlying policy question about whether to address not just ITINs, but also the ATINs and EINs.

Judge Mosman added that he wanted to extend his thanks to former Rules Law Clerk, Kyle Brinker, who researched the extent to which people engaging in fraud use SSNs versus ITINs or other identifying taxpayer information. That research indicated either little or no known cases involving ATINs.

Professor Gibson asked for clarification whether the Criminal Rules Committee would apply the EIN protection to corporations and individuals. Professor Beale responded that the rule would apply to both, as done in the U.S. Tax Court. Professor Gibson followed up with a question about privacy concerns given that EINs are fully available on bankruptcy petitions. Professor Beale acknowledged that

bankruptcy is likely to be different, but that for Criminal Rules, if the current rule refers to taxpayer identifying information, that includes social security numbers, ITINs, ATINs, and EINs.

b. Rule 40 and Out of District Arrest for Violation of Conditions of Release

Judge Mosman then reported on the work of the Rule 40 Subcommittee. He explained that three rules set out what the judge must tell the defendant in certain proceedings. Rule 5 applies to an initial appearance in the charging district, Rule 32.1 is a comprehensive rule that applies when someone is arrested in another district for violating their supervised release, and Rule 40 (which is less comprehensive) applies when someone is arrested outside of the charging district for violating the conditions of their release (or for failure to appear in the charging district). Rule 40 does not provide the same level of detail or guidance as Rule 32.1, and the focus of the Rule 40 Subcommittee is to consider amendments to create a more comprehensive checklist for the judge when a defendant appears in court under the circumstances covered in Rule 40.

The Advisory Committee considered and generally agreed with the Subcommittee on a number of policy decisions about what should and should not be included in Rule 40, including: (1) the person should be advised that they have the right to a detention hearing even though they are not in the district where they were charged, (2) the person should be able to contest identity in the non-charging district; (3) the person should be advised that there will not be another or new preliminary hearing in the non-charging district; and (4) the person should be advised again of the right to consult with an attorney (if their attorney is in another state, they should be able to consult with some attorney at that hearing). The subcommittee further believes that Rule 40 does not need to require the judge to repeat consular warnings or some of the other things that go into Rule 5 or Rule 32.1.

c. Rule 11 and Plea Agreements

Judge Mosman next reported on a suggestion from Judge Patricia Barksdale to consider amending Rule 11(b)(1)(M), which provides that when accepting a plea, the judge must ensure the defendant understands that in determining a sentence, the judge will calculate the applicable guideline range and consider possible departures and then other sentencing factors. The Sentencing Guidelines were amended effective November 1, 2025 to fold departures into the general catch-all that the judge will consider “other sentencing factors.” Judge Barksdale suggested amending Rule 11 to conform to that change and delete the reference to departures as subsumed into the advice that the judge will consider “other sentencing factors.” Judge Mosman noted that the DOJ raised an interesting issue regarding whether the amendments to the Sentencing Guidelines also implicate Rule 32(h), which provides that before departing from the Sentencing Guidelines on a ground not previously noticed or briefed, a judge must give notice to the parties. Judge Mosman reported that a subcommittee will look into what to do with Rule 32(h).

A judge member suggested that if the subcommittee plans to look into Rules 11 and 32, it might want to add a requirement that when judges describe the “terms” of an appeal waiver, they must also explain the consequences. Such consequences include situations in which post-plea, the conduct subject to the plea is ruled not to be a crime, but the defendant has already waived the right to appeal. Judge Mosman noted

the suggestion and stated that the Advisory Committee would take a look at that issue (although it might await the outcome of a case on appeal waivers currently pending in the Supreme Court).

d. Status of Proposals Relating to Rule 53 and Rule 15

Judge Mosman concluded with a report on two items on the study agenda. One item is a suggestion from Judge Edmond Chang, Chair of the Criminal Law Committee, relating to Rule 53. Judge Mosman reminded the Committee that the Advisory Committee had studied Rule 53 about a year ago and decided not to make any changes. The previous Rule 53 proposal was driven by news organizations who wanted to have the rule changed quickly so that they could broadcast the Trump trial or trials, particularly in New York. Judge Chang's suggestion is much narrower and has to do with the idea that Rule 53's broadcasting ban not only affects big news organizations but also bars narrowly broadcasting the trial to a victim or a group of victims who might be remote from the courthouse where the sentencing or the trial is occurring. Judge Mosman noted that some of those victim groups, such as the Lockerbie victims, are covered by specific acts of Congress. Judge Mosman advised the Committee that given the workload of the Advisory Committee and its recent look at Rule 53 (and the decision not to change it), the Advisory Committee has decided to focus more narrowly on Judge Chang's specific suggestion.

Finally, Judge Mosman reported that a number of proposals and letters have been received to amend Rule 15 to allow for pretrial depositions. The submissions show differing views on this issue, which was placed on the Advisory Committee's study agenda. Judge Mosman added that the states are doing different things with this issue, with about 20 states that have some sort of criminal depositions, with some of them very informal. A subcommittee will eventually be stood up to study this issue, which will be a massive undertaking.

With no further questions or comments, Judge Mosman concluded his report.

E. Advisory Committee on Evidence Rules – Judge Jesse M. Furman

Judge Furman presented the report of the Advisory Committee on Evidence Rules, which met (virtually, due to the government shutdown) on November 5, 2025. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning on page 282.

1. Status of Proposed Amendments Published for Public Comment

a. Proposed New Rule 707

Judge Furman began his report with proposed new Rule 707, which was published for public comment in August 2025. The Advisory Committee has spent several years studying issues relating to artificial intelligence and considering whether they warrant amendments to the Rules of Evidence. The Advisory Committee has focused on two concerns. The first is the issue of reliability, namely machine output that essentially functions like expert testimony, albeit without a human expert to cross-examine or test the reliability of the opinion, and the second is authenticity, namely whether audio/visual evidence is authentic or a deepfake.

Beginning with the first concern, which has advanced further on the rulemaking front, the Advisory Committee published for public comment a new Rule 707, which applies when machine output would be expert testimony if it were produced by a human. The new rule subjects that output to the requirements of Rule 702(a) through (d), but it explicitly excludes the output of “simple scientific instruments.” The public comment period closes on February 16. As of today, there have been nine public comments, and public hearings will be held on January 15 and 29, 2026.

At the Advisory Committee’s November meeting, the Advisory Committee discussed various potential changes to the committee note in light of some commentary on the issues, as well as input from members. These changes are noted on page 295 of the agenda book. The first change is to add a provision to emphasize the differences between human experts, who are subject to cross-examination, and machine-generated opinions. The change would encourage trial courts to consider limiting instructions, cautioning juries against over- or under-reliance on machine output given the absence of cross-examination. The second change responds to a concern that was expressed by the Standing Committee previously to strengthen the note to make clear that Rule 707 is not intended to circumvent Rule 702; the added language would emphasize that the requirements of the rule might actually be difficult to meet without an expert. The third change is to address the “black box” issue where no one can explain how the machine works and what it does. The sentiment is that in those circumstances, reliability is probably not something that can be shown unless it can be validated through error rates and the like. Finally, there are changes to clarify the relationship with Rule 901(b)(9), which provides a ground for authenticating machine-generated evidence, namely that if the requirements of Rule 707 are satisfied, it would likely subsume the requirements of 901(b)(9).

Judge Furman explained that the Advisory Committee also considered and rejected the following proposed changes to the proposed rule and the note: (1) to change machine-generated to computer-generated; (2) to limit the scope to machine learning, as that term is not clearly defined and is somewhat dynamic; (3) to cover expert testimony, because that is subject to the requirements of Rule 702; and (4) to change the sentence referring to “simple scientific instruments” to make it refer to machines that are generally understood by the public, because that change was too amorphous.

A judge member expressed concern about language from the proposed committee note, “If the process cannot be explained then the court should in most cases find that the proponent has not established more likely than not that the methodology is reliable,” and then, at the end of that paragraph, the sentence that “the proponent of machine learning output may overcome the problem of inexplicability by showing how the machine got trained and establishing, for example through validation studies, that the process leads to a low rate of error.” The judge member questioned how evidence could be put before a jury with no explanation of how output was produced. Professor Capra responded that the Advisory Committee considered the existence of validation studies that can show there is a very low rate of error for a particular machine even if no one can figure out how the machine actually reached the result it did. The alternative approach would be to not allow introduction of the output if it cannot be explained. Even with respect to experience-based experts, however, there are times when that expert can explain something but not the way actual way they came to the conclusion. The judge member asked Professor Capra to provide an example of output that could be introduced without an explanation of how it was produced, which could

be troubling if somebody's liberty were at issue in a trial. Professor Capra believed that instances will arise only rarely in which a black box/machine comes up with something that can be found to be reliable, but it has happened. For example, facial recognition technology may produce a conclusion as to identity, with no explanation of how it came to that conclusion, but there is corroborative evidence which indicates that the identification is correct. Though this is rare, Professor Capra suggested that it would be a big step to adopt a rule that such evidence can never be admitted. The Advisory Committee has not come to a formal decision on this issue. Professor Capra made a comparison to dog sniffs - you do not know how a dog came to the conclusion, but you can determine that the dog was trained properly and that the dog has been accurate in 800 particular situations and then the dog-sniff evidence is admissible. The judge member thanked Professor Capra for the helpful explanation and examples.

Judge Furman then brought to the attention of the Standing Committee, Civil Rules Committee, and Criminal Rules Committee that if Rule 707 is added to the Rules of Evidence, it would raise fairly important disclosure issues, for example regarding the algorithms underlying a machine. While this is not an issue for the Federal Rules of Evidence, it is an issue for the Civil and Criminal Rules Committees to consider in connection with their disclosure-related rules if Rule 707 is adopted.

Before moving to the next topic, another judge member noted that he had sent an edit regarding the notice and disclosure language raised in the proposed rule, pointing to lines 83 to 85 on page 297 of the agenda book. Professor Capra responded that he would look at it. Judge Furman concluded the discussion of proposed Rule 707 by restating his concern that at a minimum, if this rule is adopted, courts need to be alerted that they should be mindful of notice issues as they manage cases.

b. Proposed Amendments to Rule 609

Judge Furman then provided an update on public comments on Rule 609. Judge Furman reminded the Committee that the Advisory Committee had considered various proposals over the last few years regarding Rule 609 and settled on a relatively minor amendment to Rule 609(a)(1)(B), which makes the rule somewhat more exclusionary by adding the word "substantially" before "outweigh" in the balancing test on admissibility of prior convictions.

Judge Furman explained that the amendment was driven by the concern that district courts were misapplying the balancing test or applying it without regard for the similarity of the prior conviction to the charged conviction. The harm from this approach is compounded by the fact that under Supreme Court precedent, a ruling under Rule 609 is not appealable unless the defendant actually takes the stand, and this also leads to little court of appeals case law on the issue. While addressing this issue, the Advisory Committee also decided to draft an amendment to Rule 609(b) to address a circuit split as to when the 10-year period for older convictions ends. The Advisory Committee concluded that the date of trial is the appropriate date because it is the least subject to manipulation by the parties and unambiguous. As of the Committee meeting, three comments were received which are generally favorable.

2. Status of Pending Proposals

a. Rule 901(c) and Deepfake Evidence

Judge Furman next provided an update on the Advisory Committee's consideration of deepfake evidence. Judge Furman explained that the Advisory Committee had initially been of the view that there may not be a need for an amendment here because there was no evidence of deepfake problems in federal trials and because it is not clear that courts cannot address this issue under the existing rules, as they have dealt with forgeries, for example. Having said that, Judge Furman noted that the Advisory Committee also must be mindful of the fact that there may be an issue because the standard for authentication is so low. The Advisory Committee has tried to make progress on a rule that could be considered in the event that it decides that a rule change is warranted. To that end, the Advisory Committee has discussed a new proposed Rule 901(c), a working draft of which is at pages 286 to 288 of the agenda book. In brief, it would impose a burden on the opponent of the evidence to make a prima facie showing that there is reason (e.g., something suspicious about the item) for a reasonable person to conclude that it was fabricated. At that point, the burden would shift to the proponent of the evidence to show by a preponderance (that is, under the Rule 104(a) standard) that the item is authentic and not a fabrication.

Judge Furman added that at the Advisory Committee's last meeting, discussion of deepfakes continued, and there was some shift in sentiment in favor of publishing a proposed rule for public comment. He also noted that Professor Capra had gathered some anecdotal evidence that judges might be seeing these issues even if it is not showing up in case law or media reports. This information led the Advisory Committee to conclude that it might be helpful to enlist the FJC and conduct a survey of trial courts nationwide to see if they are encountering deepfake issues and whether they think a rule amendment is necessary.

Ms. Shapiro, on behalf of DOJ, noted that DOJ was the sole vote against publishing Rule 707 and also does not see the need for the deepfake rule. DOJ also intends to put in a public comment to lay out its arguments in full. Ms. Shapiro also noted that there is an Executive Order that prompted DOJ to perform an internal study on AI issues, and that she hopes to be able to report to the Advisory Committee on that as well.

A lawyer member asked why the proposal as drafted is limited to fabrications created by generative AI as opposed to other technological means. He noted that the Take It Down Act has a much broader scope than just generative AI. Professor Capra answered that if the manipulation is done by generative AI, it is almost impossible to discern. If there is manipulation done by other technical means, there are means of determining whether it is been fabricated. The Advisory Committee considered whether the rule should apply to electronic manipulation more generally, but Professor Capra was told by many that the rule should just be focusing on generative AI. Professor Capra thanked the lawyer member and appreciated the question, which is something that could come up if a proposed rule on deepfakes is issued for public comment.

b. Rule 902(1) and Federally Recognized Indian Tribes

Judge Furman next addressed the Advisory Committee's consideration of a suggestion to add federally recognized Indian tribes to Rule 902(1), which provides that certain domestic public records that are sealed

and signed are self-authenticating. Rule 902(1) does not currently include Indian tribes but does include a variety of other governmental entities. In criminal cases most notably, the government has to use another route to prove a defendant's Indian status in federal prosecutions brought for crimes occurring in Indian country, an issue that has become more prominent in the wake of the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020).

Judge Furman explained that the DOJ strongly supports changing the rule, but the Federal Defender on the Advisory Committee adamantly opposes it. In brief, DOJ favors amendment on the grounds that it would recognize the dignity and sovereignty of tribes and avoid unnecessary authentication hurdles, and further, that there is no meaningful distinction between tribes and the other entities that are currently in the rule. By contrast, the Federal Defender has expressed concerns about variability in tribal record-keeping and about losing the ability to challenge authenticity through an identified witness. Mindful of the dignitary issues involved, the Advisory Committee solicited input from tribal governments and Native legal organizations, and thus far has received comments from a number of tribes, all of which are very supportive of amending the rule. At its spring meeting, the Advisory Committee will consider whether to move forward with an amendment.

Professor Capra added that there can be a conflict in criminal cases between the tribe and an individual tribe member defendant. The defendant's interest is to challenge the certificate, and if the matter were treated under Rule 902(1) there would be no way to challenge the certificate, whereas under Rule 902(11) there is an opportunity to challenge the certificate. The Advisory Committee will consider this issue at the next meeting.

c. Rule 803(3) and Hearsay Exception for Declarant's State of Mind

Judge Furman reported on the Advisory Committee's consideration of amendments to Rule 803(3), which allows admission of a declarant's statement of then existing state of mind, i.e., intent, motive, emotion, or the like, to prove that mental condition. First, the Advisory Committee is considering whether the rule should require spontaneity or another reliability safeguard. There is no such requirement in the rule as written, but some courts have held that spontaneity or some other indicator of trustworthiness is required. There is a longstanding circuit split on the issue, which does seem to come up fairly frequently. Second, the Advisory Committee is considering amendments regarding whether a declarant's statement can be used to prove a non-declarant's intent or conduct. Judge Furman gave the example that if he said "I plan to go to lunch with Dan," this statement cannot be used as evidence that Dan intends to go to lunch or went to lunch. Most courts bar such use, but two circuits, the Ninth and the Second, have allowed it under some circumstances. Judge Furman noted that the issue does not come up as often as the spontaneity issue, and there are questions about whether the practical distinction between the different approaches is especially large. The Advisory Committee continues to study whether the spontaneity issue causes a problem in practice that warrants a rule amendment; if so, then it may also take up the second issue.

d. Rule 703 and the Impact of *Smith v. Arizona*

Judge Furman addressed potential amendments to Rule 703 in light of the Supreme Court's decision in *Smith v. Arizona*, 602 U.S. 779 (2024), in which a forensic expert testified to a positive drug test by relying on the testimonial hearsay of another analyst and that other analyst's findings were disclosed directly to

the jury. The Court held that an expert's disclosure to the jury of testimonial hearsay violated the defendant's right of confrontation even if the purpose of the disclosure was purportedly to illustrate the basis of the testifying expert's opinion. The Advisory Committee is generally of the view that to the extent that the Court was concerned about disclosure alone, there would be little to no impact on Rule 703, which limits disclosure of inadmissible hearsay as the basis of the expert's opinion. If the Court's decision is construed to also apply to reliance, not just disclosure, this interpretation could have a substantial effect on federal practice and raise serious questions about unconstitutional application of Rule 703 in some cases. Judge Furman noted that the Advisory Committee's consultant, Professor Liesa Richter, did a very thorough and helpful memo in which she surveyed decisions that addressed *Smith*, and there seems to be an emerging pattern where at least more than a majority have adopted the view that *Smith* prohibits reliance and not just disclosure. In light of this trend, the Advisory Committee's emerging view is that Rule 703 probably does warrant some sort of amendment to address the issues raised by *Smith*.

Judge Furman also commented that there are some difficulties with drafting an amendment, with possible language found in the Advisory Committee's report at page 291 of the agenda book. First, drafting an amendment to specifically address the concerns raised by *Smith* would be potentially complicated because it is limited to the criminal context and it is an evolving area of the law. At present, the Advisory Committee has gravitated toward a more modest amendment to the rule that would provide a "red flag" indicating that the rule might raise constitutional issues in criminal cases to alert practitioners and courts. Rule 412, which contains constitutional red flag language, provides a precedent for such an approach. On the flip side, Judge Furman stated that the Advisory Committee considered a similar issue after the Supreme Court's decision in *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017), which held that Rule 606(b), which bars testimony from jurors about juror deliberations, is unconstitutional in certain circumstances. The Advisory Committee decided not to amend the rule, but might revisit that decision in the event that the Advisory Committee considers adding red-flag language to Rule 703, on the theory that the two are similar.

Professor Coquillette advised the Committee that the problem with a red flag is that sometimes it is appropriate and sometimes it is not. The problem arises when a rule red flags some things, but not others. If a constitutional concern is raised in one rule, does that mean that other rules without the red flag are safe constitutionally. Professor Capra added that the rationale for rejecting a red flag in Rule 606(b) was that it would encourage lawyers to make more legal arguments.

Ms. Shapiro, on behalf of DOJ, added that the Solicitor General's Office anticipates that this issue will come back to the Supreme Court soon, which could impact the rulemaking process. Judge Furman agreed that this is an area the Court is very likely to revisit, which counsels proceeding with any amendment in more general terms rather than specifically addressing the issue in *Smith*.

e. Rule 104 and Preliminary Questions on Evidence

Judge Furman moved on to possible amendment of Rule 104, which governs the judge's role in deciding preliminary questions about evidence. Many evidence scholars, including Professor Dan Capra, consider Rule 104 to be one of the worst rules in the Federal Rules of Evidence. First, Rule 104(a), which the Supreme Court has held to establish a preponderance standard, does not include the relevant standard.

Second, Rule 104(b) codifies the concept of conditional relevance, but there is a question as to whether that concept has any real meaning. Judge Furman directed the Committee to Professor Capra's suggestions to improve each section of the rule, which appear at page 292 of the agenda book. The Advisory Committee does have concerns, however, whether there is a big enough problem to justify amending the rule. Professor Capra added that his research has uncovered problems because the rule is so opaque and the concept of conditional relevance does not have a meaning.

A judge member asked if the Advisory Committee would consider adding the preponderance language to subsection (a) even in the absence of a change to (b). Professor Capra responded that subsection (a) could be a freestanding change. Judge Furman agreed that amendments to (a) and (b) do not have to go in tandem.

f. Rule 803(6) and Rule 901

Judge Furman also informed the Committee that the Advisory Committee had considered and rejected two suggestions from a practitioner relating to Rule 803(6), although the suggestions were well received and quite helpful. The first was to clarify Rule 803(6) regarding business records to explicitly permit incorporated business records, that is, records created by one entity but kept and relied upon by another. The second suggestion was to amend Rule 901 to treat production and discovery as a form of authentication, at least in civil cases. The Advisory Committee decided not to proceed on either suggestion because a survey of case law suggested that courts were generally interpreting each rule consistently with the relevant suggestion, and thus the amendments were not necessary.

g. 50th Anniversary of the Federal Rules of Evidence

Following the end of the substantive report, Judge Furman took a moment to inform the Committee of efforts to recognize the 50th Anniversary of the Rules of Evidence in 2025. But for the government shutdown in November 2025, the Advisory Committee had planned to celebrate that milestone. Judge Furman described a small celebration of the anniversary in New York for those present for the virtual meeting and noted that Ms. Dubay has a photograph that can be shared with the Committee. Judge Furman also thanked Ms. Dubay for providing Advisory Committee members with small tokens of appreciation for their service on the Advisory Committee.

4. OTHER COMMITTEE BUSINESS

With the conclusion of the Advisory Committee reports, Judge Dever turned attention to the recognition of three people who have made a remarkable contribution to the rules process over a large number of years – Professor Cathie Struve, Mr. Joseph Spaniol, and Professor Ed Hartnett.

A. Recognition of Professor Struve

Judge Dever began the recognition portion of the meeting with thanks to Professor Cathie Struve, who is the David Kaufman and Leopold Glass Professor of Law at the University of Pennsylvania Carey School of Law. She served as the Appellate Reporter from 2006 to 2015, became the Associate Reporter for Standing from 2017 to 2019, has been the Standing Committee Reporter since then, and will transition to a role as a consultant in February 2026. In her role as the Appellate Reporter, she served with Judges Carl

Stewart, Jeffrey Sutton, and Steven Colloton. As the Standing Committee Reporter, she served with Judges David Campbell and John Bates. Judge Dever noted that while he has been Chair for only three months, in previous work as Chair of Criminal Rules and on that Committee over the past 11 years, it has been a privilege to work with her.

Judge Dever shared messages of appreciation to Professor Struve from Judges Campbell and Bates. Among other superlatives, Judge Campbell offered that he had “never met anyone who combines breadth of knowledge, wise judgment, attention to detail, and incisive analysis as well as Cathie Struve” and that she is “a consistently delightful colleague whose invaluable contributions will be greatly missed.” Judge Bates offered additionally that Professor Struve’s “contributions are always thoughtful and incisive yet unerringly fair and polite.” Judge Dever concurred in these assessments, noting that Professor Struve has been a great resource, teacher, and friend to all involved in the rules effort. Judge Dever thanked Professor Struve again for her incredible contribution and invited Ms. Dubay to make remarks on behalf of the Rules Committee Staff.

Ms. Dubay shared her appreciation of Professor Struve’s assistance and offered tokens of appreciation from the Rules Committee Staff. Ms. Dubay recognized the special camaraderie among the Reporters, and also the camaraderie Professor Struve developed with the Rules Committee Staff. Ms. Dubay commented that the job of the Rules Committee Staff is to ensure the rules process works well and to support not just the members, but the Reporters as an important part of the Rules Enabling Act process. Ms. Dubay thanked Professor Struve, not only on behalf of the staff, but personally for helping her learn the history, often oral, of the work of the Rules Committees.

Professor Hartnett spoke on behalf of the Reporters and Consultants, noting that he and Professor Struve had been colleagues in various contexts for over 25 years. Professor Hartnett presented Professor Struve with a gift from the Reporters and Consultants, along with the Rules Committee Staff - a membership to the Philadelphia Museum of Art. Professor Coquillette, former Reporter for the Standing Committee and involved in the rules process for 42 years, also shared generous remarks about Professor Struve.

Professor Struve offered her thanks for the remarks and gifts. She recalled that 25 years ago, she first attended (as a member of the public) a meeting of the Standing Committee, then chaired by Judge Anthony Scirica. Professors Dan Coquillette, Dan Capra, Ed Cooper, and Rick Marcus were already Reporters. She was struck not just by the rigor and dedication of those discussions, but the deep good fellowship among the participants. Professor Struve noted that the community of Reporters is an extraordinary group, and thanked in particular Professor Coquillette, who guided her in her role as Standing Committee Reporter. Professor Struve extended her appreciation to the judges with whom she worked, including not only those Judge Dever mentioned but also Judges David Levi, Lee Rosenthal, and Mark Kravitz. Professor Struve also thanked the unparalleled researchers who supported the committees, including Tim Reagan and his colleagues in the Federal Judicial Center. She also extended her gratitude to the Rules Committee Staff and expressed her appreciation for their work to support the rules process. Finally, Professor Struve gave thanks to the Style Consultants for their tutelage and friendly discussions about style.

B. Recognition of Joe Spaniol

Judge Dever then recognized Joe Spaniol, Style Consultant to the Standing Committee. Mr. Spaniol, who just turned 100 years old, served in World War II in combat. After law school, he joined the Administrative Office of the U.S. Courts in 1951, rising to Deputy Director and then Acting Director. He served as Clerk of the Supreme Court from 1985 to 1991. Mr. Spaniol served as Style Consultant for the Standing Committee from 1991 to 2025, and is both an extraordinary person and an extraordinary contributor to the rules process.

Style Consultant Joe Kimble submitted a pre-recorded tribute to Mr. Spaniol that was played for the Committee. Professor Kimble noted that Mr. Spaniol is the only one of the three Style Consultants who has served continuously since the beginning of the Style work in 1991, participating in all five rule set restylings. Professor Kimble described him as an “ace drafter” with “an especially sharp eye for logic and consistency.” He was an Editor and then Editor-in-Chief of both the *Federal Bar News* and the *Federal Bar Journal*. Mr. Spaniol served in the 86th Black Hawk Division in World War II. Mr. Spaniol has eight children, 15 grandchildren, and seven great-grandchildren. Above all, Professor Kimble noted that Mr. Spaniol is a kind and gracious man, and his children offered these kind words: “We are all proud of our father, amazed by his many accomplishments, and grateful for his help in our success. He is the epitome of unconditional love, and he is pretty darn smart too. That’s our tribute to you, Dad, from all of us. We love you.”

Bryan Garner, Style Consultant, echoed the remarks of Professor Kimble, and recalled that when Judge Keeton sought to create the Style Committee in the early ‘90s, nobody dreamed that it would overhaul all five rule sets. The success of the Style project was largely attributable to Mr. Spaniol and his steadfastness. Professor Garner described Mr. Spaniol as a very creative, audacious editor, often having to be reined in a bit. Professor Garner concluded by remarking how glad he was to see Mr. Spaniol getting this recognition.

Professor Capra commented that Mr. Spaniol was gracious and kind to Reporters. At one of Professor Capra’s first meetings, the Evidence Rules Committee sought permission to publish for public comment a proposed amendment to Evidence Rule 103. In the Advisory Committee Chair’s absence, Dan presented the proposal, which met with harsh criticism from two members of the Standing Committee. Shortly thereafter, Professor Capra received a note from Mr. Spaniol urging him not to worry about it because the Committee members did that to everybody. Professor Capra thanked Mr. Spaniol for his kindness.

C. Recognition of Professor Hartnett

Judge Dever then recognized Professor Hartnett for his service as Appellate Rules Committee Reporter and congratulated him on his next role as Standing Committee Reporter. Judge Dever thanked Professor Hartnett for his remarkable contributions as the Reporter to Appellate Rules since 2018. He described Professor Hartnett as someone who is “kind and thoughtful and detail-oriented and has an encyclopedic knowledge of the rules and the rules process.”

Judge Eid, Chair of the Appellate Rules Committee, then extended her thanks to Professor Hartnett. She echoed her earlier remarks about Professor Hartnett’s brilliance and amazing work for the Advisory

Committee, but also recognized Professor Hartnett’s professional accomplishments. He is the Richard J. Hughes Professor for Constitutional and Public Law and Service at Seton Hall. Judge Eid thanked him warmly for his service, wished him well, and expressed confidence that he would be a great Standing Committee Reporter.

D. Closing Remarks and Adjournment

Judge Dever informed the members that the next meeting will be June 3-4 in Chicago at Northwestern School of Law.

Judge Dever concluded by thanking everyone for taking the time to do this very important work in support of the rule of law. The meeting was then adjourned.

Draft

TAB 2B

SUMMARY OF THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

- Federal Rules of Appellate Procedurep. 2
- Federal Rules of Bankruptcy Procedurep. 3
- Federal Rules of Civil Procedurep. 4
- Federal Rules of Criminal Procedure.....p. 5
- Federal Rules of Evidence pp. 6-7
- Judiciary Strategic Planningp. 7

<p>NOTICE NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.</p>
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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 January 6, 2026. Member Judge D. Brooks Smith was unable to participate.

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 Sarah S. Vance (S.D. La.), chair; Professor Richard L. Marcus, Reporter; Professor Andrew Bradt, Associate Reporter; and Professor Edward Cooper, consultant, Advisory Committee on Civil Rules; Judge Michael W. Mosman (D. Or.), 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, Standing Committee Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Carolyn A. Dubay, Secretary to the Standing Committee; Bridget M. Healy and Sarah Sraders, Rules Committee Staff Counsel; Judge Robin L. Rosenberg, Director, and Dr. Tim Reagan, Senior Research Associate, Federal

NOTICE

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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 the status of pending rule amendments in different stages of the Rules Enabling Act process, the Standing Committee received and responded to reports from the 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 asked to submit up to three goals from the *Strategic Plan for the Federal Judiciary* that should be prioritized over the next two years 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

Information Items

The Advisory Committee reported on the status of matters under consideration following its October 15, 2025 meeting. The Advisory Committee is considering several issues, including possible amendments to Rule 4 (Appeal as of Right—When Taken) concerning reopening of the time to appeal, and Rule 8 (Stay or Injunction Pending Appeal) to address the purpose and length of administrative stays. It is also considering suggestions for a new rule governing intervention on appeal, amendments to Rule 46(a) concerning admission to the bar of the court of appeals, and the treatment of tribes in the Appellate Rules. The Advisory Committee removed from its agenda a suggestion that Rule 3 be amended to provide that the district clerk, rather than the appellant, identify the court to which the appeal is taken.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Notice of Retroactive Technical Amendment

In March 2016, the Judicial Conference delegated authority to the Bankruptcy Rules Advisory Committee to make “non-substantive, technical, or conforming amendments to the Bankruptcy Official Forms, subject to later approval by the Rules Committee and notice to the Judicial Conference.” JCUS-MAR 2016, p. 24.

Official Form 410C13-NR (Response to Trustee’s Notice of Disbursements Made)

The Advisory Committee on Bankruptcy Rules submitted for retroactive approval a technical amendment to Official Form 410C13-NR (Response to Trustee’s Notice of Disbursements Made). Technical corrections are required to fix two erroneous references in Form 410C13-NR, which went into effect on December 1, 2025. Specifically, two items in Part 2 of the form referred to “the date of this notice” when it should have stated “the date of this response.” The technical corrections conform Part 2 to the introductory language of that section. The Standing Committee unanimously approved the Advisory Committee’s recommendation.

Information Items

The Advisory Committee also reported on the status of matters under consideration following its September 25, 2025 meeting. In addition to the recommendation discussed above, the Advisory Committee considered proposed amendments to the privacy rules, suggestions to amend Rule 2003 (Meeting of Creditors or Equity Security Holders) regarding the location and timing of meetings of creditors, suggestions to allow the use of masters in bankruptcy cases and proceedings, and proposed amendments to Rule 8017 to conform with proposed amendments to Appellate Rule 29. It removed from its agenda a suggestion to amend Rule 2006 regarding time counting.

FEDERAL RULES OF CIVIL PROCEDURE

Rule Approved for Publication and Comment

The Advisory Committee on Civil Rules submitted proposed amendments to Rule 55 (Default; Default Judgment) with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee’s recommendation, including minor style changes.

The proposed amendment to Rule 55 removes the commands in Rules 55(a) and (b)(1) that the clerk “must” enter a default or default judgment, respectively, whenever the rules empower the clerk to do so. Instead, the proposed amendment provides that the clerk “may either” enter default or default judgment, respectively, “or refer the matter to the court for directions.” The proposed amendment also changes the reference to “the party” in Rule 55(b)(2) to “a party” for greater clarity.

Information Items

The Advisory Committee also reported on the status of matters under consideration following its October 24, 2025 meeting. In addition to the recommendation discussed above, the Advisory Committee continued to discuss proposals to amend Rule 43 (Taking Testimony) to relax the standards governing permission for remote testimony and heard an update concerning third-party litigation funding. The Advisory Committee also continues to study suggestions relating to Rule 23 (Class Actions) and random case assignment.

The Advisory Committee decided to remove from its agenda proposals concerning cross-border discovery, filing under seal, discovery cybersecurity risks, reimbursement of nonparties served with subpoenas for costs of compliance, permissive filing of discovery requests and responses, and time counting for responses to motions.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee reported on the status of matters under consideration following its November 6, 2025 meeting. The Advisory Committee continues to consider amendments to Rule 49.1 (Privacy Protection for Filings Made with the Court) to protect minors' privacy by requiring the use of pseudonyms and to require complete redaction of SSNs and other taxpayer identifying information. The Advisory Committee plans to consider the proposed amendments at its spring 2026 meeting with a view to proposing them at the Standing Committee's June 2026 meeting for publication and public comment. (Consideration of the privacy rules has been a coordinated project, and the Appellate, Bankruptcy, and Civil Rules Advisory Committees are also considering amendments to their privacy rules that may also be submitted to the Standing Committee in June 2026.) The Advisory Committee also reported on the activities of its subcommittee on Rule 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District). The Advisory Committee also formed a new subcommittee to consider a suggestion on Rule 11 (Pleas) to remove "possible departures under the Sentencing Guidelines" from the factors a court must advise the defendant it must consider in determining a sentence, in light of the new amendments to the Sentencing Guidelines that took effect in November 2025. The suggestion also implicates Rule 32(h) concerning notice of possible departures from sentencing guidelines.

The Advisory Committee decided to remove from its agenda a recent proposal to amend Rule 53 (Courtroom Photographing and Broadcasting Prohibited) to allow broadcasting of criminal proceedings since it had already recently considered and declined to pursue a related proposal in 2024. The Advisory Committee continues to study potential amendments to Rule 15 (Depositions).

FEDERAL RULES OF EVIDENCE

Information Items

The Advisory Committee reported on the status of matters under consideration following its November 5, 2025 meeting. The Advisory Committee reported on potential edits to the proposal for new Rule 707 regarding the admissibility of evidence generated by artificial intelligence, which has been published for public comment. Potential edits to the published preliminary draft include amending the proposed committee note to emphasize the distinction between expert opinions offered by humans (Rule 702) and opinions generated by machines (Rule 707). The Advisory Committee also discussed strengthening language in the committee note to (1) emphasize that Rule 707 does not provide a way for the proponent to evade the requirements of Rule 702 by presenting machine-based evidence instead of an expert; (2) provide guidance on what to do if it is not possible to explain how a machine reached its opinion or conclusion; and (3) explain the relationship between Rule 707 and Rule 901(b)(9), which provides a ground for authenticating machine-generated evidence.

The Advisory Committee also continued to discuss a proposal to add a new Rule 901(c) to establish a procedure to challenge the authenticity of evidence suspected to be a deepfake. Other items under the Advisory Committee's consideration include possible amendments to the following rules: Rule 902 (Evidence that is Self-Authenticating) to add a reference to federally recognized Indian tribes and nations; Rule 803(3) (Exceptions to the Rule Against Hearsay – Regardless of Whether the Defendant is Available as a Witness) regarding the state of mind exception; Rule 703 (Bases of an Expert's Opinion Testimony) in light of *Smith v. Arizona*; and Rule 104(a) and (b) (Preliminary Questions) to include applicable standards of proof.

The Advisory Committee also reported on its celebration of the 50th Anniversary of the enactment of the Federal Rules of Evidence in 2025 and noted that materials will be made available publicly to commemorate the anniversary.

JUDICIARY STRATEGIC PLANNING

At the request of the Judiciary Planning Coordinator, Chief Judge Michael A. Chagares (3d Circuit), the Committee reviewed the *Strategic Plan for the Federal Judiciary for 2025-2030* and provided recommendations for aspects of the plan that should be prioritized over the next two years.

Respectfully submitted,



James C. Dever III, Chair

Paul J. Barbadoro
Todd Blanche
Elizabeth J. Cabraser
Louis A. Chaiten
Colm F. Connolly
Joan N. Ericksen
Stephen A. Higginson

Edward M. Mansfield
Troy A. McKenzie
Andrew J. Pincus
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D. Brooks Smith
Bart H. Williams

TAB 3

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. This is not true of all the rule sets; one of the other sets of national rules currently contains no instances of ‘unrepresented’ apart from its electronic-filing rule, so using ‘self-represented’ in that rule set is easier to implement. 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 Reagan if he wanted to say anything. Mr. Reagan 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. Reagan 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. Reagan 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. Reagan 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.

TAB 4

TAB 4A

MEMORANDUM

DATE: March 19, 2026

TO: Advisory Committee on Appellate Rules

FROM: Catherine T. Struve

RE: Proposed draft amendments relating to self-represented litigants

Enclosed with this memo are proposed draft amendments to Appellate Rule 25. These amendments would implement changes developed by the project on self-represented litigants' filing and service. If approved for publication at the Advisory Committee's spring 2026 meeting, these amendments would form part of a package of proposed amendments (to the Appellate, Bankruptcy, Civil, and Criminal Rules) presented for approval for publication in summer 2026. This memo highlights matters for the Advisory Committee to consider as it determines whether to propose the amendments for publication.

To ground the Advisory Committee's review of the proposed amendments, I enclose (1) a clean version of the proposed amendments to Appellate Rule 25; (2) a redline showing how the clean version of the Appellate Rule 25 draft differs from the one in the fall 2025 agenda book; and (3) a comparison chart of the proposed amended rule language (in clean form) across the Bankruptcy, Appellate, Civil, and Criminal rule sets.

Part I of this memo recounts that the provision on electronic filing access for self-represented litigants has been restructured to accord with guidance provided at the Criminal Rules Committee's fall 2025 meeting. Part II explains the tentative decision – reflected in the enclosed draft – to limit the new filing provision in the Criminal, Civil, and Appellate Rules to self-represented “parties.” Part III collects other developments since the fall. And Part IV notes remaining variances in wording across the rule sets in the overall package.

I. New structure of the e-filing provision

The new structure for the proposed e-filing provision grows out of discussions at the Criminal Rules Committee's fall meeting.

As a point of comparison, the sketch set out in the fall 2025 agenda books used a four-part structure for the provision on e-filing by self-represented litigants. Part (i) flipped the default principle (by providing that a self-represented litigant may “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”). Part (ii) provided that any local provision (extending beyond a particular litigant) that prohibits self-represented litigants from using the e-filing system “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.” Part (iii) stated that “[a] court may set reasonable conditions and restrictions on unrepresented parties’ access to the court’s electronic-filing system.” Part (iv) stated that the court may deny a person access to the e-filing system “and may revoke a person’s previously granted access for not complying with the conditions authorized in (iii).”

That structure had a number of features that participants in prior discussions found valuable. But, on the other hand, some participants questioned the structure and wondered why parts (ii) and (iii) were separate, given that they are really two sides of the same coin. Here is the new structure (shown for illustrative purposes in a clean version that would become part of Appellate Rule 25(a)(2)):

(C) Electronic Filing by an Unrepresented Party – When Allowed or Required.

(i) In General. An unrepresented party may use the court’s electronic-filing system to file papers and receive notice of activity in the party’s¹ case, unless a court order or local rule prohibits the party from doing so. An unrepresented person may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions.

(ii) Conditions and Restrictions on Access. A court may set and enforce reasonable conditions and restrictions on unrepresented parties’ access to the court’s electronic-filing system (including by denying or revoking access for a particular unrepresented party). But the court may not prohibit all unrepresented parties from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing papers and receiving electronic notice of activity in the party’s case.

¹ We have added “party’s” before “case” to emphasize that the presumption in favor of access to the court’s e-filing system only extends to access in the party’s own case.

II. Limitation of e-filing provision to self-represented “parties”

As shown in Part I, the self-represented litigant e-filing provisions proposed for the Civil, Criminal, and Appellate Rules refer to access for unrepresented “*parties*.”² This is a shift from the current Civil and Appellate Rules (which refer to an unrepresented “person”), though it carries forward current Criminal Rule 49’s reference to a self-represented “party.” The reason for the shift is that the amended provision flips the default presumption from one of non-access to one of access to the court’s electronic-filing system. Once the presumption is inverted to say that self-represented litigants may e-file *unless* barred by order or local rule, it seems advisable to change “person” to “party” so that lay people who are not parties to the case do not cite the rule as granting *them* access.

As noted above, in the Criminal Rules context there is an additional reason to use “party” – that is, because that is the term used in current Criminal Rule 49. Criminal Rule 49(b)(3)(B) deals only with electronic filing by a “party not represented by an attorney.” Meanwhile, Criminal Rule 49(c) provides: “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.”

In the Appellate Rule 25(a)(2)(C) draft, we have added one new component, which is unique to the appellate context. Because a self-represented nonparty (for example, a law professor amicus) who already appeared in the court below may have received permission to e-file in the court below, one question is whether that permission to e-file below should broaden the person’s access to e-filing in the court of appeals. Cf. Appellate Rule 24(a)(3) (providing presumptive *in forma pauperis* status on appeal to a party who proceeded i.f.p. in the district court). The argument for providing presumptive carryover permission is that, to the extent that e-filing permission depends on attributes of the litigant (e.g., capacity to master the technical aspects of the e-filing system), a grant of permission below may indicate that it makes sense to carry the permission over to the nonparty’s filings on appeal. An argument against carrying over the permission to the court of appeals might be that e-filing permission might also depend on attributes of the court (e.g., the extent of court staff’s training and bandwidth to assist users with the court’s e-filing system) which could differ as between the court below and the court of appeals.

2 There is one nuance in the Civil and Appellate proposals: Proposed Appellate Rule 25(a)(2)(C)(i) carries forward the present Rule’s provision that an unrepresented “person” may “be required to file electronically only by” court order or “a local rule that includes reasonable exceptions.” The choice of the broader term is appropriate in this provision, which is designed to protect unrepresented people from being required to use the court’s e-filing system if doing so would pose a hardship for them.

See *infra* Part IV for discussion of the Bankruptcy-specific proposal to use “individual” rather than “party.”

The bracketed Rule 25(a)(2)(C)(iii) shown in the enclosed draft is intended to take account of both of these perspectives. It provides (subject to alteration by local rule, if that bracketed language is retained) that the same treatment accorded by Rule 25(a)(2)(C) to unrepresented *parties* will apply to unrepresented *nonparties* who have been permitted to use the district court’s e-filing system. That is to say, as to such nonparties, Rule 25(a)(2)(C)(i) would presumptively allow them to use the court of appeals’ e-filing system (unless the court of appeals adopted a provision barring them from doing so), and Rule 25(a)(2)(C)(ii) would permit the court to impose reasonable conditions and restrictions on such nonparties’ e-filing access but would only permit the court to categorically bar them from the court’s e-filing system if it provided an alternative electronic method for filing papers and receiving electronic notice of activity in the case:

[(iii) Unrepresented Person Permitted to File Electronically in the District Court. In an appeal from a district court, [unless a local rule provides otherwise,] this subdivision (C) concerning an unrepresented party also applies to an unrepresented nonparty who has used the district court’s electronic-filing system to file papers in the case and who remains permitted to do so.]

III. Other developments since fall 2025

This section highlights three changes made since Advisory Committee members last saw the draft of Rule 25 in fall 2025: the deletion of the provision addressing service of papers not filed (Part III.A), revisions to the provision addressing when service by the notice of case activity is complete (Part III.B), and a revision to the provision addressing service of sealed filings (Part III.C). Additionally, Part III.D highlights a question about the Committee Note, and Part III.E notes a few matters that have been resolved without a change to the proposed rule text.

A. Deletion of provision addressing service of papers not filed

The Rules currently don’t specifically and explicitly address manners of service for papers that aren’t filed. Because some project participants had expressed interest in separately treating that topic, the fall 2025 sketch included a proposed Rule 25(c)(5) which provided: “Rule 25(c)(2) governs service of a paper that is not filed.” There’s a good argument, though, that such a provision is redundant: The rules governing method of service don’t confine themselves to service of *filed* papers, except of course that the provision for service via the court’s e-filing system will not be an option for non-filed papers.

This proposed provision did not attract support among other project participants. At the Criminal Rules Committee’s fall 2025 meeting, it was suggested that we should ask the Clerk liaisons whether they saw a need for such a provision. None of the four Clerk liaisons voiced

support for including such a provision. In addition, Brandy Lonchena consulted some other District Clerks about this question and reported that they, too, saw no reason to include such a provision. Accordingly, we have deleted the “service of papers not filed” provision from the draft.

B. Provision on when service by notice of case activity is complete

The fall 2025 sketch essentially said that service by means of the notice of case activity is complete as of the notice’s date (“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.”). This provision was designed to protect litigants whose deadlines run *from* the date of service, by ensuring that if there’s a time lag in the courthouse (in scanning a paper filing and uploading it into CM/ECF) then that time lag will occur *before* the date of service. (Courts are pretty prompt in scanning and uploading; but still we have heard of one to two day delays between receipt and upload.)

But last month, we focused on the fact that the rules contain a number of provisions that require a litigant to *serve* an item *by* a certain date – and in a close case, the fall 2025 draft might lead a court to conclude that service was untimely, if a self-represented litigant were to get their filing into the court’s hands on the last day of the period but the court didn’t upload it until a later date.

Accordingly, we modified the proposed provisions that address when service by means of the notice of case activity is complete to read as follows: “For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity]³ is complete as of the notice’s date.” Variants of this language are now in proposed Bankruptcy Rules 9036(d) and 8011(c)(3), Appellate Rule 25(c)(4), Civil Rule 5(b)(2), and Criminal Rule 49(a)(3). We have also deleted the words “as of the notice’s date” from the provisions in Bankruptcy Rules 9036(c)(1) and 8011(c)(1), Appellate Rule 25(c)(1), Civil Rule 5(b)(2), and Criminal Rule 49(a)(3) stating that the notice of case activity constitutes service on persons registered to receive such notices.

³ This bracketed language was not in the version approved by the Criminal Rules Committee’s subcommittee – which originated this phrasing – but the bracketed language may be desirable to make clear that the sentence addresses completeness only for purposes of service by the notice of case activity, and not also for purposes of service by other means.

An alternative would be to use “such service” instead of repeating “service by a notice of case activity,” as follows: “For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, such service is complete as of the notice’s date.” This formulation is more concise but requires the reader to refer back to the preceding sentence to identify what “such service” means. Because the concepts here are somewhat subtle, using more explicit and parallel wording for maximum clarity may be preferable.

C. Revision to provision on service of sealed filings

As the Committee knows, the goal of the service component of the project is to relieve self-represented litigants who file in paper from having to serve in paper when the recipient is already receiving the electronic notice of case activity. As shown in the fall 2025 draft of Appellate Rule 25(c)(1), the service-related proposal provided that the notice of case activity constituted service on anyone registered to receive notices of case activity, but also stated that “a court may provide by local rule that if a paper is filed under seal . . . , it must be served by other means.”

This winter, we focused on the fact that, in fall 2025, a number of federal courts “implemented new procedures to prevent sealed filings from being accessed or viewed electronically in CM/ECF.”⁴ The reporters and Clerk liaisons discussed whether the requirement of service of sealed documents by other means should be part of the national rule rather than being left up to local discretion. Participants concluded that a national rule requiring sealed filings to be served by other means was unnecessary because court practices for handling and serving sealed documents may continue to evolve. The group favored preserving flexibility by leaving the decision to local rules or orders rather than imposing a uniform national requirement.

Accordingly, we retained the provision for local control. To accord further flexibility to courts, we expanded that provision by adding “order or,” thus: “a court may provide by order or local rule that if a paper is filed under seal . . . it must be served by other means.”⁵

D. Note language on requiring court permission to use e-filing system

The draft Committee Note to proposed Rule 25(a)(2)(C) includes a bracketed sentence concerning the permissibility of a local provision requiring unrepresented parties to obtain court permission to use the court’s e-filing system. This language was included in the draft based on a suggestion from a member of the Criminal Rules Committee. Two questions have been raised about it – one having to do with whether a Committee Note can opine on the permissible

4 https://www.gand.uscourts.gov/sites/gand/files/general-ordes/2025-09-24%20Standing_Order_25-02-Access_and_Management_of_Sealed_Documents-Revised.pdf .
See also

https://www.wiwd.uscourts.gov/sites/default/files/Sealed%20Documents_Electronic%20Access%20and%20Service.pdf .

5 In addition to containing that provision, Appellate Rule 25(c)(1)(B) also authorizes local provisions to require service by other means for a filing that “initiates a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21.” We added Appellate Rule 6(c) to that list in light of the 2025 amendments to that rule (which made Rule 6(c) a more self-contained compendium of the provisions governing requests for permission to take a direct appeal from the bankruptcy court to the court of appeals).

applications of rule text and the other on whether the bracketed statement is a good idea as a matter of policy.

The bracketed statement – as shown in the enclosed draft – is: “A local provision requiring unrepresented parties to obtain the court’s permission in order to use the court’s electronic-filing system [could] [would] count as including reasonable exceptions, so long as such permission is not unreasonably withheld in practice.”⁶

Taking the policy question first: On one hand, including this language would recognize existing practices in more than half of the federal courts of appeals and district courts.⁷ On the other hand, because it would be challenging for an unrepresented party to demonstrate that a court unreasonably withholds permission in practice, one concern is that this Note language might seem to bless local provisions that effectively deny e-filing to unrepresented parties in general.

As for whether Committee Note language should opine on the meaning of rule text: Past rulemaking practice provides support for the notion that Committee Note language can opine on the meaning or application of new rule text.⁸ Admittedly, textualist judges might disregard Committee Notes. And for that reason as well as to provide clear notice to litigants and courts, the rulemakers have always followed the principle that anything essential must go in the text of the rule rather than in the Note. But it seems to this writer that the bracketed statement would not be a departure from past Committee Note practice.

E. Items resolved without a change to the draft

Some issues that were presented during the fall 2025 discussions appear – based on a combination of expressed agreement by some participants and an absence of expressed qualms from other participants – to have been resolved without a change to the draft rules. Here is a quick report on the two most notable issues:

6 The corresponding language sketched for the Criminal Rule 49 Committee Note – and echoed in drafts for the other trial-court rules – is: “[For example, local provisions that require unrepresented parties who seek to use the court’s electronic-filing system to obtain permission from the judge to whom the case is assigned would count as including reasonable exceptions, so long as such permission is not unreasonably withheld in practice.]”

7 See Tim Reagan, *United States District Courts’ Local Rules and Procedures on Electronic Filing by Self-Represented Litigants* (FJC 2025) at 1 (reporting that 54 federal districts “permit self-represented litigants to request permission to use the electronic filing system”); Tim Reagan, Carly Giffin, and Roy Germano, *Federal Courts’ Electronic Filing by Pro Se Litigants* (FJC 2025) at 6-7 (reporting that seven courts of appeals “allow [pro se litigants to register as CM/ECF users] with individual permission”).

8 For one example, see the 2015 Committee Note to Civil Rule 37(e).

- Whether to include the prison-mailbox rule in the scope of the current project
 - We had previously discussed 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, so the project will not tackle that issue.
- Whether the project should try to overhaul the clerk-refusal and local-form rules
 - My fall 2025 memo asked whether project participants were interested in expanding the project to encompass revisions to the rules that govern the clerk’s rejection of a filing for noncompliance with national or local rules on form⁹ and the enforcement of local requirements on form.¹⁰ The consensus view is that the project should not expand to encompass those issues.

IV. Remaining variances across the rule sets in the package

We are proposing for publication possible amendments to Appellate Rule 25, Bankruptcy Rules 5005, 8011, and 9036, and Criminal Rule 49, as well as Civil Rule 5.¹¹ As you can see from the enclosed comparison chart, we have tried to maintain parallel language across the proposals. But some variations have emerged as the committees have considered the proposals. In inter-committee projects like this one, we always prefer to use parallel language whenever possible; but the Standing Committee can be willing to approve deviations from parallel language where a particular rule set’s needs justify those deviations. Below is a summary of the variances that have emerged and the reasons for them.

- Self-represented litigant (“SRL”) provisions generally: “unrepresented” versus “self-represented”
 - The Bankruptcy, Civil, and Appellate Rules will use the term “unrepresented” to describe SRLs, whereas the Criminal Rule will use “self-represented.” Though the latter is preferred by many project participants, implementing that preference is not practicable in the Bankruptcy, Civil, and Appellate Rules because too

9 See Appellate Rule 25(a)(4), Bankruptcy Rule 5005(a)(1), Civil Rule 5(d)(4), and Criminal Rule 49(b)(5).

10 See Appellate Rule 47(a)(2), Bankruptcy Rule 9029(b), Civil Rule 83(a)(2), and Criminal Rule 57(a)(2).

11 We are also proposing for publication conforming amendments to cross-references in the three-day rules in Civil Rule 6 and Criminal Rule 45. No conforming amendment is needed for the three-day rule in Appellate Rule 26(c), because that rule does not employ cross-references.

many existing rules in those sets would have to be amended correspondingly.

- This difference seems warranted by differences between the rules sets (that is, that the current Criminal Rules use the term “unrepresented” only in Rule 49), so my working assumption is that it will be fine with the Standing Committee for Criminal to take a different approach than the other Advisory Committees. Notably, the proposed amendments to Criminal Rule 17 use the term “self-represented,” and the public comment on the Rule 17 proposal does not seem to have taken issue with the use of that phrase as a matter of terminology.
- SRL e-filing: “individual” versus “party”
 - The current rules vary in the term that they use to denote an unrepresented filer. Criminal Rule 49 says “party,” Appellate Rule 25 and Civil Rule 5 say “person,” and the Bankruptcy Rules say “individual.” (Terminology in the Bankruptcy Rules is affected by the definitions in the Bankruptcy Code.)
 - The term of choice will vary in the proposed amended rules as well. To denote the type of SRL who is encompassed in the new default principle of access to the court’s e-filing system, the Bankruptcy Rules Committee’s Technology Subcommittee has decided that Bankruptcy Rules 5005 and 8011 should use “individual.” By contrast, the proposed Appellate, Civil, and Criminal Rules use “party.”
 - The Bankruptcy Rules subcommittee considered and rejected the term “unrepresented party,” because it is concerned that that term would erroneously suggest to readers that a nonhuman litigant could represent itself. To avoid that possibility, they have decided that the Bankruptcy Rules should continue to use “individual,” which is the term those rules use to refer to a human being.
 - The current plan¹² is for the other rule sets to use “party,” in order to emphasize that only those unrepresented litigants who are parties to a lawsuit are encompassed in the amended rules’ presumption of access to the court’s e-filing system. We have heard from participants that, from the clerk’s perspective, it’s important that the rule draw that boundary.
 - This variance in terminology may be justified by features of bankruptcy practice – that is, the number of artificial entities (eg, small creditors) that may participate in a bankruptcy proceeding and might wish to appear without a lawyer. By contrast, the other three sets of rules already use words (to denote unrepresented

12 Subject, of course, to determination by the advisory committees of the question presented in Part II.

litigants) that encompass artificial entities – they say either “person” (Civil and Appellate) or “party” (Criminal) – and we haven’t heard of those terms giving rise to any erroneous assumptions that artificial entities can appear without a lawyer; so the concern that arose for the Bankruptcy subcommittee appears not to be an issue for the other three sets of rules.

- SRL e-filing: “in the case” versus “in the party’s case”
 - Proposed Bankruptcy Rules 5005(a)(3)(B)(i) and 8011(a)(2)(C)(i) refer to “receiv[ing] notice of activity in the case,” while proposed Appellate Rule 25(a)(2)(C)(i), Civil Rule 5(d)(2)(B)(i), and Criminal Rule 49(b)(2)(B)(i) refer to “receiv[ing] notice of activity in the party’s case.” The latter three rules specify “in the party’s case” because we have heard from clerk participants how important it is to make clear that the default principle of access to e-filing should extend only to the case in which the SRL is a party, and not to other cases. But the Bankruptcy Rules will say, simply, “in the case” – because in the bankruptcy context, there is a concern that saying “in the individual’s case” would suggest that the denoted individual must always be the debtor, and that’s not true, because the rule is designed to extend to self-represented human *creditors* as well.
- SRL e-filing: requirements to e-file
 - This variance is carried forward from the existing rules. Unlike the other SRL e-filing default rules, proposed Criminal Rule 49(b)(2)(B)(i) (like existing Criminal Rule 49(b)(3)(B)) contains no provision about the circumstances under which a SRL can be required to e-file, because the Criminal Rules Committee has made a judgment call that the Criminal Rule shouldn’t authorize a court to require a SRL to e-file.
- E-filing and signatures:
 - Currently, all five relevant rules contain (with immaterial variations) the following provision, added in 2018: “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.” See, e.g., Appellate Rule 25(a)(2)(B)(iii).
 - In the process of preparing the SRL-related amendments, the Bankruptcy Rules team has decided to amend their signature provisions to use “individual” instead of “person.” Their reason is that “person” (as defined in Section 101 of the Bankruptcy Code) includes some artificial entities, and their surmise is that only human beings can currently register for electronic-filing accounts. As noted

above, to denote human entities, the Bankruptcy Rules use the term “individual.”

- The Bankruptcy Code’s definitions are not relevant to the non-bankruptcy rule sets, and “person” has been used in all the signature rules for nearly eight years without causing any perceptible problem, so no change to the non-bankruptcy rules’ signature provisions is proposed for the other three sets of rules.
- Possible FRAP provision concerning nonparties permitted to e-file in the court below:
 - As noted in Part II, the Appellate Rules draft includes a sketch of a proposed Rule 25(a)(2)(C)(iii), which would broaden access to the court of appeals’ e-filing system for a self-represented nonparty (e.g., an academic submitting an amicus brief) who was permitted to file electronically in the district court.
 - No similar provision is proposed for Bankruptcy Rule 8011(a)(2)(C) (which governs appeals from a bankruptcy court to a district court or BAP). That’s because none is needed: Given Bankruptcy’s decision to use “individual” instead of “party” to describe the self-represented litigants to which the e-filing provision applies, a human nonparty without a lawyer is already encompassed in the Bankruptcy SRL e-filing provisions.
- “Documents” versus “papers” (this one is not a substantive variation, but is an intentional one):
 - Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and (in the main) Appellate Rule 25 use the word “paper,” while Bankruptcy Rules 8011 and 9036 use the word “document.” On the theory that internal consistency within a rule may be more valuable than consistency across rules, the proposals use “paper” in the amendments to Bankruptcy Rule 5005, Civil Rule 5, Criminal Rule 49, and Appellate Rule 25, but use “document” in the amendments to Bankruptcy Rules 8011 and 9036.

Encls.

1 **Rule 25. Filing and Service**

2 **(a) Filing.**

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

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

6 **(A) Nonelectronic Filing.**

7 **(i) In General.** For a paper not filed electronically, filing may be
8 accomplished by mail addressed to the clerk, but filing is not
9 timely unless the clerk receives the papers within the time fixed for
10 filing.

11 **(ii) A Brief or Appendix.** A brief or appendix not filed electronically is
12 timely filed, however, if on or before the last day for filing, it is:
13 • mailed to the clerk by first-class mail, or other class of mail that
14 is at least as expeditious, postage prepaid; or
15 • dispatched to a third-party commercial carrier for delivery to the
16 clerk within 3 days.

17 **(iii) Inmate Filing.** If an institution has a system designed for legal mail,
18 an inmate confined there must use that system to receive the
19 benefit of this Rule 25(a)(2)(A)(iii). A paper not filed
20 electronically by an inmate is timely if it is deposited in the
21 institution's internal mail system on or before the last day for filing

- 22 and:
- 23 • it is accompanied by: a declaration in compliance with 28 U.S.C.
- 24 § 1746--or a notarized statement--setting out the date of
- 25 deposit and stating that first-class postage is being prepaid;
- 26 or evidence (such as a postmark or date stamp) showing
- 27 that the paper was so deposited and that postage was
- 28 prepaid; or
- 29 • the court of appeals exercises its discretion to permit the later
- 30 filing of a declaration or notarized statement that satisfies
- 31 Rule 25(a)(2)(A)(iii).

32 **(B) Electronic Filing and Signing. (i) ~~By~~ by a Represented Person**

33 **Represented by Counsel--Generally Required; Exceptions.** A person

34 represented by an attorney must file electronically, unless nonelectronic

35 filing is allowed by the court for good cause or is allowed or required by

36 local rule.

37 **(ii) (C) Electronic Filing by ~~By~~ an Unrepresented Person Party--When**

38 **Allowed or Required.**

39 **(i) In General.** ~~An unrepresented party person not represented by an~~

40 ~~attorney: • may file electronically only if allowed by~~ use the

41 court's electronic-filing system to file papers and receive notice of

42 activity in the party's case, unless a court order or by local rule

43 prohibits the ~~person party~~ person party from doing so.; ~~and • An unrepresented~~

44 person may be required to file electronically only by ~~court~~ order in
45 a case, or by a local rule that includes reasonable exceptions.

46 **(ii) Conditions and Restrictions on Access.** A court may set and enforce
47 reasonable conditions and restrictions on unrepresented parties'
48 access to the court's electronic-filing system (including by denying
49 or revoking access for a particular unrepresented party). But the
50 court may not prohibit all unrepresented parties from using the
51 system unless that prohibition includes reasonable exceptions or
52 the court permits the use of another electronic method for filing
53 papers and receiving electronic notice of activity in the party's
54 case.

55 **[(iii) Unrepresented Person Permitted to File Electronically in the**
56 **District Court.** In an appeal from a district court, [unless a local
57 rule provides otherwise,] this subdivision (C) concerning an
58 unrepresented party also applies to an unrepresented nonparty who
59 has used the district court's electronic-filing system to file papers
60 in the case and who remains permitted to do so.]

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

64 **(iv) (E) Same as a Written Paper.** A paper filed electronically is a written paper
65 for purposes of these rules.

66 (3) **Filing a Motion with a Judge.** *[Not shown in this draft, for brevity.]*

67 (4) **Clerk's Refusal of Documents.** *[Not shown in this draft, for brevity.]*

68 (5) **Privacy Protection.** *[Not shown in this draft, for brevity.]*

69 **(b) Service of All Papers Required.** Unless a rule requires service by the clerk or the paper will
70 be served through the court's electronic-filing system under Rule 25(c)(1), a party must,
71 at or before the time of filing a paper, serve a copy on the other parties to the appeal or
72 review. Service on a party represented by counsel must be made on the party's counsel.

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

74 **(1) Service by a Notice of Case Activity Sent Through the Court's Electronic-Filing**
75 **System.** A notice of case activity sent to a person registered to receive it through
76 the court's electronic-filing system constitutes service on that person, with these
77 qualifications:

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

80 (B) a court may provide by order or local rule that if a paper is filed under seal or
81 initiates a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21,
82 it must be served by other means.

83 **(2) Service by Other Means.** A paper may also be served under this rule by:

84 ~~Nonelectronic service may be any of the following:~~

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

87 (B) ~~by-mail; or~~

88 (C) ~~by~~ third-party commercial carrier for delivery within 3 days; or
89 (D) .-(2) Electronic service of a paper may be made (A) by sending it to a
90 registered user by filing it with the court's electronic filing system or (B)
91 by sending it by other electronic means that the person to be served has
92 consented to in writing, but such electronic service is not effective if the
93 sender learns that it did not reach the person to be served.

94 **(3) Considerations in Choosing Other Means.** When reasonable considering such
95 factors as the immediacy of the relief sought, distance, and cost, service on a party
96 must be by a manner at least as expeditious as the manner used to file the paper
97 with the court.

98 **(4) When Service Is Complete.**

99 **(A) For Service by Mail or Commercial Carrier.** Service by mail or by
100 commercial carrier is complete on mailing or delivery to the carrier.

101 **(B) For Service by a Notice of Case Activity.** For any service deadlines, service
102 by a notice of case activity is complete as of the date of filing. For any
103 deadlines that run from the date of service, service [by a notice of case
104 activity] is complete as of the notice's date.

105 **(C) For Service by Other Electronic Means.** Service by other electronic means
106 is complete on filing or sending, unless the party making service is
107 notified that the paper was not received by the party served.

108 **(5) Definition of "Notice of Case Activity."** The term "notice of case activity" includes
109 a notice of docket activity, a notice of electronic filing, and any other similar

110 electronic notice provided to case participants through the court’s electronic-filing
111 system to inform them of activity on the docket.

112 **(d) Proof of Service.**

113 (1) A paper presented for filing must contain either of the following if it was served other
114 than through the court's electronic-filing system:

115 (A) an acknowledgment of service by the person served; or

116 (B) proof of service consisting of a statement by the person who made service
117 certifying:

118 (i) the date and manner of service;

119 (ii) the names of the persons served; and

120 (iii) their mail or electronic addresses, facsimile numbers, or the addresses
121 of the places of delivery, as appropriate for the manner of service.

122 (2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule
123 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which
124 the document was mailed or dispatched to the clerk.

125 (3) Proof of service may appear on or be affixed to the papers filed.

126 **(e) Number of Copies.** *[Not shown in this draft, for brevity.]*

127

128

129

130

Committee Note

131 Rule 25 is amended to address two topics concerning unrepresented parties. (Concurrent
132 amendments are made to Bankruptcy Rules 5005, 8011, and 9036, Civil Rule 5, and Criminal
133 Rule 49.) Rule 25(a)(2) is amended to expand the availability of electronic modes by which
134 unrepresented parties can file documents with the court and receive notice of filings that others
135 make in the case. Rule 25(c) is amended to address service of documents filed by an

136 unrepresented litigant in paper form. Because all such paper filings are uploaded by court staff
137 into the court’s electronic-filing system, there is no need to require separate paper service by the
138 filer on case participants who receive an electronic notice of the filing from the court’s
139 electronic-filing system. Rule 25(c)’s treatment of service is also reorganized to reflect the
140 primacy of service by means of the electronic notice.

141
142 **Subdivision (a)(2)(C).** Under new Rule 25(a)(2)(C)(i), an unrepresented party is
143 presumptively authorized to use the court’s electronic-filing system to file documents in the case.
144 If a court of appeals wishes to restrict unrepresented parties’ access to the electronic-filing
145 system, it must do so by order or local rule. This presumption in favor of access by
146 unrepresented parties is the opposite of the presumption set by the prior Rule 25(a)(2)(B)(ii). The
147 reference to an unrepresented ‘party,’ rather than an unrepresented ‘person,’ excludes an
148 unrepresented nonparty from its scope. However, the court may not require electronic filing by
149 any unrepresented person, including any unrepresented nonparty, except by order in a particular
150 case or by a local rule that includes reasonable exceptions.

151
152 New Rule 25(a)(2)(C)(ii) states that the court may set reasonable conditions and
153 restrictions on access by unrepresented parties to the court’s electronic-filing system. Where
154 appropriate, access to the electronic-filing system might be allowed only to a particular type of
155 unrepresented party: for example, one who is not incarcerated (if the distinctive logistical
156 considerations that apply in carceral settings justify such a limitation), one who has satisfactorily
157 completed required training and certifications, one who complies with other reasonable
158 conditions on access, and so on. Reasonable conditions or restrictions might also distinguish
159 between particular types of filings: for example, filings that initiate a case in the court of appeals
160 and those that do not. The subdivision explicitly contemplates that, in appropriate circumstances,
161 a reasonable restriction might also include an order barring a specific unrepresented party from
162 accessing the court’s electronic-filing system or revoking that party’s access to the system.

163
164 However, new Rule 25(a)(2)(C)(ii) also expressly prohibits a court from barring all
165 unrepresented parties from using the electronic-filing system, unless the court also either (1)
166 includes reasonable exceptions to the prohibition, or (2) permits unrepresented parties to use
167 another electronic method for filing documents (such as by email or by upload through an
168 electronic document submission system) and for receiving notice of court filings and orders
169 (such as an electronic noticing program). [A local provision requiring unrepresented parties to
170 obtain the court’s permission in order to use the court’s electronic-filing system [could] [would]
171 count as including reasonable exceptions, so long as such permission is not unreasonably
172 withheld in practice.]¹

173
174 [New Rule 25(a)(2)(C)(iii) applies to an unrepresented nonparty in an appeal from a
175 district court. In such an appeal, the district court would already have made a determination as to
176 the unrepresented nonparty’s suitability to file by means of that court’s electronic-filing system.
177 [Unless a local rule provides otherwise, the] [The] favorable presumption described above

1 See Part III.D of accompanying memo.

178 extends to an unrepresented nonparty in such an appeal – but only if that nonparty both (1) used
179 the district court’s electronic-filing system to file papers in the case and (2) remains permitted to
180 do so. An unrepresented nonparty who has not yet filed papers in the case by means of the
181 district court’s electronic-filing system, or one whose access to the district court’s electronic-
182 filing system has been revoked and has not yet been restored, would not enjoy any presumption
183 in favor of access to the electronic-filing system of the court of appeals.]

184
185 Former Rules 25(a)(2)(B)(iii) and (iv) are carried forward but renumbered as Rules
186 25(a)(2)(D) and (E).

187
188 **Subdivision (b).** Former Rule 25(b) generally required that a party, “at or before the time
189 of filing a paper, [must] serve a copy on the other parties to the appeal or review.” The former
190 rule exempted from this requirement instances when “a rule requires service by the clerk.” The
191 rule is amended to add a second exemption, for instances when “the paper will be served through
192 the court’s electronic-filing system under Rule 25(c)(1).” This amendment reflects that new Rule
193 25(c)(1) encompasses service by the notice of case activity that results from the clerk’s
194 uploading into the system a paper filing by an unrepresented litigant. (As to when such service is
195 complete, see subdivision (c)(4)(B).)

196
197 **Subdivision (c).** Rule 25(c) is restructured so that the primary means of service – that is,
198 service by means of the court’s electronic-filing system – is addressed first, in Rule 25(c)(1).
199 Former Rule 25(c)(1) becomes new Rule 25(c)(2), which continues to address alternative means
200 of service. New Rule 25(c)(5) defines the term “notice of case activity” as any electronic notice
201 provided to case participants through the court’s electronic-filing system to inform them of a
202 filing or other activity on the docket.

203
204 **Subdivision (c)(1).** Amended Rule 25(c)(1) eliminates the requirement of separate
205 (paper) service on a litigant who is registered to receive a notice of case activity from the court’s
206 electronic-filing system. Litigants who are registered to receive a notice of case activity include
207 those litigants who are participating in the court’s electronic-filing system with respect to the
208 case in question and also include those litigants who receive the notice because they have
209 registered for a court-based electronic-noticing program. (Former Rule 25(c)(2)’s provision for
210 service by “sending [a paper] to a registered user by filing it with the court’s electronic-filing
211 system” had already eliminated the requirement of paper service on registered users of the
212 court’s electronic-filing system by other registered users of the system; the amendment extends
213 this exemption from paper service to those who file by a means other than through the court’s
214 electronic-filing system.)

215
216 New Rule 25(c)(1)(A) provides that service by means of the court’s electronic-filing
217 system is not effective if the filer learns that it did not reach the person to be served. This
218 provision carries forward the principle previously contained in former Rule 25(c)(4).

219
220 New Rule 25(c)(1)(B) states that a court may provide by order or local rule that if a paper
221 is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21, it

222 must be served by other means. This sentence is designed to account for circuits (if any) in which
223 parties in the case cannot access other participants’ sealed filings via the court’s electronic-filing
224 system. It also accounts for circuits that permit the use of the court’s electronic-filing system to
225 file case-initiating petitions but that do not wish to permit the filer to rely on the court’s
226 electronic-filing system for service of such a petition. The rule does not set a national
227 requirement that all case-initiating documents be served other than through the court’s
228 electronic-filing system; a court of appeals may decide that, in some instances, service of such
229 documents through the court’s electronic-filing system is an appropriate option.

230
231 **Subdivision (c)(2).** Subdivision (c)(2) carries forward the contents of former Rule
232 25(c)(1), with three changes.

233
234 The subdivision’s introductory phrase (“Nonelectronic service may be any of the
235 following”) is amended to read “A paper may also be served under this rule by.” This locution
236 reflects the inclusion of other electronic means (apart from service through the court’s electronic-
237 filing system) in new Rule 25(c)(2)(D) and also ensures that new Rule 25(c)(2) remains an
238 option for serving any litigant, even one who receives notices of filing. This option might be
239 useful to litigants who will be filing non-electronically but who wish to effect service on their
240 opponents before the time when the court will have uploaded the filing into the court’s system
241 (thus generating the notice of case activity).

242
243 The prior reference to “sending [a paper] to a registered user by filing it with the court’s
244 electronic-filing system” is deleted, because this is now covered by new Rule 25(c)(1).

245
246 The concept that service by other electronic means is not effective if the sender learns
247 that the document was not received by the person served – previously contained in prior Rule
248 25(c)(4) – is relocated to what now is Rule 25(c)(2)(D).

249
250 **Subdivision (c)(4).** Amended subdivision (c)(4) carries forward the prior rule’s
251 provisions that service by electronic means other than through the court’s electronic-filing
252 system is complete on sending and that service by mail or by commercial carrier is complete on
253 mailing or delivery to the carrier.

254
255 As to service through the court’s electronic-filing system, the amended rule provides that
256 service by a notice of case activity is complete as of the date of filing for purposes of any
257 deadlines for making service. But the amended rule provides that, for purposes of any deadlines
258 that run from the date of service, service is complete as of the date of the notice of case activity.
259 Thus, the amended rule ensures that if there is a delay between the date the court receives a filing
260 not made through the electronic-filing system and the date the court uploads that filing into the
261 electronic-filing system, that delay will not diminish the time allowed to the party whose
262 deadline runs from the date of service.

263
264 In addition to providing when service was complete, former Rule 25(c)(4) addressed
265 what happened if the person making electronic service learned that the document was not

266 received by the person to be served. The latter is now addressed by new Rules 25(c)(1)(A) and
267 (c)(2)(D), which provide that electronic service is not effective if the filer or sender learns that it
268 did not reach the person to be served.

269

270 **Subdivision (c)(5).** New Rule 25(c)(5) defines the term “notice of case activity” as any
271 electronic notice provided to case participants through the court’s electronic-filing system to
272 inform them of a filing or other activity on the docket. There are two equivalent terms currently
273 in use: Notice of Electronic Filing and Notice of Docket Activity. “Notice of case activity” is
274 intended to encompass both of those terms, as well as any equivalent terms that may come into
275 use in future. The word “electronic” is deleted as superfluous now that electronic filing is the
276 default method.

1 **Rule 25. Filing and Service**

2 **(a) Filing.**

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

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

6 **(A) Nonelectronic Filing.**

7 **(i) In General.** For a paper not filed electronically, filing may be
8 accomplished by mail addressed to the clerk, but filing is not
9 timely unless the clerk receives the papers within the time fixed for
10 filing.

11 **(ii) A Brief or Appendix.** A brief or appendix not filed electronically is
12 timely filed, however, if on or before the last day for filing, it is:
13 • mailed to the clerk by first-class mail, or other class of mail that
14 is at least as expeditious, postage prepaid; or
15 • dispatched to a third-party commercial carrier for delivery to the
16 clerk within 3 days.

17 **(iii) Inmate Filing.** If an institution has a system designed for legal mail,
18 an inmate confined there must use that system to receive the
19 benefit of this Rule 25(a)(2)(A)(iii). A paper not filed

20 electronically by an inmate is timely if it is deposited in the
21 institution's internal mail system on or before the last day for filing
22 and:

- 23 • it is accompanied by: a declaration in compliance with 28 U.S.C.
24 § 1746--or a notarized statement--setting out the date of
25 deposit and stating that first-class postage is being prepaid;
26 or evidence (such as a postmark or date stamp) showing
27 that the paper was so deposited and that postage was
28 prepaid; or
- 29 • the court of appeals exercises its discretion to permit the later
30 filing of a declaration or notarized statement that satisfies
31 Rule 25(a)(2)(A)(iii).

32 **(B) Electronic Filing and Signing. (i) ~~By~~ by a Represented Person**

33 **Represented by Counsel--Generally Required; Exceptions.** A person
34 represented by an attorney must file electronically, unless nonelectronic
35 filing is allowed by the court for good cause or is allowed or required by
36 local rule.

37 **(ii) (C) Electronic Filing by ~~By~~ an Unrepresented Person Party--When**
38 **Allowed or Required.**

39 **(i) In General.** ~~A~~An unrepresented party ~~person~~ ~~not represented by an~~
40 ~~attorney:~~ ~~•~~ may file electronically only if allowed by use the
41 court's electronic-filing system to file papers and receive notice of

42 activity in the party's case, unless a court order or by local rule
43 prohibits the person party from doing so; and An unrepresented
44 person may be required to file electronically only by court order in
45 a case, or by a local rule that includes reasonable exceptions.

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

53 ~~**(iii) Conditions and Restrictions on Access.** A court may set **(ii)**~~
54 ~~**Conditions and Restrictions on Access.** A court may set and~~
55 ~~enforce reasonable conditions and restrictions on unrepresented~~
56 ~~parties' access to the court's electronic-filing system (including by~~
57 ~~denying or revoking access for a particular unrepresented party).~~
58 ~~But the court may not prohibit all unrepresented parties from using~~
59 ~~the system unless that prohibition includes reasonable exceptions~~
60 ~~or the court permits the use of another electronic method for filing~~
61 ~~papers and receiving electronic notice of activity in the party's~~
62 ~~case.~~

63 ~~**(iv) Restrictions on a Particular Person.** A court may deny a particular~~

64 ~~person access to the court's electronic-filing system and may~~
65 ~~revoke a person's previously granted access for not complying~~
66 ~~with the conditions authorized in (iii).~~

67 **[(iii) Unrepresented Person Permitted to File Electronically in the**
68 **District Court. In an appeal from a district court, [unless a local**
69 **rule provides otherwise,] this subdivision (C) concerning an**
70 **unrepresented party also applies to an unrepresented nonparty who**
71 **has used the district court's electronic-filing system to file papers**
72 **in the case and who remains permitted to do so.]**

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

76 **(iv) (E) Same as a Written Paper.** A paper filed electronically is a written paper
77 for purposes of these rules.

78 **(3) Filing a Motion with a Judge.** *[Not shown in this draft, for brevity.]*

79 **(4) Clerk's Refusal of Documents.** *[Not shown in this draft, for brevity.]*

80 **(5) Privacy Protection.** *[Not shown in this draft, for brevity.]*

81 **(b) Service of All Papers Required.** Unless a rule requires service by the clerk or the paper will
82 be served [through the court's electronic-filing system] under Rule 25(c)(1), a party must,
83 at or before the time of filing a paper, serve a copy on the other parties to the appeal or
84 review. Service on a party represented by counsel must be made on the party's counsel.

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

86 **(1) Service by a Notice of Case Activity Sent Through the Court’s Electronic-Filing**

87 **System.** A notice of case activity sent to a person registered to receive it through
88 the court’s electronic-filing system constitutes service on that person ~~as of the~~
89 ~~notice’s date.~~ **But, with these qualifications:**

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

92 ~~((B))~~ a court may provide by **order or** local rule that, if a paper is filed under seal
93 or initiates a proceeding in the court of appeals under Rule 5, ~~6(c)~~, 15, or
94 21, it must be served by other means.

95 **(2) Service by Other Means.** A paper may also be served under this rule by:

96 ~~Nonelectronic service may be any of the following:~~

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

99 (B) ~~by~~ mail; ~~or~~

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

101 ~~(D) .(2) Electronic service of a paper may be made (A) by sending it to a~~
102 ~~registered user by filing it with the court's electronic filing system or (B)~~
103 ~~by sending it by other electronic means that the person to be served has~~
104 ~~consented to in writing.~~ **but such electronic service is not effective if the**
105 **sender learns that it did not reach the person to be served.**

106 **(3) Considerations in Choosing Other Means.** When reasonable considering such

107 factors as the immediacy of the relief sought, distance, and cost, service on a party

108 must be by a manner at least as expeditious as the manner used to file the paper
109 with the court.

110 **(4) When Service Is Complete.**

111 **(A) For Service by Mail or Commercial Carrier.** Service by mail or by
112 commercial carrier is complete on mailing or delivery to the carrier.

113 **(B) For Service by a Notice of Case Activity.** For any service deadlines, service
114 by a notice of case activity is complete as of the date of filing. For any
115 deadlines that run from the court's electronic-filing-system date of service,
116 service [by a notice of case activity] is complete as of the notice's date.

117 **(C) For Service by Other Electronic Means.** Service by other electronic means
118 is complete on ~~filing or sending, unless the party making service is~~
119 ~~notified that the paper was not received by the party served.~~

120 **(5) Serving Papers That Are Not Filed.** ~~Rule 25(e)(2) governs service of a paper that is~~
121 ~~not filed.~~

122 **(6)(5) Definition of "Notice of Case Activity."** The term "notice of case activity" ~~in this~~
123 ~~rule~~ includes a notice of docket activity, a notice of electronic filing, and any
124 other similar electronic notice provided to case participants through the court's
125 electronic-filing system to inform them of activity on the docket.

126 **(d) Proof of Service.**

127 (1) A paper presented for filing must contain either of the following if it was served other
128 than through the court's electronic-filing system:

129 (A) an acknowledgment of service by the person served; or

- 130 (B) proof of service consisting of a statement by the person who made service
131 certifying:
132 (i) the date and manner of service;
133 (ii) the names of the persons served; and
134 (iii) their mail or electronic addresses, facsimile numbers, or the addresses
135 of the places of delivery, as appropriate for the manner of service.
- 136 (2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule
137 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which
138 the document was mailed or dispatched to the clerk.
- 139 (3) Proof of service may appear on or be affixed to the papers filed.

140 **(e) Number of Copies.** *[Not shown in this draft, for brevity.]*

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Committee Note

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161

Rule 25 is amended to address two topics concerning unrepresented parties. (Concurrent amendments are made to ~~add cites to~~ Bankruptcy Rules ~~5, 8005, 8011, and 9036~~, 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 an unrepresented party is~~ presumptively authorized to use the court's electronic-filing system to file documents in ~~their~~the 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~~court of appeals

162 wishes to restrict unrepresented parties’ access to the ~~court’s~~ electronic-filing system, it must
163 ~~adopt and so by~~ order or local rule ~~to impose~~. This presumption in favor of access by
164 unrepresented parties is the opposite of the presumption set by the prior Rule 25(a)(2)(B)(ii). The
165 reference to an unrepresented ‘party,’ rather than an unrepresented ‘person,’ excludes an
166 unrepresented nonparty from its scope. However, the court may not require electronic filing by
167 any unrepresented person, including any unrepresented nonparty, except by order in a particular
168 case or by a local rule that restriction includes reasonable exceptions.

169
170 ~~Under New~~ Rule 25(a)(2)(C)(ii), ~~a local rule or general court order that bars persons not-~~
171 ~~represented by an attorney from using the court’s electronic filing system must include-~~
172 ~~reasonable exceptions, unless that court permits the use of another electronic method for filing-~~
173 ~~documents and receiving electronic notice of activity in the case. But Rule 25(a)(2)(C)(iii) makes~~
174 ~~clear) states~~ that the court may set reasonable conditions and restrictions on access ~~to the court’s-~~
175 ~~electronic filing system.~~

176
177 ~~A court can comply with Rules 25(a)(2)(C)(ii) and (iii) by doing either of the following:—~~
178 ~~(1) Allowing reasonable access for unrepresented parties to the court’s electronic-filing system,—~~
179 ~~or (2) providing unrepresented parties with an alternative electronic means for filing (such as by—~~
180 ~~email or by upload through an electronic document submission system) and an alternative—~~
181 ~~electronic means for receiving notice of court filings and orders (such as an electronic noticing—~~
182 ~~program). That is, a local rule generally prohibiting access to the court’s electronic-filing system—~~
183 ~~would include “reasonable exceptions” (within the meaning of the Rule) if it provided reasonable~~
184 ~~access to the court’s electronic filing system.~~

185
186 ~~For a court that adopts the option of allowing reasonable access to the court’s electronic-~~
187 ~~filing system, the concept of “reasonable access” encompasses the idea of reasonable conditions—~~
188 ~~and restrictions. Thus, Where appropriate, access to the electronic-filing system might be~~
189 ~~allowed only to a particular type of unrepresented party: for example, access to electronic filing—~~
190 ~~could be restricted to non-one who is not incarcerated litigants (in light of (if the distinctive~~
191 ~~logistical considerations that apply in carceral settings) and could be restricted to those persons—~~
192 ~~who— justify such a limitation), one who has satisfactorily ~~complete~~completed required training~~
193 ~~and/or certifications and comply, one who complies with other reasonable conditions on access,~~
194 ~~and so on. Reasonable conditions on access. Also, a court could adopt a local provision stating—~~
195 ~~that certain or restrictions might also distinguish between particular types of filings—; for~~
196 ~~example, filings that ~~commence~~initiate a ~~proceeding~~case in the court of appeals — cannot be filed~~
197 ~~by means of the court’s electronic-filing system. [Some courts have adopted local rules that—~~
198 ~~permit unrepresented parties to use the court’s electronic filing system only if they obtain—~~
199 ~~permission from the court; such a local rule would meet the Rule’s requirement of “reasonable—~~
200 ~~access” so long as such permission is not unreasonably withheld in practice.] Rule 25(a)(2)(C)(ii)~~
201 ~~refers to “a local rule—or any other local court provision that extends beyond a particular litigant~~
202 ~~or case” to make clear that Rule 25(a)(2)(C)(ii) does not restrict a court from entering and those~~
203 ~~that do not. The subdivision explicitly contemplates that, in appropriate circumstances, a~~
204 ~~reasonable restriction might also include an order barring a specific unrepresented litigant party~~
205 ~~from accessing the court’s electronic-filing system— or revoking that party’s access to the~~

206 system.

207
208 ~~For~~ However, new Rule 25(a)(2)(C)(ii) also expressly prohibits a court that opts to
209 ~~provide from barring all~~ unrepresented parties ~~with an alternative from using the~~ electronic means
210 ~~-filing system, unless the court also either (1) includes reasonable exceptions to the prohibition,~~
211 ~~or (2) permits unrepresented parties to use another electronic method for filing documents (such~~
212 ~~as by email or by upload through an electronic document submission system) and an alternative-~~
213 ~~electronic means for receiving notice of court filings and orders, the rule does not require the-~~
214 ~~court to accept emailed or uploaded files in any and all formats. A court is free to set reasonable-~~
215 ~~requirements such as that the files be in PDF format. [But see Appellate Rule 47(a)(2) (“ (such as~~
216 ~~an electronic noticing program). [A local rule imposing a requirement of form must not be-~~
217 ~~enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply-~~
218 ~~with the requirement.”).]~~

219
220 Rules 25(a)(2)(C)(ii) and (iii) are intended to work in tandem. Where a local rule
221 ~~prohibits provision requiring~~ unrepresented parties ~~from using to obtain~~ the court’s ~~permission in~~
222 ~~order to use the court’s electronic-filing system, the “ [could] [would] count as including~~
223 ~~reasonable exceptions” required by item (ii) should align with the types of “reasonable-~~
224 ~~conditions and restrictions” referenced in item (iii). That is, a local rule may allow unrepresented~~
225 ~~parties e-filing access only in particular circumstances — such as after completing a training or-~~
226 ~~agreeing to specified formatting standards — provided those requirements are reasonable under~~
227 ~~item (iii), so long as such permission is not unreasonably withheld in practice.]¹~~

228
229 Conversely, item (iii)’s authorization for courts to impose reasonable conditions on
230 unrepresented parties’ access also informs what counts as a reasonable exception under item (ii).
231 For example, a local rule that generally prohibits unrepresented parties from e-filing might
232 nonetheless provide an exception where the unrepresented party meets conditions similar to
233 those described in item (iii). The two provisions thus establish a flexible, complementary
234 framework: item (ii) ensures that a blanket prohibition is not absolute, while item (iii) ensures
235 that courts retain authority to structure access responsibly.

236
237 Rule 25(a)(2)(C)(iv) provides that the court may deny a specific unrepresented litigant
238 access to the court’s electronic filing system, and that the court may revoke an unrepresented
239 litigant’s access to the court’s electronic filing system.

240 [New Rule 25(a)(2)(C)(iii) applies to an unrepresented nonparty in an appeal from a
241 district court. In such an appeal, the district court would already have made a determination as to
242 the unrepresented nonparty’s suitability to file by means of that court’s electronic-filing system.
243 [Unless a local rule provides otherwise, the] [The] favorable presumption described above
244 extends to an unrepresented nonparty in such an appeal – but only if that nonparty both (1) used
245 the district court’s electronic-filing system to file papers in the case and (2) remains permitted to
246 do so. An unrepresented nonparty who has not yet filed papers in the case by means of the
247 district court’s electronic-filing system, or one whose access to the district court’s electronic-

1 See Part III.D of accompanying memo.

248 filing system has been revoked and has not yet been restored, would not enjoy any presumption
249 in favor of access to the electronic-filing system of the court of appeals.]

250
251 Former Rules 25(a)(2)(B)(iii) and (iv) are carried forward but renumbered as Rules
252 25(a)(2)(D) and (E).

253
254 **Subdivision (b).** ~~ExistingFormer~~ Rule 25(b) generally ~~requiresrequired~~ that a party, “at
255 or before the time of filing a paper, [must] serve a copy on the other parties to the appeal or
256 review.” The ~~existingformer~~ rule ~~exemptsexempted~~ from this requirement instances when “a rule
257 requires service by the clerk.” The rule is amended to add a second exemption, for instances
258 when “the paper will be served ~~[through the court’s electronic-filing system]~~ under Rule
259 25(c)(1).” This amendment ~~is necessary because reflects that~~ new Rule 25(c)(1) encompasses
260 service by the notice of case activity that results from the clerk’s uploading into the system a
261 paper filing by an unrepresented litigant. ~~In those circumstances, service will not occur “at or~~
262 ~~before the time of filing a paper,” but it will occur when the court’s electronic-filing system~~
263 ~~sends the notice to the litigants registered to receive it.(As to when such service is complete, see~~
264 subdivision (c)(4)(B).

265
266 **Subdivision (c).** Rule 25(c) is restructured so that the primary means of service – that is,
267 service by means of the court’s electronic-filing system – is addressed first, in Rule 25(c)(1).
268 ~~ExistingFormer~~ Rule 25(c)(1) becomes new Rule 25(c)(2), which continues to address
269 alternative means of service. New Rule 25(c)(5) defines the term “notice of case activity” as any
270 electronic notice provided to case participants through the court’s electronic-filing system to
271 inform them of a filing or other activity on the docket.

272
273 **Subdivision (c)(1).** Amended Rule 25(c)(1) eliminates the requirement of separate
274 (paper) service on a litigant who is registered to receive a notice of case activity from the court’s
275 electronic-filing system. Litigants who are registered to receive a notice of case activity include
276 those litigants who are participating in the court’s electronic-filing system with respect to the
277 case in question and also include those litigants who receive the notice because they have
278 registered for a court-based electronic-noticing program. ~~-(Current(Former~~ Rule 25(c)(2)’s
279 provision for service by “sending [a paper] to a registered user by filing it with the court’s
280 electronic-filing system” had already eliminated the requirement of paper service on registered
281 users of the court’s electronic-filing system by other registered users of the system; the
282 amendment extends this exemption from paper service to those who file by a means other than
283 through the court’s electronic-filing system.)

284
285 [The last sentence of amendedNew Rule 25(c)(1)](A) provides that service by means
286 of the court’s electronic-filing system is not effective if the filer learns that it did not reach the
287 person to be served. This provision carries forward the principle previously contained in former
288 Rule 25(c)(4).

289
290 New Rule 25(c)(1)(B)) states that a court may provide by order or local rule that if a
291 paper is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 6(c), 15, or

292 21, it must be served by other means. This sentence is designed to account for circuits (if any) in
293 which parties in the case cannot access other participants’ sealed filings via the court’s
294 electronic-filing system. It also accounts for circuits that permit the use of ~~CM/ECF~~the court’s
295 electronic-filing system to file case-initiating petitions but that do not wish to permit the filer to
296 rely on ~~CM/ECF~~the court’s electronic-filing system for service of such a petition. The rule does
297 not set a national requirement that all case-initiating documents be served other than through the
298 court’s electronic-filing system; a court of appeals may decide that, in some instances, service of
299 such documents through the court’s electronic-filing system is an appropriate option.

300
301 **Subdivision (c)(2).** Subdivision (c)(2) carries forward the contents of ~~current~~former Rule
302 25(c)(1), with ~~two~~three changes.

303
304 The subdivision’s introductory phrase (“Nonelectronic service may be any of the
305 following”) is amended to read “A paper may also be served under this rule by.” This locution
306 reflects the inclusion of other electronic means (apart from service through the court’s electronic-
307 filing system) in new Rule 25(c)(2)(D) and also ensures that ~~what will be~~new Rule 25(c)(2)
308 remains an option for serving any litigant, even one who receives notices of filing. This option
309 might be useful to litigants who will be filing non-electronically but who wish to effect service
310 on their opponents before the time when the court will have uploaded the filing into the court’s
311 system (thus generating the notice of case activity).

312
313 The prior reference to “sending [a paper] to a registered user by filing it with the court’s
314 electronic-filing system” is deleted, because this is now covered by new Rule 25(c)(1).

315
316 The concept that service by other electronic means is not effective if the sender learns
317 that the document was not received by the person served – previously contained in prior Rule
318 25(c)(4) – is relocated to what now is Rule 25(c)(2)(D).

319
320 **Subdivision (c)(4).** Amended subdivision (c)(4) carries forward the prior rule’s
321 provisions that service by electronic means other than through the court’s electronic-filing
322 system is complete on sending ~~unless the party making service is notified that the paper was not~~
323 ~~received by the party served,~~ and that service by mail or by commercial carrier is complete on
324 mailing or delivery to the carrier.

325
326 As to service through the court’s electronic-filing system, the ~~amendments make two~~
327 ~~changes. First, the~~ amended rule provides that ~~such~~ service “by a notice of case activity is
328 complete as of the ~~notice’s~~ date.” ~~Under new subdivision (c)(1), when a litigant files – of filing~~
329 ~~for purposes of any deadlines for making service. But the amended rule provides that, for~~
330 ~~purposes of any deadlines that run from the date of service, service is complete as of the date of~~
331 ~~the notice of case activity. Thus, the amended rule ensures that if there is a paper other than delay~~
332 ~~between the date the court receives a filing not made through the court’s electronic-filing system,~~
333 ~~service on a litigant who is registered to receive a notice of case activity through the court’s – and~~
334 ~~the date the court uploads that filing into the electronic-filing system occurs by means of the~~
335 ~~notice of case activity. But that service does not occur “on filing” when the filing is made other~~

336 ~~than through the court's, that delay will not diminish the time allowed to the party whose~~
337 ~~deadline runs from the date of service.~~

338
339 In addition to providing when service was complete, former Rule 25(c)(4) addressed
340 what happened if the person making electronic filing system. There can be a short time lag
341 between the date the litigant files service learned that the document with the court and the date
342 that the clerk's office uploads it into the court's electronic filing system. Thus, new subdivision
343 (e)(4) was not received by the person to be served. The latter is now addressed by new Rules
344 25(c)(1)(A) and amended subdivision (c)(4)(D), which provide that service by a notice of case
345 activity sent to a person registered to receive it through the court's electronic filing system is
346 complete as of the date of the notice of case activity. electronic service is not effective if the filer
347 or sender learns that it did not reach the person to be served.

348
349 ~~[Second, while subdivision (c)(4) carries forward — for service by other electronic means —~~
350 ~~the prior rule's provision that such service is not effective if the sender “is notified that the~~
351 ~~paper was not received by the party served,” the similar provision concerning service via the~~
352 ~~court's electronic filing system now appears in subdivision (c)(1)(A).] [Second, although~~
353 ~~subdivision (e)(4) carries forward — for service by other electronic means — the prior rule's~~
354 ~~provision that such service is not effective if the sender “is notified that the paper was not~~
355 ~~received by the party served,” no such proviso is included in subdivision (c)(1) as to service by a~~
356 ~~notice of case activity sent to a person registered to receive it through the court's electronic filing~~
357 ~~system. This is because experience has demonstrated the general reliability of notice and service~~
358 ~~through the court's electronic filing system on those registered to receive notices of electronic~~
359 ~~filing from that system.]~~

360
361 ~~**Subdivision (e)(5).** New Rule 25(e)(5) addresses service of papers not filed with the~~
362 ~~court. It makes explicit what is arguably implicit in new Rule 25(c)(1): If a paper is not filed with~~
363 ~~the court, then the court's electronic system will never generate a notice of case activity, so the~~
364 ~~sender cannot use Rule 25(c)(1) for service and thus must use Rule 25(c)(2).~~

365
366 ~~**Subdivision (e)(6).** New Rule 25(e)(6)~~

367 ~~**Subdivision (c)(5).** New Rule 25(c)(5) defines the term “notice of case activity” as any~~
368 ~~electronic notice provided to case participants through the court's electronic filing system to~~
369 ~~inform them of a filing or other activity on the docket. There are two equivalent terms currently~~
370 ~~in use: Notice of Electronic Filing and Notice of Docket Activity. “Notice of case activity” is~~
371 ~~intended to encompass both of those terms, as well as any equivalent terms that may come into~~
372 ~~use in future. The word “electronic” is deleted as superfluous now that electronic filing is the~~
373 ~~default method.~~

SRL provision comparison chart, March 20, 2026

This comparison chart shows – as clean rule text – the various SRL e-filing and service provisions, along with other related provisions in the affected rules.

Bankruptcy (not appellate)	Bankruptcy (appellate)	Appellate	Civil	Criminal
<i>E-filing general rule:</i>	<i>E-filing general rule:</i>	<i>E-filing general rule:</i>	<i>E-filing general rule:</i>	<i>E-filing general rule:</i>
Bankruptcy Rule 5005(a)(3)(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.	Bankruptcy Rule 8011(a)(2)(B): (B) Electronic Filing 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.	FRAP 25(a)(2)(B): (B) Electronic Filing by a 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.	Civil Rule 5(d)(2)(A): (2) Electronic Filing and Signing. (A) By a 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.	Criminal Rule 49(b)(2)(A): (2) Electronic Filing and Signing. (A) By a Party 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.

<i>E-filing SRL default rule:</i>	<i>E-filing SRL default rule:</i>	<i>E-filing SRL default rule:</i>	<i>E-filing SRL default rule:</i>	<i>E-filing SRL default rule:</i>
<p>Bankruptcy Rule 5005(a)(3)(B)(i): (B) By an Unrepresented Individual—When Allowed or Required.</p> <p>(i) In General. An unrepresented individual 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 individual from doing so. An unrepresented individual may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions.</p>	<p>Bankruptcy Rule 8011(a)(2)(C)(i): (C) Electronic Filing By an Unrepresented Individual—When Allowed or Required.</p> <p>(i) In General. An unrepresented individual may use the court’s electronic-filing system to file documents and receive notice of activity in the case, unless a court order or local rule prohibits the individual from doing so. An unrepresented individual may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions.</p>	<p>FRAP 25(a)(2)(C)(i): (C) Electronic Filing by an Unrepresented Party--When Allowed or Required.</p> <p>(i) In General. An unrepresented party may use the court’s electronic-filing system to file papers and receive notice of activity in the party’s case, unless a court order or local rule prohibits the party from doing so. An unrepresented person may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions.</p>	<p>Civil Rule 5(d)(2)(B)(i): (B) By an Unrepresented Party—When Allowed or Required.</p> <p>(i) In General. An unrepresented party may use the court’s electronic-filing system to file papers and receive notice of activity in the party’s case, unless a court order or local rule prohibits the party from doing so. An unrepresented person may be required to file electronically only by order in a case or by a local rule that includes reasonable exceptions.</p>	<p>Criminal Rule 49(b)(2)(B)(i): (B) By a Self-Represented Party – When Allowed.</p> <p>(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 party’s case, unless a court order or local rule prohibits the party from doing so.</p>

<i>E-filing SRL conditions:</i>	<i>E-filing SRL conditions:</i>	<i>E-filing SRL conditions:</i>	<i>E-filing SRL conditions:</i>	<i>E-filing SRL conditions:</i>
<p>Bankruptcy Rule 5005(a)(3)(B)(ii): (ii) Conditions and Restrictions on Access.</p> <p>A court may set and enforce reasonable conditions and restrictions on unrepresented individuals' access to the court's electronic-filing system (including by denying or revoking access for a particular unrepresented individual). But the court may not prohibit all unrepresented individuals from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing papers and receiving electronic notice of activity in the case.</p>	<p>Bankruptcy Rule 8011(a)(2)(C)(ii): (ii) Conditions and Restrictions on Access.</p> <p>A court may set and enforce reasonable conditions and restrictions on unrepresented individuals' access to the court's electronic-filing system (including by denying or revoking access for a particular unrepresented individual). But the court may not prohibit all unrepresented individuals from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing documents and receiving electronic notice of activity in the case.</p>	<p>FRAP 25(a)(2)(C)(ii): (ii) Conditions and Restrictions on Access.</p> <p>A court may set and enforce reasonable conditions and restrictions on unrepresented parties' access to the court's electronic-filing system (including by denying or revoking access for a particular unrepresented party). But the court may not prohibit all unrepresented parties from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing papers and receiving electronic notice of activity in the party's case.</p>	<p>Civil Rule 5(d)(2)(B)(ii): (ii) Conditions and Restrictions on Access.</p> <p>A court may set and enforce reasonable conditions and restrictions on unrepresented parties' access to the court's electronic-filing system (including by denying or revoking access for a particular unrepresented party). But the court may not prohibit all unrepresented parties from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing papers and receiving electronic notice of activity in the party's case.</p>	<p>Criminal Rule 49(b)(2)(B)(ii): (ii) Conditions and Restrictions on Access.</p> <p>A court may set and enforce reasonable conditions and restrictions on self-represented parties' access to the court's electronic-filing system (including by denying or revoking access for a particular self-represented party). But the court may not prohibit all self-represented parties from using the system unless that prohibition includes reasonable exceptions or the court permits the use of another electronic method for filing papers and receiving electronic notice of activity in the party's case.</p>

<i>E-filing & signature:</i>	<i>E-filing & signature:</i>	<i>E-filing & signature:</i>	<i>E-filing & signature:</i>	<i>E-filing & signature:</i>
<p>Bankruptcy Rule 5005(a)(3)(C): (C) Signing. A filing made through an individual’s electronic-filing account and authorized by that individual, together with the individual’s name on a signature block, constitutes the individual’s signature.</p>	<p>Bankruptcy Rule 8011(e): (e) Signature Always Required. (1) Electronic Filing. Every document filed electronically must include the electronic signature of the individual filing it or, if an entity is represented, the counsel's electronic signature. A filing made through an individual’s electronic-filing account and authorized by that individual—together with that individual’s name on a signature block—constitutes the individual’s signature. (2) Paper Filing. Every document filed in paper form must be signed by the individual filing it or, if an entity is represented, by the entity’s counsel.</p>	<p>FRAP 25(a)(2)(D): (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.</p>	<p>Civil Rule 5(d)(2)(C): (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.</p>	<p>Criminal Rule 49(b)(2)(D): (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.</p>

Service required:	Service required:	Service required:	Service required:	Service required:
<i>[NB: No need to revise Rule 5005(b) (“Sending Copies to the United States Trustee”), because it does not specify that sending must be “at or before the time of filing.” Rule 9036 does not include a provision requiring service.]</i>	Rule 8011(b): (b) Service of All Documents Required. Unless a rule requires service by the clerk or the document will be served through the court’s electronic-filing system under (c)(1), 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.	FRAP 25(b): (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 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.	<i>[NB: No need to revise Civil Rule 5(a) (“Service: When Required”), because it does not specify that service must be “at or before the time of filing.”]</i>	<i>[NB: No need to revise Criminal Rule 49(a)(1) (“Service on a Party. What is Required”), because it does not specify that service must be “at or before the time of filing.”]</i>

Service by NCA:	Service by NCA:	Service by NCA:	Service by NCA:	Service by NCA:
<p>Rule 9036(c)(1): (c) Notices from and Service by an Entity. (1) Notice of Case Activity Sent Through the Court’s Electronic-Filing System. A notice of case activity sent to an [individual] [entity] registered to receive it through the court’s electronic-filing system constitutes notice or service on that [individual] [entity], with these qualifications: (A) such notice or service is not effective if the filer [learns] [receives notice] that it did not reach the [individual] [entity] to be notified or served; and (B) a court may provide by order or local rule that if a document is filed under seal, neither service nor notice occurs under this paragraph (c)(1).</p>	<p>Rule 8011(c)(1): (c) Manner of Service. (1) Service by a Notice of Case Activity Sent Through the Court’s Electronic-Filing System. A notice of case activity sent to an [individual] [entity] registered to receive it through the court’s electronic-filing system constitutes service on that [individual] [entity], with these qualifications: (A) such service is not effective if the filer [learns] [receives notice] that it did not reach the [individual] [entity] to be served; and (B) a court may provide by order or local rule that if a document is filed under seal, it must be served by other means.</p>	<p>FRAP 25(c)(1): (c) Manner of Service. (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, with these qualifications: (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 order or local rule that if a paper is filed under seal or initiates a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21, it must be served by other means.</p>	<p>Civil Rule 5(b)(2): (b) Service: How Made.... (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. For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date. But these qualifications apply: (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 order or local rule that if a paper is filed under seal, it must be served by other means.</p>	<p>Criminal Rule 49(a)(3): (3) 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. For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date. But these qualifications apply: (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 order or local rule that if a paper is filed under seal, it must be served by other means.</p>

<i>Service / other electronic means:</i>	<i>Service / other means:</i>	<i>Service / other means:</i>	<i>Service / other means:</i>	<i>Service / other means:</i>
<p>[NB: Rule 9036 focuses on electronic notice & service, so its “other means” provision focuses only on other electronic means.] Rule 9036(c)(2): (2) Electronic Means Consented To. An entity may also send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But such notice or service is not effective if the sender [learns] [receives notice] that it did not reach the entity to be notified or served.</p>	<p>Rule 8011(c)(2): (2) Service by Other Means. A document may also be served under this rule by: (A) personal delivery; (B) mail; (C) third-party commercial carrier for delivery within 3 days; or (D) electronic means that the entity served has consented to in writing, but such electronic service is not effective if the sender [learns] [receives notice] that it did not reach the entity to be served.</p>	<p>FRAP 25(c)(2): (2) Service by Other Means. A paper may also be served under this rule by: (A) personal delivery, including delivery to a responsible person at the office of counsel; (B) mail; (C) third-party commercial carrier for delivery within 3 days; or (D) sending it by electronic means that the person to be served has consented to in writing, but such electronic service is not effective if the sender learns that it did not reach the person to be served.</p>	<p>Civil Rule 5(b)(3): (3) Service by Other Means. A paper 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;</p>	<p>Criminal Rule 49(a)(4): (4) Service by 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;</p>

			<p>(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</p> <p>(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.</p>	<p>(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</p> <p>(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.</p>
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Service / completeness:	Service / completeness:	Service / completeness:	Service / completeness:	Service / completeness:
<p>Rule 9036(d): (d) When Notice or Service Is Complete; Keeping an Address Current.</p> <p>(1) Notice of Case Activity Sent Through the Court’s Electronic-Filing System.</p> <p>For any notice or service deadlines, notice or service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of notice or service, notice or service [by a notice of case activity] is complete as of the date of the notice of case activity.</p> <p>(2) Other Electronic Means. Electronic notice or service by other electronic means is complete upon sending.</p>	<p>Rule 8011(c)(3): (3) When Service Is Complete.</p> <p>(A) For Service by a Notice of Case Activity.</p> <p>For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date.</p> <p>(B) For Service by Other Electronic Means.</p> <p>Service by other electronic means is complete on sending.</p> <p>(C) For Service by Mail or Commercial Carrier.</p> <p>Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier.</p>	<p>FRAP 25(c)(4): (4) When Service Is Complete.</p> <p>(A) For Service by Mail or Commercial Carrier.</p> <p>Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.</p> <p>(B) For Service by a Notice of Case Activity.</p> <p>For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date.</p> <p>(C) For Service by Other Electronic Means.</p> <p>Service by other electronic means is complete on sending.</p>	<p><i>[Civil Rule 5 does not have a discrete subpart focused on completeness. Rather, the current rule addresses completeness in Rule 5(b)(2)(C), (E), and (F). The amended rule retains those mentions of completeness and addresses completeness for service by means of the NCA in Rule 5(b)(2).]</i></p> <p>Civil Rule 5(b)(2): For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date.</p>	<p><i>[Criminal Rule 49 does not have a discrete subpart focused on completeness. Rather, the current rule addresses completeness in Rules 49(a)(3)(A) & (B) and 49(a)(4)(C) & (E). The amended rule retains (though relocates) three of these mentions of completeness and addresses completeness for service by means of the NCA in Rule 49(a)(3).]</i></p> <p>Criminal Rule 49(a)(3): For any service deadlines, service by a notice of case activity is complete as of the date of filing. For any deadlines that run from the date of service, service [by a notice of case activity] is complete as of the notice’s date.</p>

NB: The proposed language approved by the Criminal Rules Committee’s subcommittee (which originated the latest phrasing of this provision) did not include the bracketed language. The bracketed language is offered for consideration because it may be desirable to make entirely clear that the second sentence, like the first, pertains only to service by a notice of case activity and not service by other means.

<i>NCA defined:</i>	<i>NCA defined:</i>	<i>NCA defined:</i>	<i>NCA defined:</i>	<i>NCA defined:</i>
<p>Rule 9036(c)(3): (3) Definition of “Notice of Case Activity.” The term “notice of case activity” 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.</p>	<p>Rule 8011(c)(4): (4) Definition of “Notice of Case Activity.” The term “notice of case activity” 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.</p>	<p>FRAP 25(c)(5): (5) Definition of “Notice of Case Activity.” The term “notice of case activity” 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.</p>	<p>Civil Rule 5(b)(4): (4) Definition of “Notice of Case Activity.” The term “notice of case activity” 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.</p>	<p>Crim Rule 49(a)(5): (5) Definition of “Notice of Case Activity.” The term “notice of case activity” 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.</p>

Certificate of service:	Certificate of service:	Certificate of service:	Certificate of service:	Certificate of service:
<i>[NB: Rule 5005 doesn't discuss service, and while Rule 9036 addresses service, it does not address proof of service.]</i>	<i>[NB: The overarching SRL project does not give rise to a need to revise Rule 8011(d)(1) ("Proof of Service. Requirements"), because it already uses the language "if it was served other than through the court's electronic-filing system," thus accommodating service (by means of the notice of case activity) of a filing made in paper form by a SRL. However, based on its review of bankruptcy-specific terminology, the Bankruptcy Rules Committee will update Rule 8011(d)(1) to use the terms "entity" and "individual" instead of "person."]</i>	<i>[NB: No need to revise FRAP 25(d)(1) ("Proof of Service"), because it already uses the language "if it was served other than through the court's electronic-filing system," thus accommodating service (by means of the notice of case activity) of a filing made in paper form by a SRL.]</i>	Civil Rule 5(d)(1)(B): (B) Certificate of Service. No certificate of service is required when a paper is served through the court's electronic-filing system under Rule 5(b)(2). When a paper that is required to be served is served by other means: (i) if it is filed, a certificate of service must be filed with it or within a reasonable time after service; and (ii) if it is not filed, a certificate of service need not be filed, unless filing is required by court order or by local rule.	Criminal Rule 49(b)(1): (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 through the court's electronic-filing system 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.

TAB 4B

12 of Criminal Procedure 49.1 governs when an ex-
13 traordinary writ is sought in a criminal case.

14 **(B) In a Petition Involving the Railroad Retirement**
15 **Act.** The provisions on remote electronic ac-
16 cess in Federal Rule of Civil Procedure 5.2(c)(1) and
17 (2) apply in a petition for review of a benefits deci-
18 sion of the Railroad Retirement Board under the
19 Railroad Retirement Act.

20 **(C) Redacting Social-Security Numbers and Tax-**
21 **payer-Identification Numbers.** Unless the court
22 orders filing under seal, a party or nonparty must
23 fully redact social-security numbers or other tax-
24 payer-identification numbers, including employer-
25 identification numbers, from any filing it makes, de-
26 spite what Rule 25(a)(5)(A) allows. But this require-
27 ment does not apply to a clerk who forwards or
28 makes the record available under Rule 6(b)(2)(C),
29 Rule 6(c)(2), or Rule 11 or to an agency that files the
30 record under Rule 17.

31 * * * * *

32 Committee Note

33 **Subdivision (a).** Existing paragraph (5) of subdivision (a) deals
34 with privacy protection. In general, the privacy protection rules that
35 governed below also govern on appeal. But whatever the justification for
36 permitting unredacted or partially redacted social-security numbers or
37 other taxpayer-identification numbers in other settings, there is no need
38 for them in the publicly available papers filed by litigants in a court of
39 appeals. For that reason, the amendment adds a new provision broadly
40 requiring a party or nonparty to fully redact those numbers from any
41 filing it makes, despite what the rules mentioned in subparagraph (A)
42 would otherwise allow. If there is a rare case in which it is necessary for
43 the court of appeals to know the number, a court order can permit filing
44 under seal.

45 This prohibition does not apply to a clerk who forwards or makes
46 the record available under Rule 6(b)(2)(C), Rule 6(c)(2), or Rule 11. Nor
47 does it apply to an agency that files the record under Rule 17. The record

48 can be sent as it is. The prohibition does apply, however, to any litigant
49 who reproduces portions of the record in an appendix under Rule 30.

50 For clarity, the existing provisions of paragraph (5) are broken
51 into subparagraphs and given headings. The new provision is subpara-
52 graph (C).

Similar language is also being proposed for the Bankruptcy Rules, to govern appeals to a district court or a bankruptcy appellate panel.

If the Committee wishes to track the changes made by the other advisory committees, no further changes need be made, and this language could be forwarded to the Standing Committee for publication and comment.

One other issue, though, might have greater salience for appeals: the Committee might wish to provide additional protection for the names of minors, akin to that provided for social-security numbers. If a minor is named in a state-court or agency record, for example, that name might be publicly available if the record has been filed in a district court under Civil Rule 5.2(b), but there would remain the question of whether a filer should redact the name if that same record is included in a more selective appendix on appeal. The question is one of balancing the costs of requiring additional review of the appendix materials against the benefits of avoiding further unwelcome publicity for the minor.

TAB 5

TAB 5A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Amicus Disclosures (21-AP-C)**

For several years the Committee has considered revisions to Rule 29’s amicus disclosure requirements. In September 2025, the Judicial Conference sent to the Supreme Court a package of proposed amendments to Rule 29, together with conforming amendments to Rule 32 and the Appendix of Length Limits. As the attached letter from Judge Dever and Judge Eid describes, the Committee and the Standing Committee recently voted to withdraw those proposed amendments. At press time, the Court had not yet acted on that letter. This memorandum has been prepared on the assumption that the Court will choose not to adopt the amendments this spring, allowing for further deliberation by the Committee.

Judge Dever and Judge Eid’s letter notes three areas of concern. *First*, the proposed Rule 29(e) would oblige organizational amici to disclose certain brief-related contributions or pledges not only from nonmembers, as Rule 29 currently requires, but also from relatively new members who had joined the organization within the previous twelve months. The Executive Committee of the Judicial Conference expressed a concern that this provision could interfere with the privacy of those organizations and of their members, who may be chilled from contributing to their organization’s amicus briefs if they were required to announce their membership to the public. *Second*, there is a potential ambiguity in the proposed Rule 29(d), which obliges parties and counsel to make “the required disclosure” if they know that an amicus has failed to do so, but which does not distinguish as between two such disclosures, one required under Rule 29(b) and another required under Rule 29(e). *Third*, the Appendix of Length Limits contains an unrevised cross-reference to Rule 29(d) that the proposed amendments would render obsolete.

This memorandum describes potential revisions along these lines to the proposed amendments and to the Committee Note. It then discusses whether, should the Committee wish to make such revisions, any further public comment would be necessary. Blackline/redline and clean copies of the potential revisions are attached.

* * *

Potential Revisions

1. *New members of amici.* Under the existing Rule 29(a)(4)(E)(iii), an amicus is required to disclose whether “a person—other than the amicus curiae, its members,

— 1 of 12 —

or its counsel—contributed money that was intended to fund preparing or submitting the brief” and, if so, to “identif[y] each such person.” The proposed amendments would have recodified this requirement in Rule 29(e)(1), limited it to contributions or pledges over \$100, and exempted only “the amicus,” “its counsel,” or “a member of the amicus who first became a member at least 12 months earlier.” Another provision, Rule 29(e)(2), would have required that “[i]f 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.” (This date-of-creation disclosure would also have been required by the proposed Rule 29(a)(4)(F), which states that an amicus brief must include, “if an amicus has existed for less than 12 months, the date the amicus was created.”)

As explained in the proposed Committee Note,

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to “pass the hat” when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

The Committee Note described the proposal to limit the member exclusion to longstanding (more-than-twelve-month) members as “an anti-evasion rule that treats new members of an amicus as non-members.” The cost of such an anti-evasion rule, however, is that an organizational amicus would have to disclose the identities of its contributing new members. This obligation might dissuade either the organization or its new members from participating in filing the brief in the first place. See *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (describing the potential chilling effect of membership disclosures); accord *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (same).

These dueling concerns of evasion and privacy have been the subject of extensive public comment and of discussion by both the Committee and the Standing Committee. See, e.g., Agenda Book 786–97 (Apr. 2025) (summarizing public comments); *id.* at 803–10 (summarizing hearing testimony); Minutes pt. IV.A, at 9–10 (Apr. 2025); Standing Committee Minutes 2.B.1.a, at 13, 15 (June 2025).

18

Committee Note

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Subdivision (e). Subdivision (e) focuses on the relationship between the amicus and a nonparty. It makes several changes to the existing Rule 29(a)(4)(E)(iii), which currently requires the disclosure of any contribution earmarked for a brief, no matter how small, by anyone other than the amicus itself, its members, or its counsel. Earmarked contributions run the risk that the amicus is being used as a paid mouthpiece by the contributor. Knowing about earmarked contributions helps courts and the public evaluate the arguments and information in the amicus brief by providing information about possible reasons for the filing other than those explained by the amicus itself.

30

The Committee considered requiring the disclosure of nonparties who make any significant contributions to an amicus, whether earmarked or not. But it decided against doing so because of the burdens it could impose on amici and their contributors, even when the reason for the contribution had nothing to do with the brief. Instead, it retained the focus of the existing rule on earmarked contributions.

36

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to “pass the hat” when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

48

~~Instead, the amendment retains the member exception, but limits it to those who first became members of the amicus at least 12 months earlier. In effect, the amendment is an anti-evasion rule that treats new members of an amicus as non-members. As a result, earmarked contributions made by new members must be disclosed, but earmarked contributions by other members do not have to be disclosed.~~

53

54 ~~This then raises the question of what to do with a newly formed~~
55 ~~amicus organization.~~ Rather than eliminate the member exception for
56 ~~such~~ organizations, the amendment protects members from disclosure.
57 But Rule 29(a)(4)(F) requires an amicus that has existed for less than 12
58 months to disclose the date of its creation. This requirement works in
59 conjunction with the expanded disclosure requirement of Rule 29(a)(4)(E)
60 to reveal an amicus that may have been created for purposes of particular
61 litigation or is less established and broadly-based than its name might
62 suggest. Unless adequately explained, a court and the public might
63 choose to discount the views of such an amicus.

64 The amendment also provides a \$100 threshold for the disclosure
65 requirement. Under the existing rule, a non-member of an amicus who
66 contributes any amount, no matter how small, that is earmarked for a
67 particular brief must be disclosed. This can hamper crowdfunding of ami-
68 cus briefs while providing little useful information to the courts or the
69 public. Contributions of \$100 or less are unlikely to run the risk that an
70 amicus is being used as a mouthpiece for others.

71 Changes Made Upon Further Consideration. Two changes
72 were made to the text of the proposed Rule 29(e). First, a provision was
73 deleted that would have limited the exemption from disclosure of ear-
74 marked contributions by an amicus’s members to those who first became
75 members more than 12 months prior to the filing of the brief. The re-
76 quirement to disclose earmarked contributions to an organization by its
77 new members would have enhanced the understanding of the court, but
78 it also could have interfered with the privacy of that organization and of
79 its members, who might have been chilled from contributing to an organ-
80 ization’s amicus brief if they were required to announce their member-
81 ship to the public. Second, an accompanying provision that would have
82 limited this now-deleted requirement—exempting organizations that
83 themselves had been created within the previous 12 months—was de-
84 leted as unnecessary.

2. *Required disclosures by parties and counsel.* Like the existing Rule 29(a)(4)(E)(i)–(ii), the proposed Rule 29(b) would require an amicus brief to disclose whether a party or counsel had participated in authoring or funding it. The proposed Rule 29(b)(3) additionally requires disclosure of a party or counsel’s majority ownership or control of the amicus. These disclosure obligations regarding parties and counsel are in addition to the disclosures of nonparty contributions required by the proposed Rule 29(e) and discussed above.

Two other proposed provisions had referred to the proposed Rule 29(b) requirement, but in potentially ambiguous ways. The proposed Rule 29(c), “Naming the Party or Counsel,” states generally that “Any such disclosure must name the party or counsel.” While the implication is that “such disclosure” refers only to the disclosure described in the previous subdivision, this is not explicit. Moreover, the proposed Rule 29(d), “Disclosure by the Party or Counsel,” states that “If the party or counsel knows that an amicus has failed to make the required disclosure, the party or counsel must do so.” This provision does not specify whether “the required disclosure” refers *only* to the party-or-counsel disclosure of the proposed Rule 29(b), or whether it also includes a required nonparty contribution disclosure under the proposed Rule 29(e). (A party or counsel might know, for example, that an amicus has received a contribution from a nonparty and has failed to disclose it.)

A revision could clarify this ambiguity, either by restricting the disclosure requirements under Rule 29(c)–(d) to those specifically involving parties and counsel under Rule 29(b), or by extending these requirements to *all* required amicus disclosures that a party or its counsel knows have not been made. While an argument might be made for the broader obligation, ensuring that the court learns facts of which it ought to be informed, the Rules generally do not impose requirements of this kind. For example, a party or its counsel might know that another party has failed to make necessary corporate disclosures under Rule 26.1, but the existing Rules do not speak to such questions, leaving parties and counsel subject to more general duties of candor to the court. Moreover, as evidenced by the proposed Committee Note (reproduced below), the intent of the Committee seems to have been to require that a party or counsel disclose its *own* role in authoring or funding an amicus brief—a fact of which it cannot help being aware, and which typically would not present any close questions of knowledge or belief—rather than to employ parties or counsel as informants regarding the roles of nonparties.

The most appropriate revision may therefore be to limit the express disclosure obligations of a party or counsel to facts concerning its own role, and not to impose a separate obligation to disclose its beliefs concerning the relationship of the amicus to a nonparty. These revisions could be accomplished by the following changes to the Rule’s text. (The Committee Note could remain unchanged, as shown below.)

1 **Rule 29. Brief of an Amicus Curiae**

2 * * * * *

3
4 **(b) Disclosing a Relationship Between an Amicus and a Party.**

5 An amicus brief must disclose whether:

6 (1) a party or its counsel authored the brief in whole or in part;

7 (2) a party or its counsel contributed or pledged to contribute
8 money intended to pay for preparing, drafting, or submit-
9 ting the brief; and

10 (3) a party, its counsel, or any combination of parties, their
11 counsel, or both has a majority ownership interest in or ma-
12 ajority control of a legal entity submitting the brief.

13 **(c) Naming the Party or Counsel.** Any ~~such~~ Rule 29(b) disclosure
14 must name the party or counsel.

15 **(d) Disclosure by the Party or Counsel.** If the party or counsel
16 knows that an amicus has failed to make the ~~required~~ Rule 29(b)
17 disclosure, the party or counsel must do so.

18 * * * * *

19 **Committee Note**

20 * * * * *

21 **Subdivision (b).** Subdivision (b) dealing with disclosure of the
22 relationship between the amicus and a party is new, but it draws on
23 existing Rule 29(a)(4)(E). Because of the important interest in knowing
24 whether a party has significant influence or control of an amicus, these
25 disclosures are more far reaching than those involving nonparties,
26 which are addressed in (e).

27 Rule 29(b)(1) carries forward the existing requirement that au-
28 thorship of an amicus brief by a party or its counsel must be disclosed.

29 Rule 29(b)(2) carries forward the existing requirement that
30 money contributed by a party or party's counsel that was intended to
31 fund the preparation or submission of the brief must be disclosed. But

32 in an effort to counteract the possibility of an amicus interpreting the
33 existing rule narrowly, the amendment explicitly refers to “preparing,
34 drafting, or submitting the brief,” thereby making clear that it applies
35 to every stage of the process.

36 Subdivision (b)(3) is new. It requires disclosure of whether a
37 party, its counsel, or any combination of parties or counsel either has a
38 majority ownership interest in or majority control of an amicus. If a
39 party has such control over an amicus, it is in a position to control the
40 content of an amicus brief. If undisclosed, the court and the public may
41 be misled about the independence of an amicus from a party, and a party
42 may be able to effectively exceed the limitations otherwise imposed on
43 parties.

44 **Subdivision (c).** Subdivision (c) requires that any disclosure re-
45 quired by paragraph (b) name the party or counsel. This builds upon the
46 requirement in current Rule 29(a)(4)(E)(iii) that certain persons who
47 make earmarked contributions be identified.

48 **Subdivision (d).** Subdivision (d) is new. It operates as a backstop
49 to the disclosure requirements of (b) and (c): If the amicus fails to make
50 a required disclosure, and the party or counsel knows it, the party or
51 counsel must make the disclosure.

3. *Appendix of Length Limits.* Conforming changes were proposed to the Appendix of Length Limits. (Conforming changes were also proposed to Rule 32, as seen in the attachments, but those proposed amendments require no revision.)

The existing Appendix discusses Rule 29 twice: once in a bulleted list, describing the alternative use of word or page limits under Rule 29(a)(5), and once in the table, specifying the length limits appropriate under Rule 29(a)(5) and (b)(4).

The proposed amendments would have appropriately revised the cross-references in the table to conform to the amended Rule. However, they neglected to propose deletion of the initial reference to page limits under Rule 29(a)(5), which the amended Rule would eliminate.

The following revision would properly conform the Appendix to the proposed Rule 29.

**Appendix:
 Length Limits Stated in the
 Federal Rules of Appellate Procedure**

* * * * *

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure.

Please refer to the rules for precise requirements, and bear in mind the following:

* * * * *

- For the limits in Rules 28.1, ~~29(a)(5)~~, and 32:
 - You may use the word limit or page limit, regardless of how you produce the document; or
 - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
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* * * * *

Amicus briefs	29(a)(5)	• Amicus brief during initial consideration of case on merits	One half the length set by the Appellate Rules for a party's principal brief <u>6,500</u>	One half the length set by the Appellate Rules for a party's principal brief <u>Not applicable</u>	One half the length set by the Appellate Rules for a party's principal brief <u>Not applicable</u>
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	29(b)(4)(f) (3)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
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Public Comment

Whether further public comment is required for post-publication revisions to the proposed Rule depends on the scope of those revisions. Per the *Guide to Judiciary Policy*, vol. 1, §§ 440.20.40(d), .50(b)–(c):

§ 440.20.40 Publication and Public Hearings

* * * * *

(d) Expedited Procedures

The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained. The Standing Committee may also eliminate public notice and comment for a technical or conforming amendment if the Committee determines that they are unnecessary. When an exception is made, the chair must advise the Judicial Conference and provide the reasons.

§ 440.20.50 Procedures After the Comment Period

* * * * *

(b) Advisory Committee Review; Republication

The advisory committee reviews the proposed change in light of any comments and testimony. If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that

republishing would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

(c) Submission to the Standing Committee

The advisory committee submits to the Standing Committee the proposed change and committee note that it recommends for approval. Each submission must:

- (1) be accompanied by a separate report of the comments received;
- (2) explain the changes made after the original publication; and
- (3) include an explanation of competing considerations examined by the advisory committee.

Working backwards:

It seems plain that no public comment could be necessary for the proposed revision to the Appendix of Length Limits, which is a “technical or conforming amendment” if anything is.

The same seems true of the suggested revisions to Rule 29(c)–(d). These revisions would reconcile the language of the proposed Rule with the understanding of that language already given in the proposed Committee Note.

The proposed revision to Rule 29(e), eliminating the new-member disclosure requirement, would be a substantive change rather than a technical or conforming one. However, whether the membership exemption from disclosure should include new members or should be limited to longstanding members is not a new question, but one already discussed at length by the Committee and the Standing Committee and already the subject of extensive public comment and testimony. As a result, should the Committee choose to propose the revisions above—deleting the twelve-month limitation in the proposed Rule 29(e)(1), the accompanying limitation for new organizations in the proposed Rule 29(e)(2), and the related language in the Committee Note—it might well determine “that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.” (Should the Committee find further substantive changes to be required, though, republication might well be of help in crafting those changes.)

If the amendments are not republished for public comment, any postpublication changes should be specifically explained in the Committee Note, including an explanation of competing considerations examined by the advisory committee. In prior instances of such changes—*e.g.*, the 2002, 2005, 2009, and 2011 amendments to

Rule 4—the Committee Notes specifically described the “Changes Made After Publication and Comment.” This approach has been suggested above.

* * *

Conclusion

The Committee therefore has two decisions to make.

First, it must decide whether or not to recommend to the Standing Committee any revisions to the proposed Rule 29 and the accompanying Committee Note.

Second, if the Committee does recommend revisions, it must decide whether or not to recommend republication of the revised proposal for public comment.

TAB 5B

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

JAMES C. DEVER III
CHAIR

CAROLYN A. DUBAY
SECRETARY

ALLISON H. EID
CHAIR
ADVISORY COMMITTEE
ON APPELLATE RULES

To: Scott S. Harris
Clerk of Court, Supreme Court of the United States

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

Allison H. Eid
Chair, Advisory Committee on Appellate Rules

Date: March 10, 2026

Re: Request to Withdraw Proposed Amendments to Appellate Rules 29 and 32 and the Appendix of Length Limits

Pending before the Court are proposed amendments to the Federal Rules of Appellate Procedure. The Judicial Conference approved these amendments at its September 2025 session (JCUS-SEP 25, p. 20), and they were submitted to the Court on October 16, 2025. If adopted by the Court and transmitted to Congress by May 1, 2026, absent congressional action, the proposed amendments will take effect on December 1, 2026.

With respect to these proposed amendments, we write to respectfully withdraw the proposed amendments to Appellate Rule 29, Appellate Rule 32, and the Appendix of Length Limits. The remaining portion of the Appellate Rules package containing proposed amendments to Form 4 is unaffected by this request and should remain pending for the Court's consideration, and if adopted by the Court, should be transmitted to Congress by May 1, 2026.

The proposed amendments to Rule 29 submitted to the Court contain a new provision in proposed Rule 29(e) that would oblige amicus organizations to disclose brief-related contributions or pledges over \$100 not only from nonmembers, as the current rules require, but also from relatively new members who joined the organization within the previous 12 months. We have recently been made aware of concerns on the part of the Executive Committee of the Judicial Conference that this provision could interfere with the privacy of those organizations and of their members, who may be chilled from contributing to their organization's amicus briefs if they were required to announce their membership to the public. We have also become aware of a

potential ambiguity in proposed Rule 29(d)'s disclosure requirements for parties and counsel, who are obliged to make "the required disclosure" if they know that an amicus has failed to do so. Finally, we have identified an unrevised cross-reference in the Appendix of Length Limits.

To ensure that any effort to address the above issues does not require conforming amendments elsewhere in Rule 29, Rule 32, or the Appendix of Length Limits, we believe that withdrawal of all three in their entirety at this time is appropriate, so that they may receive further consideration by the Advisory Committee. While a delay in moving forward with these amendments now is regrettable, we believe that the additional consideration and clarity will benefit litigants rather than create any difficulty in the interim period while these issues are addressed. The Advisory Committee and Standing Committee unanimously support withdrawing the proposed amendments for further consideration in light of the concerns raised.

We are pursuing this request based on the resolution of a similar issue that arose in 2018 regarding an ambiguity in the proposed amendments to Rule 25(d) after those amendments were approved by the Judicial Conference and submitted to the Court. At that time, Judge David Campbell, the chair of the Standing Committee, and Judge Michael Chagares, the chair of the Appellate Rules Committee, took similar action to ask their committees to approve withdrawal, which was done unanimously, and the Chief Justice and Counsel were then notified in March 2018 of the request to withdraw Rule 25(d). The Advisory Committee and Standing Committee then addressed the changes to Rule 25(d) through the ordinary committee process at their spring meetings and the amendments were adopted and became effective the following year.

To be clear, we ask to withdraw only the proposed amendments to Appellate Rule 29, Rule 32, and the Appendix of Length Limits. Our request leaves unchanged the request for the Court's consideration of proposed amendments to Form 4, submitted to the Court on October 16, 2025.

We apologize to the Court for the inconvenience occasioned by this matter. Please let us know if you have any questions.

TAB 5C

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

- 1 **Rule 29. Brief of an Amicus Curiae**
- 2 **(a) During Initial Consideration of a Case on the**
- 3 **Merits.**
- 4 (1) **Applicability.** This Rule 29(a) governs
- 5 amicus curiae filings during a court’s initial
- 6 consideration of a case on the merits.
- 7 (2) **Purpose; When Permitted.** An amicus brief
- 8 that brings to the court’s attention relevant
- 9 matter not already brought to its attention by
- 10 the parties may help the court. An amicus
- 11 brief that does not serve this purpose burdens
- 12 the court, and its filing is disfavored. The
- 13 United States ~~or~~, its officer or agency, or a
- 14 state may file an amicus brief without the

¹ New material is underlined in red; matter to be omitted is lined through.

15 consent of the parties or leave of court. Any
16 other amicus curiae may file a brief only with
17 by leave of court or if the brief states that all
18 parties have consented to its filing, ~~but a court~~
19 ~~of appeals.~~ The court may prohibit ~~the filing~~
20 ~~of~~ or ~~may~~ strike an amicus brief that would
21 result in a judge's disqualification.

22 (3) **Motion for Leave to File.** ~~A~~ The motion for
23 leave to file must be accompanied by the
24 proposed brief and state:

- 25 (A) the movant's interest; and
26 (B) the reason ~~why an amicus~~ the brief is
27 ~~desirable and why~~ serves the purpose
28 set forth in Rule 29(a)(2) ~~the matters~~
29 ~~asserted are relevant to the disposition~~
30 ~~of the case.~~

31 (4) **Contents and Form.** An amicus brief must
32 comply with Rule 32. ~~In addition to the~~

33 requirements of Rule 32, ~~T~~the cover must
34 identify name the party or parties supported
35 and indicate whether the brief supports
36 affirmance or reversal. ~~An amicus~~ The brief
37 need not comply with Rule 28, but it must
38 include the following:

39 (A) if the amicus ~~curiae~~ is a corporation,
40 a disclosure statement like that
41 required of parties by Rule 26.1;

42 (B) unless the amicus is the United States,
43 its officer or agency, or a state, the
44 disclosure statement required by
45 Rules 29(b), (c), and (e);

46 ~~(B)~~ (C) a table of contents, with page
47 references;

48 ~~(C)~~ (D) a table of authorities—cases
49 (alphabetically arranged), statutes,
50 and other authorities, —with

- 51 references to together with the pages
52 of the brief where they are cited;
- 53 ~~(D)~~(E) a concise ~~statement~~ description of the
54 identity, history, experience, and
55 interests of the amicus curiae, its
56 interest in the case, and the source of
57 its authority to file together with an
58 explanation of how the brief and the
59 perspective of the amicus will help
60 the court;
- 61 (F) if an amicus has existed for less than
62 12 months, the date the amicus was
63 created;
- 64 ~~(E)~~ ~~unless the amicus is one listed in the~~
65 ~~first sentence of Rule 29(a)(2), a~~
66 ~~statement that indicates whether:~~
- 67 ~~(i)~~ ~~a party's counsel authored the~~
68 ~~brief in whole or in part;~~

- 69 (ii) ~~a party or a party's counsel~~
70 ~~contributed money that was~~
71 ~~intended to fund preparing or~~
72 ~~submitting the brief; and~~
- 73 (iii) ~~a person other than the~~
74 ~~amicus curiae, its members, or~~
75 ~~its counsel contributed~~
76 ~~money that was intended to~~
77 ~~fund preparing or submitting~~
78 ~~the brief and, if so, identifies~~
79 ~~each such person;~~
- 80 (F)(G) an argument, which may be preceded
81 by a summary ~~and which~~ but need not
82 include a statement of the applicable
83 standard of review; and
- 84 (G)(H) a certificate of compliance under
85 Rule 32(g)(1), ~~if length is computed~~
86 ~~using a word or line limit.~~

105 (7) **Reply Brief.** An amicus may not file a reply
106 brief except with the court's permission.

107 ~~Except by the court's permission, an amicus~~
108 ~~curiae may not file a reply brief.~~

109 (8) **Oral Argument.** An amicus ~~curiae~~ may
110 participate in oral argument only with the
111 court's permission.

112 **(b) Disclosing a Relationship Between an Amicus and**
113 **a Party. An amicus brief must disclose whether:**

114 (1) a party or its counsel authored the brief in
115 whole or in part;

116 (2) a party or its counsel contributed or pledged
117 to contribute money intended to pay for
118 preparing, drafting, or submitting the brief;
119 and

120 (3) a party, its counsel, or any combination of
121 parties, their counsel, or both has a majority

122 ownership interest in or majority control of a
123 legal entity submitting the brief.

124 **(c) Naming the Party or Counsel.** Any such Rule 29(b)
125 disclosure must name the party or counsel.

126 **(d) Disclosure by the Party or Counsel.** If the party or
127 counsel knows that an amicus has failed to make the
128 required Rule 29(b) disclosure, the party or counsel
129 must do so.

130 **(e) Disclosing a Relationship Between an Amicus and**
131 **a Nonparty.**

132 (1) —An amicus brief must disclose whether any
133 person contributed or pledged to contribute
134 more than \$100 intended to pay for
135 preparing, drafting, or submitting the brief
136 and, if so, must identify each such person.

137 But disclosure is not required if the person is:

- 138 • the amicus;
139 • its counsel; or

- 140 • ~~a member of the amicus. who first~~
141 ~~became a member at least 12 months~~
142 ~~earlier.~~

- 143 ~~(2) — If an amicus has existed for less than 12~~
144 ~~months, an amicus brief need not disclose~~
145 ~~contributing members but must disclose the~~
146 ~~date the amicus was created.~~

147 **~~(b)~~(f) During Consideration of Whether to Grant**
148 **Rehearing.**

- 149 (1) **Applicability.** ~~This Rule 29(b)~~ Rules 29(a)-
150 (e) governs amicus ~~filings~~ briefs filed during
151 a court’s consideration of whether to grant
152 panel rehearing or rehearing en banc, except
153 as provided in this Rule 29(f), and unless a
154 local rule or order in a case provides
155 otherwise.

- 156 (2) **When Permitted.** The United States, ~~or~~ its
157 officer or agency, or a state may file an

158 amicus brief without the consent of the
159 parties or leave of court. Any other amicus
160 curiae may file a brief only by leave of court.

161 The motion for leave must comply with Rule
162 29(a)(3).

163 (3) ~~Motion for Leave to File.~~ Rule 29(a)(3)
164 applies to a motion for leave.

165 (4) ~~Contents, Form, and Length.~~ Rule 29(a)(4)
166 applies to the amicus brief. An amicus The
167 brief must not exceed 2,600 words.

168 (5)(4) **Time for Filing.** An amicus curiae
169 supporting the a petition for rehearing or
170 supporting neither party must file its brief,
171 accompanied by a motion for filing when
172 necessary, no later than 7 days after the
173 petition is filed. An amicus curiae opposing
174 the petition must file its brief, accompanied
175 by a motion for filing when necessary, no

176 later than the date set by the court for ~~the~~ a
177 response.

178 **Committee Note**

179 The amendments to Rule 29 make changes to the
180 procedure for filing amicus briefs, including to the
181 disclosure requirements.

182 The amendments seek primarily to provide the courts
183 and the public with more information about an amicus
184 curiae. Throughout its consideration of possible
185 amendments, the Advisory Committee has carefully
186 considered the relevant First Amendment interests.

187 Some have suggested that information about an
188 amicus is unnecessary because the only thing that matters
189 about an amicus brief is the merits of the legal arguments in
190 that brief. At times, however, courts do consider the identity
191 and perspective of an amicus to be relevant. For that reason,
192 the Committee thinks that some disclosures about an amicus
193 are important to promote the integrity of court processes and
194 rules.

195 Careful attention to the various interests and the need
196 to avoid unjustified burdens is reflected throughout these
197 amendments. For example, the amendment treats disclosures
198 about the relationship between a party and an amicus
199 differently than disclosures about the relationship between a
200 nonparty and an amicus. While the public interest in
201 knowing about an amicus—in order to evaluate its
202 arguments and a court's consideration of those arguments—
203 is relevant in both situations, there is an additional interest in
204 disclosing the relationship between a party and an amicus:
205 the court's interest in evaluating whether an amicus is

206 serving as a mouthpiece for a party, thereby evading limits
207 imposed on parties in our adversary system and misleading
208 the court about the independence of an amicus. Moreover,
209 the burden on an amicus of disclosing a relationship with a
210 party is much lower than having to disclose a relationship
211 with nonparties. Disclosing a relationship with a party
212 requires an amicus to check its records (and perhaps make a
213 disclosure) regarding only the limited number of persons
214 who are parties to the case. Disclosing a relationship with a
215 nonparty would, by contrast, require an amicus to check its
216 records (and perhaps make a disclosure) regarding the much
217 larger universe of all persons who are not parties to the case.

218 To take another example, the amendment treats
219 contributions by a nonparty that are earmarked for a
220 particular brief differently than general contributions by a
221 nonparty to an amicus. People may make contributions to
222 organizations for a host of reasons, including reasons that
223 have nothing to do with filing amicus briefs. Requiring the
224 disclosure of non-earmarked contributions provides less
225 useful information for those who seek to evaluate a brief and
226 imposes far greater burdens on contributors.

227 **Subdivision (a).** The amendment to Rule 29(a)(2)
228 adds a statement of the purpose of an amicus brief: to bring
229 to the court’s attention relevant matter not already brought
230 to its attention by the parties that may help the court. By
231 contrast, if an amicus curiae brief adds nothing to the parties’
232 briefs, it is a burden rather than a help. Where feasible,
233 avoiding redundancy among amicus briefs can also be
234 helpful.

235 The amendment to Rule 29(a)(4) expands the
236 required statement regarding the identity of an amicus and
237 its interest in the case and requires “a concise description of
238 the identity, history, experience, and interests of the amicus,

239 together with an explanation of how the brief and the
240 perspective of the amicus will help the court.” The
241 amendment calls for this broader disclosure to help the court
242 and the public evaluate the likely reliability and helpfulness
243 of an amicus, particularly those with anodyne or potentially
244 misleading names. It also requires that the amicus explain
245 how the brief and the perspective of the amicus will further
246 the goal of helping the court. Rule 29(a)(4)(F) is new. It
247 requires an amicus that has existed for less than 12 months
248 to state the date of its creation, helping identify amici that
249 may have been created for the purpose of this litigation.
250 Subsequent provisions are re-lettered.

251 Existing disclosure requirements about the
252 relationship between the amicus and both parties and
253 nonparties are removed from subdivision (a) and placed in
254 separate subdivisions, one dealing with parties (subdivision
255 (b)) and one dealing with nonparties (subdivision (e)).

256 Rule 29(a)(5) is amended to directly impose a word
257 limit on amicus briefs, replacing the provision that
258 establishes length limits for amicus briefs as a fraction of the
259 length limits for parties. This results in removing the option
260 to rely on a page count rather than a word count. This change
261 enables Rule 29(a)(4)(H) (formerly 29(a)(4)(G)) to be
262 simplified and require a certification of compliance under
263 Rule 32(g)(1) in all amicus briefs.

264 **Subdivision (b).** Subdivision (b) dealing with
265 disclosure of the relationship between the amicus and a party
266 is new, but it draws on existing Rule 29(a)(4)(E). Because of
267 the important interest in knowing whether a party has
268 significant influence or control of an amicus, these
269 disclosures are more far reaching than those involving
270 nonparties, which are addressed in (e).

271 Rule 29(b)(1) carries forward the existing
272 requirement that authorship of an amicus brief by a party or
273 its counsel must be disclosed.

274 Rule 29(b)(2) carries forward the existing
275 requirement that money contributed by a party or party's
276 counsel that was intended to fund the preparation or
277 submission of the brief must be disclosed. But in an effort to
278 counteract the possibility of an amicus interpreting the
279 existing rule narrowly, the amendment explicitly refers to
280 "preparing, drafting, or submitting the brief," thereby
281 making clear that it applies to every stage of the process.

282 Subdivision (b)(3) is new. It requires disclosure of
283 whether a party, its counsel, or any combination of parties or
284 counsel either has a majority ownership interest in or
285 majority control of an amicus. If a party has such control
286 over an amicus, it is in a position to control the content of an
287 amicus brief. If undisclosed, the court and the public may be
288 misled about the independence of an amicus from a party,
289 and a party may be able to effectively exceed the limitations
290 otherwise imposed on parties.

291 **Subdivision (c).** Subdivision (c) requires that any
292 disclosure required by paragraph (b) name the party or
293 counsel. This builds upon the requirement in current Rule
294 29(a)(4)(E)(iii) that certain persons who make earmarked
295 contributions be identified.

296 **Subdivision (d).** Subdivision (d) is new. It operates
297 as a backstop to the disclosure requirements of (b) and (c):
298 If the amicus fails to make a required disclosure, and the
299 party or counsel knows it, the party or counsel must make
300 the disclosure.

301 **Subdivision (e).** Subdivision (e) focuses on the
302 relationship between the amicus and a nonparty. It makes

303 several changes to the existing Rule 29(a)(4)(E)(iii), which
304 currently requires the disclosure of any contribution
305 earmarked for a brief, no matter how small, by anyone other
306 than the amicus itself, its members, or its counsel.
307 Earmarked contributions run the risk that the amicus is being
308 used as a paid mouthpiece by the contributor. Knowing
309 about earmarked contributions helps courts and the public
310 evaluate the arguments and information in the amicus brief
311 by providing information about possible reasons for the
312 filing other than those explained by the amicus itself.

313 The Committee considered requiring the disclosure
314 of nonparties who make any significant contributions to an
315 amicus, whether earmarked or not. But it decided against
316 doing so because of the burdens it could impose on amici
317 and their contributors, even when the reason for the
318 contribution had nothing to do with the brief. Instead, it
319 retained the focus of the existing rule on earmarked
320 contributions.

321 The Committee considered eliminating the member
322 exception because that exception allows for easy evasion:
323 simply become a member at the time of making an
324 earmarked contribution. But it decided against doing so
325 because members speak through an amicus and an amicus
326 generally speaks for its members. In addition, eliminating
327 the member exception threatened to place an unfair burden
328 on amici who do not budget in advance for amicus briefs
329 (and therefore have to “pass the hat” when the need to file
330 an amicus brief arises) compared to other amici who may file
331 amicus briefs more frequently (and therefore can budget in
332 advance and fund them from general revenue). Without a
333 member exception, the latter (generally larger) amici would
334 not have to disclose, but the former (generally smaller) amici
335 would have to disclose.

336 ~~Instead, the amendment retains the member~~
337 ~~exception, but limits it to those who first became members~~
338 ~~of the amicus at least 12 months earlier. In effect, the~~
339 ~~amendment is an anti-evasion rule that treats new members~~
340 ~~of an amicus as non-members. As a result, earmarked~~
341 ~~contributions made by new members must be disclosed, but~~
342 ~~earmarked contributions by other members do not have to be~~
343 ~~disclosed.~~

344 ~~This then raises the question of what to do with a~~
345 ~~newly formed amicus organization.~~ Rather than eliminate
346 the member exception for ~~such~~ organizations, the
347 amendment protects members from disclosure. But
348 Rule 29(a)(4)(F) requires an amicus that has existed for less
349 than 12 months to disclose the date of its creation. This
350 requirement works in conjunction with the expanded
351 disclosure requirement of Rule 29(a)(4)(E) to reveal an
352 amicus that may have been created for purposes of particular
353 litigation or is less established and broadly-based than its
354 name might suggest. Unless adequately explained, a court
355 and the public might choose to discount the views of such an
356 amicus.

357 The amendment also provides a \$100 threshold for
358 the disclosure requirement. Under the existing rule, a non-
359 member of an amicus who contributes any amount, no matter
360 how small, that is earmarked for a particular brief must be
361 disclosed. This can hamper crowdfunding of amicus briefs
362 while providing little useful information to the courts or the
363 public. Contributions of \$100 or less are unlikely to run the
364 risk that an amicus is being used as a mouthpiece for others.

365 **Changes Made Upon Further Consideration. Two**
366 **changes were made to the text of the proposed Rule 29(e).**
367 **First, a provision was deleted that would have limited the**
368 **exemption from disclosure of earmarked contributions by an**

369 amicus’s members to those who first became members more
370 than 12 months prior to the filing of the brief. The
371 requirement to disclose earmarked contributions to an
372 organization by its new members would have enhanced the
373 understanding of the court, but it also could have interfered
374 with the privacy of that organization and of its members,
375 who might have been chilled from contributing to an
376 organization’s amicus brief if they were required to
377 announce their membership to the public. Second, an
378 accompanying provision that would have limited this now-
379 deleted requirement—exempting organizations that
380 themselves had been created within the previous 12
381 months—was deleted as unnecessary.

382 **Subdivision (f).** Subdivision (f) retains most of the
383 content of existing subdivision (b) and governs amicus briefs
384 at the rehearing stage. It is revised to largely incorporate by
385 reference the provision applicable to amicus briefs at the
386 initial consideration of the case. Rule 29(f)(1) makes
387 Rule 29(a) through (e) applicable, except as provided in the
388 rest of Rule 29(f) or if a local rule or order in a particular
389 case provides otherwise. As a result, duplicative provisions
390 are eliminated.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

1 **Rule 32. Form of Briefs, Appendices, and Other**
2 **Papers**

3 * * * * *

4 **(g) Certificate of Compliance.**

5 (1) **Briefs and Papers That Require a**
6 **Certificate.** A brief submitted under Rules
7 28.1(e)(2), 29(a)(5), 29(f)(3)~~29(b)(4)~~, or
8 32(a)(7)(B)—and a paper submitted under
9 Rules 5(c)(1), 21(d)(1), 27(d)(2)(A),
10 27(d)(2)(C), or 40(d)(3)(A)—must include a
11 certificate by the attorney, or an
12 unrepresented party, that the document
13 complies with the type-volume limitation.
14 The person preparing the certificate may rely

¹ New material is underlined in red; matter to be omitted is lined through.

15 on the word or line count of the word-
16 processing system used to prepare the
17 document. The certificate must state the
18 number of words—or the number of lines of
19 monospaced type—in the document.

20 (2) **Acceptable Form.** Form 6 in the Appendix
21 of Forms meets the requirements for a
22 certificate of compliance.

23 **Committee Note**

24 Rule 32(g) is amended to conform to amendments
25 to Rule 29.

Appendix:
Length Limits Stated in the
Federal Rules of Appellate Procedure¹

* * * * *

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

* * * * *

- For the limits in Rules 28.1, ~~29(a)(5)~~, and 32:
 - You may use the word limit or page limit, regardless of how you produce the document; or
 - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
--	------	---------------	------------	------------	------------

* * * * *

Amicus briefs	29(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief <u>6,500</u>	One-half the length set by the Appellate Rules for a party's principal brief <u>Not applicable</u>	One-half the length set by the Appellate Rules for a party's principal brief <u>Not applicable</u>
	29(b)(4) <u>(f)(3)</u>	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable

* * * * *

¹ New material is underlined in red; matter to be omitted is lined through.

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

Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability.** This Rule 29(a) governs amicus curiae filings during a court's initial consideration of a case on the merits.

(2) **Purpose; When Permitted.** An amicus brief that brings to the court's attention relevant matter not already brought to its attention by the parties may help the court. An amicus brief that does not serve this purpose burdens the court, and its filing is disfavored. The United States, its officer or agency, or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only with leave

of court or if the brief states that all parties have consented to its filing. The court may prohibit or strike an amicus brief that would result in a judge's disqualification.

(3) **Motion for Leave to File.** A motion for leave to file must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason the brief serves the purpose set forth in Rule 29(a)(2).

(4) **Contents and Form.** An amicus brief must comply with Rule 32. The cover must name the party or parties supported and indicate whether the brief supports affirmance or reversal. The brief need not comply with Rule 28, but it must include the following:

- (A) if the amicus is a corporation, a disclosure statement like that required of parties by Rule 26.1;
- (B) unless the amicus is the United States, its officer or agency, or a state, the disclosure statement required by Rules 29(b), (c), and (e);
- (C) a table of contents, with page references;
- (D) a table of authorities—cases (alphabetically arranged), statutes, and other authorities, together with the pages where they are cited;
- (E) a concise description of the identity, history, experience, and interests of the amicus, together with an explanation of how the brief and the

perspective of the amicus will help the court;

- (F) if an amicus has existed for less than 12 months, the date the amicus was created;
 - (G) an argument, which may be preceded by a summary but need not include a statement of the applicable standard of review; and
 - (H) a certificate of compliance under Rule 32(g)(1).
- (5) **Length.** Except with the court's permission, an amicus brief must not exceed 6,500 words.
- (6) **Time for Filing.** An amicus must file its brief no later than 7 days after the principal brief of the party being supported is filed. An amicus that does not support either party must file its brief no later than 7 days after the

appellant's or petitioner's principal brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) **Reply Brief.** An amicus may not file a reply brief except with the court's permission.

(8) **Oral Argument.** An amicus may participate in oral argument only with the court's permission.

(b) **Disclosing a Relationship Between an Amicus and a Party.** An amicus brief must disclose whether:

(1) a party or its counsel authored the brief in whole or in part;

(2) a party or its counsel contributed or pledged to contribute money intended to pay for preparing, drafting, or submitting the brief; and

- (3) a party, its counsel, or any combination of parties, their counsel, or both has a majority ownership interest in or majority control of a legal entity submitting the brief.
- (c) **Naming the Party or Counsel.** Any Rule 29(b) disclosure must name the party or counsel.
- (d) **Disclosure by the Party or Counsel.** If the party or counsel knows that an amicus has failed to make the Rule 29(b) disclosure, the party or counsel must do so.
- (e) **Disclosing a Relationship Between an Amicus and a Nonparty.** 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.

(f) During Consideration of Whether to Grant Rehearing.

- (1) **Applicability.** Rules 29(a)-(e) govern amicus briefs filed during a court's consideration of whether to grant panel rehearing or rehearing en banc, except as provided in this Rule 29(f), and unless a local rule or order in a case provides otherwise.
- (2) **When Permitted.** The United States, its officer or agency, or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court. The motion for leave must comply with Rule 29(a)(3).

- (3) **Length.** An amicus brief must not exceed 2,600 words.
- (4) **Time for Filing.** An amicus supporting a petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for a response.

Committee Note

The amendments to Rule 29 make changes to the procedure for filing amicus briefs, including to the disclosure requirements.

The amendments seek primarily to provide the courts and the public with more information about an amicus curiae. Throughout its consideration of possible amendments, the Advisory Committee has carefully considered the relevant First Amendment interests.

Some have suggested that information about an amicus is unnecessary because the only thing that matters

about an amicus brief is the merits of the legal arguments in that brief. At times, however, courts do consider the identity and perspective of an amicus to be relevant. For that reason, the Committee thinks that some disclosures about an amicus are important to promote the integrity of court processes and rules.

Careful attention to the various interests and the need to avoid unjustified burdens is reflected throughout these amendments. For example, the amendment treats disclosures about the relationship between a party and an amicus differently than disclosures about the relationship between a nonparty and an amicus. While the public interest in knowing about an amicus—in order to evaluate its arguments and a court’s consideration of those arguments—is relevant in both situations, there is an additional interest in disclosing the relationship between a party and an amicus: the court’s interest in evaluating whether an amicus is serving as a mouthpiece for a party, thereby evading limits imposed on parties in our adversary system and misleading the court about the independence of an amicus. Moreover, the burden on an amicus of disclosing a relationship with a party is much lower than having to disclose a relationship with nonparties. Disclosing a relationship with a party requires an amicus to check its records (and perhaps make a disclosure) regarding only the limited number of persons who are parties to the case. Disclosing a relationship with a nonparty would, by contrast, require an amicus to check its records (and perhaps make a disclosure) regarding the much larger universe of all persons who are not parties to the case.

To take another example, the amendment treats contributions by a nonparty that are earmarked for a particular brief differently than general contributions by a nonparty to an amicus. People may make contributions to organizations for a host of reasons, including reasons that

have nothing to do with filing amicus briefs. Requiring the disclosure of non-earmarked contributions provides less useful information for those who seek to evaluate a brief and imposes far greater burdens on contributors.

Subdivision (a). The amendment to Rule 29(a)(2) adds a statement of the purpose of an amicus brief: to bring to the court’s attention relevant matter not already brought to its attention by the parties that may help the court. By contrast, if an amicus curiae brief adds nothing to the parties’ briefs, it is a burden rather than a help. Where feasible, avoiding redundancy among amicus briefs can also be helpful.

The amendment to Rule 29(a)(4) expands the required statement regarding the identity of an amicus and its interest in the case and requires “a concise description of the identity, history, experience, and interests of the amicus, together with an explanation of how the brief and the perspective of the amicus will help the court.” The amendment calls for this broader disclosure to help the court and the public evaluate the likely reliability and helpfulness of an amicus, particularly those with anodyne or potentially misleading names. It also requires that the amicus explain how the brief and the perspective of the amicus will further the goal of helping the court. Rule 29(a)(4)(F) is new. It requires an amicus that has existed for less than 12 months to state the date of its creation, helping identify amici that may have been created for the purpose of this litigation. Subsequent provisions are re-lettered.

Existing disclosure requirements about the relationship between the amicus and both parties and nonparties are removed from subdivision (a) and placed in separate subdivisions, one dealing with parties (subdivision (b)) and one dealing with nonparties (subdivision (e)).

Rule 29(a)(5) is amended to directly impose a word limit on amicus briefs, replacing the provision that establishes length limits for amicus briefs as a fraction of the length limits for parties. This results in removing the option to rely on a page count rather than a word count. This change enables Rule 29(a)(4)(H) (formerly 29(a)(4)(G)) to be simplified and require a certification of compliance under Rule 32(g)(1) in all amicus briefs.

Subdivision (b). Subdivision (b) dealing with disclosure of the relationship between the amicus and a party is new, but it draws on existing Rule 29(a)(4)(E). Because of the important interest in knowing whether a party has significant influence or control of an amicus, these disclosures are more far reaching than those involving nonparties, which are addressed in (e).

Rule 29(b)(1) carries forward the existing requirement that authorship of an amicus brief by a party or its counsel must be disclosed.

Rule 29(b)(2) carries forward the existing requirement that money contributed by a party or party's counsel that was intended to fund the preparation or submission of the brief must be disclosed. But in an effort to counteract the possibility of an amicus interpreting the existing rule narrowly, the amendment explicitly refers to "preparing, drafting, or submitting the brief," thereby making clear that it applies to every stage of the process.

Subdivision (b)(3) is new. It requires disclosure of whether a party, its counsel, or any combination of parties or counsel either has a majority ownership interest in or majority control of an amicus. If a party has such control over an amicus, it is in a position to control the content of an amicus brief. If undisclosed, the court and the public may be misled about the independence of an amicus from a party,

and a party may be able to effectively exceed the limitations otherwise imposed on parties.

Subdivision (c). Subdivision (c) requires that any disclosure required by paragraph (b) name the party or counsel. This builds upon the requirement in current Rule 29(a)(4)(E)(iii) that certain persons who make earmarked contributions be identified.

Subdivision (d). Subdivision (d) is new. It operates as a backstop to the disclosure requirements of (b) and (c): If the amicus fails to make a required disclosure, and the party or counsel knows it, the party or counsel must make the disclosure.

Subdivision (e). Subdivision (e) focuses on the relationship between the amicus and a nonparty. It makes several changes to the existing Rule 29(a)(4)(E)(iii), which currently requires the disclosure of any contribution earmarked for a brief, no matter how small, by anyone other than the amicus itself, its members, or its counsel. Earmarked contributions run the risk that the amicus is being used as a paid mouthpiece by the contributor. Knowing about earmarked contributions helps courts and the public evaluate the arguments and information in the amicus brief by providing information about possible reasons for the filing other than those explained by the amicus itself.

The Committee considered requiring the disclosure of nonparties who make any significant contributions to an amicus, whether earmarked or not. But it decided against doing so because of the burdens it could impose on amici and their contributors, even when the reason for the contribution had nothing to do with the brief. Instead, it retained the focus of the existing rule on earmarked contributions.

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to “pass the hat” when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

Rather than eliminate the member exception for organizations, the amendment protects members from disclosure. But Rule 29(a)(4)(F) requires an amicus that has existed for less than 12 months to disclose the date of its creation. This requirement works in conjunction with the expanded disclosure requirement of Rule 29(a)(4)(E) to reveal an amicus that may have been created for purposes of particular litigation or is less established and broadly-based than its name might suggest. Unless adequately explained, a court and the public might choose to discount the views of such an amicus.

The amendment also provides a \$100 threshold for the disclosure requirement. Under the existing rule, a non-member of an amicus who contributes any amount, no matter how small, that is earmarked for a particular brief must be disclosed. This can hamper crowdfunding of amicus briefs while providing little useful information to the courts or the public. Contributions of \$100 or less are unlikely to run the risk that an amicus is being used as a mouthpiece for others.

Changes Made Upon Further Consideration. Two changes were made to the text of the proposed Rule 29(e). First, a provision was deleted that would have limited the exemption from disclosure of earmarked contributions by an amicus’s members to those who first became members more than 12 months prior to the filing of the brief. The requirement to disclose earmarked contributions to an organization by its new members would have enhanced the understanding of the court, but it also could have interfered with the privacy of that organization and of its members, who might have been chilled from contributing to an organization’s amicus brief if they were required to announce their membership to the public. Second, an accompanying provision that would have limited this now-deleted requirement—exempting organizations that themselves had been created within the previous 12 months—was deleted as unnecessary.

Subdivision (f). Subdivision (f) retains most of the content of existing subdivision (b) and governs amicus briefs at the rehearing stage. It is revised to largely incorporate by reference the provision applicable to amicus briefs at the initial consideration of the case. Rule 29(f)(1) makes Rule 29(a) through (e) applicable, except as provided in the rest of Rule 29(f) or if a local rule or order in a particular case provides otherwise. As a result, duplicative provisions are eliminated.

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

Rule 32. Form of Briefs, Appendices, and Other Papers

* * * * *

(g) Certificate of Compliance.

- (1) Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(a)(5), 29(f)(3), 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. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the

number of words—or the number of lines of monospaced type—in the document.

- (2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

Committee Note

Rule 32(g) is amended to conform to amendments to Rule 29.

Appendix: Length Limits Stated in the Federal Rules of Appellate Procedure

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, and 40:
 - You must use the word limit if you produce your document on a computer, and
 - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1 and 32:
 - You may use the word limit or page limit, regardless of how you produce the document; or
 - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
Permission to Appeal	5(c)	<ul style="list-style-type: none"> • Petition for permission to appeal • Answer in opposition • Cross-petition 	5,200	20	Not applicable
Extraordinary writs	21(d)	<ul style="list-style-type: none"> • Petition for writ of mandamus or prohibition or other extraordinary writ • Answer 	7,800	30	Not applicable
Motions	27(d)(2)	<ul style="list-style-type: none"> • Motion • Response to a motion 	5,200	20	Not applicable
	27(d)(2)	<ul style="list-style-type: none"> • Reply to a response to a motion 	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	32(a)(7)	<ul style="list-style-type: none"> • Principal brief 	13,000	30	1,300
	32(a)(7)	<ul style="list-style-type: none"> • Reply brief 	6,500	15	650

	Rule	Document type	Word limit	Page limit	Line limit
Parties' briefs (where cross-appeal)	28.1(e)	<ul style="list-style-type: none"> Appellant's principal brief Appellant's response and reply brief 	13,000	30	1,300
	28.1(e)	<ul style="list-style-type: none"> Appellant's principal and response brief 	15,300	35	1,500
	28.1(e)	<ul style="list-style-type: none"> Appellee's reply brief 	6,500	15	650
Party's supplemental letter	28(j)	<ul style="list-style-type: none"> Letter citing supplemental authorities 	350	Not applicable	Not applicable
Amicus briefs	29(a)(5)	<ul style="list-style-type: none"> Amicus brief during initial consideration on merits 	6,500	Not applicable	Not applicable
	29(f)(3)	<ul style="list-style-type: none"> Amicus brief during consideration of whether to grant rehearing 	2,600	Not applicable	Not applicable
Rehearing and en banc filings	40(d)(3)	<ul style="list-style-type: none"> Petition for initial hearing en banc Petition for panel rehearing; petition for rehearing en banc Response if requested by the court 	3,900	15	Not applicable

TAB 5D

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Rule 15 Subcommittee
DATE: March 25, 2026
RE: **Rule 15 Amendments (24-AP-G)**

Proposed amendments to Rule 15 were published in August for public comment. The Subcommittee (Prof. Huang (chair), Mr. Freeman, Mr. Pincus) has reviewed the public comments and recommends final approval of the amendments.

When an agency order is the subject of a petition for rehearing, reopening, or reconsideration (for now, “rehearing”), the order may become temporarily nonreviewable while the agency considers the rehearing petition. This can create a trap for the unwary filer: a petition for review or application for enforcement, if filed during this period, may be incurably premature and may need to be timely refiled after the agency has reached a decision on rehearing.

The proposed amendments would address this problem by following Rule 4(a)(B)(i)’s approach to premature notices of appeal from civil judgments. They would make a premature petition or application fully effective with respect to the initial order once the agency has disposed of the rehearing petitions that bar review. They would still require a new petition or application if the party wishes to challenge the rehearing decision itself.

Three relevant comments were received, all positive.

- Cesar Alvan expressed support for the amendments as preventing the needless dismissal of early petitions and avoiding the need to file duplicative petitions. He particularly appreciated the requirement of a new petition to challenge a rehearing decision as promoting clarity.
- Kaitlin Skow likewise supported the proposed amendments. In her view, they remove a burden on unrepresented petitioners without adding any significant burden on the agency or the courts.
- International Attestations, LLC, referenced the amendments only briefly but approved of them as avoiding a potential trap.

The Subcommittee also considered three other potential issues concerning the proposed Rule 15(d), reproduced below.

24 *Aeromar, C. Por A. v. Dept. of Transp.*, 767 F.2d 1491, 1493 (11th Cir.
25 1985) (relying on the pre-1993 treatment of notices of appeal and apply-
26 ing the “same principle” to review of agency action). In these circuits, if
27 a party aggrieved by an agency action does not file a second timely peti-
28 tion for review after the petition for rehearing is denied by the agency,
29 that party will find itself out of time: Its first petition for review will be
30 dismissed as premature, and the deadline for filing a second petition for
31 review will have passed. Subdivision ~~(d)~~(f) removes this trap.

32 It is modeled after Rule 4(a)(4)(B)(i), as amended in 1993, and is
33 intended to align the treatment of premature petitions for review of
34 agency orders with the treatment of premature notices of appeal. Recog-
35 nizing that while review of district court orders is generally case based,
36 *see* Fed. R. Civ. P. 54, review of administrative orders is generally party
37 based, subdivision ~~(d)~~(f) refers to an order that is made “nonreviewable
38 as to that party” by a petition for rehearing, reopening, or reconsidera-
39 tion.

40 Subdivision ~~(d)~~(f) does not address whether or when the filing of
41 a petition for rehearing, reopening, or reconsideration renders an agency
42 order nonreviewable as to a party. That is left to the wide variety of
43 statutes, regulations, and judicial decisions that govern agencies and
44 appeals from agency decisions. Rather, subdivision ~~(d)~~(f) provides that
45 when, under governing law, an agency order is nonreviewable as to a
46 particular party because of the filing of a petition for rehearing, reopen-
47 ing, or reconsideration, a premature petition for review or application to
48 enforce that order will be held in abeyance and become effective when
49 the agency disposes of the last such petition—that is, the last petition
50 that renders the order nonreviewable as to that party.

51 As with appeals in civil cases, *see* Rule 4(a)(4)(B)(ii), the prema-
52 ture petition becomes effective to review the original decision, but a
53 party intending to challenge the disposition of a petition for rehearing,
54 reopening, or reconsideration must file a new or amended petition for
55 review or application to enforce.

56 ~~Subsequent subdivisions are re-lettered.~~

TAB 5E

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

1 **Rule 15. Review or Enforcement of an Agency Order—**
2 **How Obtained; Intervention**

3 * * * * *

- 4 **(d) Intervention.** Unless a statute provides another
5 method, a person who wants to intervene in a
6 proceeding under this rule must file a motion for
7 leave to intervene with the circuit clerk and serve a
8 copy on all parties. The motion—or other notice of
9 intervention authorized by statute—must be filed
10 within 30 days after the petition for review is filed
11 and must contain a concise statement of the interest
12 of the moving party and the grounds for intervention.
- 13 **(e) Payment of Fees.** When filing any separate or joint
14 petition for review in a court of appeals, the
15 petitioner must pay the circuit clerk all required fees.

¹ New material is underlined in red; matter to be omitted is lined through.

16 **(f) Premature Petition or Application.** This
17 subdivision (f) applies if a party files a petition for
18 review or an application to enforce after an agency
19 announces or enters its order—but before the agency
20 disposes of any petition for rehearing, reopening, or
21 reconsideration that renders the order nonreviewable
22 as to that party. The premature petition or application
23 becomes effective to seek review or enforcement of
24 the order when the agency disposes of the last such
25 petition for rehearing, reopening, or reconsideration.
26 If a party intends to challenge the disposition of a
27 petition for rehearing, reopening, or reconsideration,
28 the party must file a new or amended petition for
29 review or application to enforce in compliance with
30 this Rule 15.

31 **Committee Note**

32 **Subdivision (f).** Subdivision (f) is new. It is designed
33 to eliminate a procedural trap. Some circuits hold that
34 petitions for review of agency orders that have been rendered
35 nonreviewable by the filing of a petition for rehearing (or

36 similar petition) are “incurably premature,” meaning that
37 they do not ripen or become valid after the agency disposes
38 of the rehearing petition. *See, e.g., Nat’l Ass’n of*
39 *Immigration Judges v. Fed. Labor Relations Auth.*, 77 F.4th
40 1132, 1139 (D.C. Cir. 2023); *Aeromar, C. Por A. v. Dept. of*
41 *Transp.*, 767 F.2d 1491, 1493 (11th Cir. 1985) (relying on the
42 pre-1993 treatment of notices of appeal and applying the
43 “same principle” to review of agency action). In these
44 circuits, if a party aggrieved by an agency action does not
45 file a second timely petition for review after the petition for
46 rehearing is denied by the agency, that party will find itself
47 out of time: Its first petition for review will be dismissed as
48 premature, and the deadline for filing a second petition for
49 review will have passed. Subdivision (f) removes this trap.

50 It is modeled after Rule 4(a)(4)(B)(i), as amended in
51 1993, and is intended to align the treatment of premature
52 petitions for review of agency orders with the treatment of
53 premature notices of appeal. Recognizing that while review
54 of district court orders is generally case based, *see* Fed. R.
55 Civ. P. 54, review of administrative orders is generally party
56 based, subdivision (f) refers to an order that is made
57 “nonreviewable as to that party” by a petition for rehearing,
58 reopening, or reconsideration.

59 Subdivision (f) does not address whether or when the
60 filing of a petition for rehearing, reopening, or
61 reconsideration renders an agency order nonreviewable as to
62 a party. That is left to the wide variety of statutes,
63 regulations, and judicial decisions that govern agencies and
64 appeals from agency decisions. Rather, subdivision (f)
65 provides that when, under governing law, an agency order is
66 nonreviewable as to a particular party because of the filing
67 of a petition for rehearing, reopening, or reconsideration, a
68 premature petition for review or application to enforce that
69 order will be held in abeyance and become effective when

70 the agency disposes of the last such petition—that is, the last
71 petition that renders the order nonreviewable as to that party.

72 As with appeals in civil cases, *see* Rule
73 4(a)(4)(B)(ii), the premature petition becomes effective to
74 review the original decision, but a party intending to
75 challenge the disposition of a petition for rehearing,
76 reopening, or reconsideration must file a new or amended
77 petition for review or application to enforce.

TAB 6

TAB 6A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Intervention on Appeal Subcommittee
DATE: March 25, 2026
RE: **Intervention on Appeal (22-AP-G)**

The Intervention on Appeal Subcommittee (Mr. Freeman, Prof. Huang, Justice Kruger), appointed in March 2023, has been considering a suggestion for a possible new Rule governing intervention on appeal. It submitted a working draft, together with a report on the topic from the FJC, for the Advisory Committee’s consideration at the October 2025 meeting (see Agenda Book 227–307 (Oct. 2025)), and it received feedback at the Standing Committee’s January 2026 meeting. After further discussions and style consultations, it now presents an updated version of that amendment.

Although Rule 15(d) permits intervention in agency review or enforcement proceedings, no specific Rule governs intervention on appeal from a district court. See *Cameron v. EMW Women’s Surgical Ctr.*, 142 S. Ct. 1002, 1010 (2022) (“No statute or rule provides a general standard to apply in deciding whether intervention on appeal should be allowed. The Federal Rules of Appellate Procedure make only one passing reference to intervention, and that reference concerns the review of agency action.”). As the FJC report shows, however, motions to intervene in such cases are indeed filed in the courts of appeals. See Agenda Book 239–307 (Oct. 2025); see also <https://www.fjc.gov/content/394353/intervention-federal-courts-appeals>.

In the absence of a Rule, courts of appeals have of necessity “turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24.” *Sierra Club v. EPA*, 358 F.3d 516, 517–18 (CA7 2004). Yet at the appellate stage, intervention ought to meet a higher standard than in the district court—both because intervention on appeal poses a greater potential for disruption to the existing parties, and because any potential intervenor would presumably have had an opportunity to intervene at a prior stage of the proceedings. (In agency cases, by contrast, a petition for review or enforcement might be the first time a matter is brought before an Article III court.)

This memorandum describes the provisions of the current draft and explains related choices made by the Subcommittee. The full draft amendment and Committee Note are reproduced at the end.

* * *

1. Scope. The first issue to be considered concerns the Rule’s scope. As Rule 15(d) governs intervention in agency proceedings, this Rule was designed to address

only intervention on appeal from a district court. However, three categories of cases may require special attention.

a. Criminal cases. The Criminal Rules have no general provision for intervention akin to Civil Rule 24. Additionally, after consulting the Criminal Rules reporters, it became clear that significant issues might be involved in extending appellate intervention to criminal cases, especially if any intervenors might remain parties after a remand to the district court. The draft Rule currently exempts any criminal case from its scope, applying only to an appeal in a civil case. (As a bracketed option, it likewise exempts an appeal in a habeas proceeding under 28 U.S.C. §§ 2254 or 2255; such proceedings are governed at least partly by the Civil Rules. See 2254 Rule 12; 2255 Rule 12.)

As the draft Committee Note makes clear, placing criminal cases outside the draft Rule’s scope means that they would be unaffected by its adoption. It neither forbids nor permits intervention in such cases, leaving all such questions to be governed by preexisting law. The draft Rule likewise would not speak to the circumstances in which a court might permit a nonparty to file a motion without intervening. If some courts permit nonparty motions in criminal proceedings (or, indeed, in civil ones) to unseal newsworthy filings, to defend the quashal of a third-party subpoena, etc., the draft Rule would leave that practice alone.

b. Bankruptcy cases. Under Rule 6(a), (b)(1), and (c)(1), the draft Rule would ordinarily apply in bankruptcy cases—whether in an appeal from a district court, an appeal from a bankruptcy appellate panel, or a direct appeal from a bankruptcy court. The same intervention rules under Civil Rule 24 already apply to both civil cases and to adversary proceedings in bankruptcy, so it might seem that a common set of appellate intervention rules would be proper in both fields too. (That said, the opportunities for appellate intervention in bankruptcy may be slim, given the various deadlines for creditors to present their claims.) After consulting with the Bankruptcy Rules reporters, the Subcommittee saw no need to exclude bankruptcy cases from the draft Rule.

c. Tax Court appeals. Appeals from the United States Tax Court present an intermediate case. As presented at the last meeting, the draft Rule was numbered as Rule 7.1; a Rule with that number would not apply to Tax Court appeals, which per Rule 14 are unaffected by Rules 6–9 (among others). It might seem that including Tax Court appeals would be appropriate; the general standards for intervention in the Tax Court under Tax Ct. R. 64 seem roughly similar to those of Civil Rule 24, and there are also special procedures for special categories of intervenors. *See, e.g.*, Tax Ct. R. 216 (retirement plan beneficiaries), 245 (partnerships), R. 325 (joint filers). On the other hand, intervention at the court-of-appeals stage seems quite unusual: initial research by the Subcommittee turned up very little on the question, and there were

22 might affect a party-based ground of subject-matter jurisdiction, such as
23 diversity. A jurisdictional statement assists the court in considering any
24 such effect.

25 Third, the motion must state the grounds for intervening. *Accord*
26 Rule 27(a)(2)(A); Fed. R. Civ. P. 24(c).

4. Statutory rights to intervene. Some federal statutes confer a right to intervene, even in the courts of appeals. Such a right is explicitly preserved by the draft Rule, to avoid any suggestion that it might be superseded. (The Subcommittee is unaware of any federal statutes that provide for appellate *permissive* intervention, as opposed to intervention as-of-right. If such statutes exist, the court’s discretion would be exercised per subdivision (e), discussed below.)

1 **(d) Grounds for Mandatory Intervention.** The court must permit
2 intervention by a movant who is given a right to intervene by federal
3 statute.

4 * * * * *

5 **Committee Note**

6 * * * * *

7 **Subdivision (d).** If a federal statute confers a right on a non-
8 party to intervene in a proceeding in a court of appeals, subdivision (d)
9 preserves such a right unimpaired, subject to the motion requirements
10 of subdivision (b). *See, e.g.*, 28 U.S.C. § 2403(a), (b) (providing rights to
11 intervene in a “court of the United States”); 28 U.S.C. § 451 (defining
12 “court of the United States” to include the “courts of appeals”); *cf.* Fed.
13 R. Civ. P. 24(a)(1) (similarly requiring a timely motion for intervention
14 as of right in a district court). If a federal statute confers, not a right to
15 intervene, but an opportunity to intervene at the discretion of the court,
16 that discretion may be exercised in accordance with subdivision (e).

5. Government intervention. As in the October draft, the draft Rule provides for intervention—at the court’s discretion, but not subject to disfavor under subdivision (b)—by federal or state governments, agencies, and officials, to defend the validity of a law or of an official action of that government.

As before, this intervention is narrower than the broad intervention permitted under Civil Rule 24(b)(2), which applies whenever the interpretation of the law or action figures in any party’s claim or defense. Here, the intervention must be sought

21 Subdivision (e)(1) identifies a ground for intervention by the
22 United States, or by a state, to defend the validity of its law or of an
23 action that it or its agency or officer has taken. (Rule 1(b) defines “state”
24 to include the District of Columbia and any United States common-
25 wealth or territory.) This ground for intervention is narrower than the
26 equivalent ground identified by Fed. R. Civ. P. 24(b)(2) in a district
27 court, which extends to a range of cases in which a statute, regulation,
28 or other government action may be the basis for a nongovernmental
29 party’s claim or defense. By contrast, this subdivision only addresses in-
30 tervention to defend the validity against legal challenge of a law or offi-
31 cial action of the government seeking to intervene. For example, in a
32 diversity suit between two contracting parties, a question might arise of
33 the validity of a state regulation that purports to void the contract. The
34 state might invoke this subdivision in moving to intervene to defend the
35 validity of its regulation. *Cf.* 28 U.S.C. § 2403(a)–(b) (providing a limited
36 statutory right to intervene in a constitutional challenge to a federal or
37 state statute).

38 Subdivision (e)(2) identifies a similar ground for intervention by
39 an agency or officer of the government identified in subdivision (e)(1),
40 rather than by the United States or the state itself. Such an agency or
41 officer must be legally authorized to defend the law or action that its
42 government might have defended under (e)(1), and its intervention must
43 be sought for this purpose.

44 Subdivision (e)(3) identifies a further ground for intervention by
45 the United States, to defend its national-security or foreign-relations in-
46 terests. A case on appeal may implicate those interests even when the
47 United States was not a party in the district court.

48 The grounds for intervention by these parties that are identified
49 by subdivisions (e)(1)–(3) are not exclusive. The United States, a state,
50 or an agency or officer thereof might also move to intervene in other
51 cases under subdivisions (d) or (e)(4).

6. Everyone else. Most litigants seeking to intervene will have to rely on sub-
division (e)(4). As had been required in the October draft, this subdivision again re-
quires a compelling reason why intervention was not sought previously (or how cir-
cumstances have changed since it was sought). It again requires a legal interest af-
fected in the appeal (apart from the precedential effect of the decision, which an ami-
cus might influence) that would be impaired or impeded in the movant’s absence, that
existing parties do not adequately protect, and for which amicus participation is in-
sufficient. And it again requires that existing parties not be unfairly prejudiced.

21

Committee Note

22

* * * * *

23

Subdivision (e)(4). This subdivision provides for limited grounds on which the court might permit a movant to intervene, subject to the following requirements.

24

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First, the subdivision requires the movant to show a compelling reason why intervention was not sought previously or, if it was sought previously, a compelling explanation of how circumstances have changed. As a movant seeking to intervene on appeal from a district court would ordinarily have had a prior opportunity to intervene in the district court, its showing of proper diligence or of changed circumstances must be that much more persuasive.

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Second, the subdivision requires the movant to show an interest that may be affected in the appeal, apart from the precedential effect of the decision. A nonparty concerned by the possible precedential effect of a decision should ordinarily seek to participate as an amicus. Instead, the interest affected in the appeal must be [legally protected] [legally cognizable], of the kind that a party to litigation might assert. [Cf. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (defining an "injury in fact" as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical" (citations and internal quotation marks omitted)).] [Cf. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) ("In order to invoke federal-court jurisdiction, a plaintiff must demonstrate that he possesses a legally cognizable interest * * * in the outcome of the action.")]. Additionally, the movant must show the need for intervention to protect this interest: more specifically, that adjudicating the appeal may, as a practical matter, impair or impede the movant's ability to protect the interest (*see* Fed. R. Civ. P. 24(a)(2)); that existing parties do not adequately protect the interest (*see id.*); and that participating as an amicus would insufficiently protect the interest.

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Third, the subdivision requires the movant to show that existing parties will not be unfairly prejudiced by the intervention. *Accord* Fed. R. Civ. P. 24(b)(3).

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7. Effect of deciding the motion. As in the October draft, a successful motion to intervene will (unless the court orders otherwise) render the movant a party

1 **Rule [7.1] [12.2]. Intervention on Appeal from a District Court**

2 **(a) Scope.** This rule applies to an appeal from a district court in a
3 civil case. [It does not apply to an appeal in a case under 28
4 U.S.C. § 2254 or § 2255.]

5 **(b) Intervention Disfavored.** The preferred method for a
6 nonparty to be heard is by participating as an amicus cu-
7 riae under Rule 29. Except as provided in (d) and (e)(1)–(3),
8 intervention under this rule is disfavored and is reserved
9 for exceptional cases.

10 **(c) Motion to Intervene.** A nonparty may file a motion to in-
11 tervene in accordance with Rule 27. The motion must:

12 (1) be filed as soon as is practical after the appeal is
13 docketed;

14 (2) state whether intervention would affect the subject-
15 matter jurisdiction of the court or of the district
16 court; and

17 (3) state the grounds for intervening.

18 **(d) Grounds for Mandatory Intervention.** The court must
19 permit intervention by a movant who is given a right to
20 intervene by federal statute.

21 **(e) Other Grounds for Intervention.** The court may permit
22 intervention:

23 (1) by the United States, or by a state, to defend the va-
24 lidity of its law or of an action that it or its agency or
25 officer has taken;

26 (2) by one of its agencies or officers, if legally authorized
27 to defend such law or action and intervention is
28 sought for this purpose;

29 (3) by the United States, to defend its national-security
30 or foreign-relations interests; or

31 (4) by any movant who shows:

- 32 (A) a compelling reason why intervention was not
33 sought previously or, if it was sought previ-
34 ously, a compelling explanation of how cir-
35 cumstances have changed;
- 36 (B) a [legally protected] [legally cognizable] in-
37 terest that may be affected in the appeal,
38 apart from the precedential effect of a deci-
39 sion, so that:
- 40 (i) adjudicating the appeal may, as a prac-
41 tical matter, impair or impede the mo-
42 vant’s ability to protect that interest;
- 43 (ii) existing parties do not adequately pro-
44 tect the interest; and
- 45 (iii) participating as an amicus would insuf-
46 ficiently protect the interest; and
- 47 (C) that existing parties will not be unfairly prej-
48 udiced.
- 49 (f) **Effect of Deciding the Motion.** If the court grants the
50 motion, the movant becomes a party to the action for all
51 purposes, unless the court orders otherwise. If the court de-
52 nies the motion, the movant is not precluded from seeking
53 to participate as an amicus under Rule 29.

54 **Committee Note**

55 While Rule 15(d) governs intervention in agency review or en-
56 forcement proceedings, no Appellate Rule currently governs interven-
57 tion on appeal from a district court. *See Cameron v. EMW Women’s Sur-*
58 *gical Ctr.*, 142 S. Ct. 1002, 1010 (2022). This new rule provides stand-
59 ards governing intervention in an appeal from a district court in a civil
60 case.

61 **Subdivision (a).** Subdivision (a) identifies the rule’s scope. The
62 rule applies to an appeal from a district court in a civil case, except any
63 case under 28 U.S.C. § 2254 or § 2255. Because intervention at the dis-
64 trict court level is not as generally available in a criminal case as it is in
65 a civil one, *see* Fed. R. Civ. P. 24, this rule does not apply to a criminal
66 appeal. [(A habeas corpus proceeding under 28 U.S.C. § 2254 or § 2255

67 is governed partly by the Federal Rules of Civil Procedure, but there is
68 no provision for intervention in the Rules Governing Section 2254 and
69 Section 2255 Proceedings, and such a proceeding is accordingly excluded
70 from the rule’s scope.)] The rule does apply to an appeal in a bankruptcy
71 case, by operation of Rule 6(a), (b)(1), and (c)(1), [and] [but not] to an
72 appeal from the United States Tax Court, per Rule 14.

73 In any case to which it does not apply under this subdivision, the
74 rule neither forbids nor permits intervention. Rather, it leaves all ques-
75 tions of intervention to be governed by preexisting law. Nor does the rule
76 govern any circumstances in which a court might permit a nonparty to
77 file a motion without intervening.

78 **Subdivision (b).** Subdivision (b) makes clear that appellate in-
79 tervention under this rule is disfavored and is reserved for exceptional
80 cases—both because intervention at such a late stage may pose a height-
81 ened risk of prejudice to existing parties, and because it would be rare
82 for a diligent nonparty to show a compelling reason why it had not
83 sought to intervene previously, such as in the district court. Intervention
84 renders the movant a party to the proceeding (ordinarily, a party for all
85 purposes, per subdivision (e)); it is not for use by officious intermeddlers,
86 and it should not be regarded as an alternative to Rule 29 as a means of
87 amicus participation.

88 Subdivision (b) also makes clear, however, that this disfavor is
89 limited to intervention under this rule—as opposed to intervention in an
90 agency case under Rule 15(d)—and moreover that it does not extend to
91 statutory intervention as of right under subdivision (d) or to interven-
92 tion by certain governments, agencies, or officers under subdivisions
93 (e)(1)–(3).

94 **Subdivision (c).** Intervention under this rule must be sought by
95 motion under Rule 27. Subdivision (c) imposes three additional require-
96 ments for such a motion, regardless of the grounds on which interven-
97 tion is sought.

98 First, the motion to intervene must be filed as soon as is practical
99 after the appeal is docketed. How soon is practical might of course de-
100 pend in a given case on the circumstances of the movant, what it knew
101 (or should have known) when, and so on. *Cf.* Fed. R. Civ. P. 24(a), (b)(1),
102 (2) (requiring a “timely motion”).

103 Second, the motion must state whether intervention would affect
104 the subject-matter jurisdiction of the court or of the district court. For
105 example, a nonparty’s intervention in a case as a plaintiff or defendant
106 might affect a party-based ground of subject-matter jurisdiction, such as
107 diversity. A jurisdictional statement assists the court in considering any
108 such effect.

109 Third, the motion must state the grounds for intervening. *Accord*
110 Rule 27(a)(2)(A); Fed. R. Civ. P. 24(c).

111 **Subdivision (d).** If a federal statute confers a right on a non-
112 party to intervene in a proceeding in a court of appeals, subdivision (d)
113 preserves such a right unimpaired, subject to the motion requirements
114 of subdivision (b). *See, e.g.*, 28 U.S.C. § 2403(a), (b) (providing rights to
115 intervene in a “court of the United States”); 28 U.S.C. § 451 (defining
116 “court of the United States” to include the “courts of appeals”); *cf.* Fed.
117 R. Civ. P. 24(a)(1) (similarly requiring a timely motion for intervention
118 as of right). If a federal statute confers, not a right to intervene, but an
119 opportunity to intervene at the discretion of the court, that discretion
120 may be exercised in accordance with subdivision (e).

121 **Subdivision (e).** This subdivision identifies other grounds for
122 permitting intervention when it is not mandatory.

123 **Subdivisions (e)(1)–(3).** These subdivisions identify limited but
124 nonexclusive grounds for intervention by certain governments, agencies,
125 and officers. (Such intervention is subject to the court’s discretion under
126 subdivision (e), but a motion on such grounds is not disfavored under
127 subdivision (b).)

128 Subdivision (e)(1) identifies a ground for intervention by the
129 United States, or by a state, to defend the validity of its law or of an
130 action that it or its agency or officer has taken. (Rule 1(b) defines “state”
131 to include the District of Columbia and any United States common-
132 wealth or territory.) This ground for intervention is narrower than the
133 equivalent ground identified by Fed. R. Civ. P. 24(b)(2) in a district
134 court, which extends to a range of cases in which a statute, regulation,
135 or other government action may be the basis for a nongovernmental
136 party’s claim or defense. By contrast, this subdivision only addresses in-
137 tervention to defend the validity against legal challenge of a law or offi-
138 cial action of the government seeking to intervene. For example, in a
139 diversity suit between two contracting parties, a question might arise of
140 the validity of a state regulation that purports to void the contract. The

141 state might invoke this subdivision in moving to intervene to defend the
142 validity of its regulation. *Cf.* 28 U.S.C. § 2403(a)–(b) (providing a limited
143 statutory right to intervene in a constitutional challenge to a federal or
144 state statute).

145 Subdivision (e)(2) identifies a similar ground for intervention by
146 an agency or officer of the government identified in subdivision (e)(1),
147 rather than by the United States or the state itself. Such an agency or
148 officer must be legally authorized to defend the law or action that its
149 government might have defended under (e)(1), and its intervention must
150 be sought for this purpose.

151 Subdivision (e)(3) identifies a further ground for intervention by
152 the United States, to defend its national-security or foreign-relations in-
153 terests. A case on appeal may implicate those interests even when the
154 United States was not a party in the district court.

155 The grounds for intervention by these parties that are identified
156 by subdivisions (e)(1)–(3) are not exclusive. The United States, a state,
157 or an agency or officer thereof might also move to intervene in other
158 cases under subdivisions (d) or (e)(4).

159 **Subdivision (e)(4).** This subdivision provides for limited
160 grounds on which the court might permit a movant to intervene, subject
161 to the following requirements.

162 First, the subdivision requires the movant to show a compelling
163 reason why intervention was not sought previously or, if it was sought
164 previously, a compelling explanation of how circumstances have
165 changed. As a movant seeking to intervene on appeal from a district
166 court would ordinarily have had a prior opportunity to intervene in the
167 district court, its showing of proper diligence or of changed circum-
168 stances must be that much more persuasive.

169 Second, the subdivision requires the movant to show an interest
170 that may be affected in the appeal, apart from the precedential effect of
171 the decision. A nonparty concerned by the possible precedential effect of
172 a decision should ordinarily seek to participate as an amicus. Instead,
173 the interest affected in the appeal must be [legally protected] [legally
174 cognizable], of the kind that a party to litigation might assert. [*Cf.*
175 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (defining an "in-
176 jury in fact" as "an invasion of a legally protected interest which is (a)
177 concrete and particularized, and (b) actual or imminent, not conjectural

178 or hypothetical" (citations and internal quotation marks omitted).] [*Cf.*
179 *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) ("In order
180 to invoke federal-court jurisdiction, a plaintiff must demonstrate that he
181 possesses a legally cognizable interest * * * in the outcome of the ac-
182 tion.".)] Additionally, the movant must show the need for intervention
183 to protect this interest: more specifically, that adjudicating the appeal
184 may, as a practical matter, impair or impede the movant's ability to pro-
185 tect the interest (*see* Fed. R. Civ. P. 24(a)(2)); that existing parties do not
186 adequately protect the interest (*see id.*); and that participating as an
187 amicus would insufficiently protect the interest.

188 Third, the subdivision requires the movant to show that existing
189 parties will not be unfairly prejudiced by the intervention. *Accord* Fed.
190 R. Civ. P. 24(b)(3).

191 **Subdivision (f).** This subdivision describes the effect of a dispo-
192 sition of the motion. By default, and unless the court orders otherwise,
193 a nonparty whose motion to intervene is granted becomes a party to the
194 action for all purposes. A nonparty whose motion is denied is not pre-
195 cluded, on the basis of that denial, from seeking to participate as an
196 amicus under Rule 29.

TAB 6B

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Administrative Stays (24-AP-L)**

The Committee has been considering a 2024 rulemaking suggestion to regulate the practice of granting administrative stays. (While Rule 8 governs stays and injunctions pending appeal, no specific provision governs administrative stays.)

An Administrative Stays Subcommittee (Mr. Freeman, Prof. Huang, Mr. Pincus) was formed in October 2024 and reported back to the April and October meetings in 2025. At the latter meeting, the Subcommittee recommended additional FJC research on certain questions, particularly as to the frequency and length of administrative stays. See Agenda Book 320–22 (Oct. 2025).

That research is now underway, at Judge Eid’s request. Accordingly, the Subcommittee was not asked to meet this winter.

Administrative stay practice continues to generate controversy. This is particularly true in immigration cases, which previous discussions had suggested might need to be subject to unique rules. See Minutes pt. V.C (Oct. 2025). The Ninth Circuit has recently granted en banc rehearing in a case concerning that court’s General Order 6.4(c)(1), which provides for an administrative stay until further order of the court on the filing of a request for stay of removal or deportation. See *Rojas-Espinoza v. Bondi*, 160 F.4th 991 (CA9 2025), *vacated and reh’g en banc granted*, 2026 WL 483470 (Feb. 20, 2026).

TAB 6C

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Reopening Time to Appeal Subcommittee
DATE: March 25, 2026
RE: **Reopening Time to Appeal Amendments
(24-AP-M)**

A litigant who misses the deadline to appeal in a civil case may still move in the district court to reopen the time for appeal under 28 U.S.C. § 2107(c)(1)–(2) and Rule 4(a)(6). If, however, the litigant files a notice of appeal after the time for appeal expires, but before its motion to reopen is granted—that is, too late for the first window, but too early for the second—courts have disagreed on whether this premature notice is enough. Often the question arises after the court has construed a single document to serve both as the notice of appeal and as the motion to reopen; requiring a second notice might create a trap for the unwary litigant, who has already filed one notice of appeal and may fail to realize the need for another.

In 2023, Chief Judge Sutton suggested that these questions might be answered by rulemaking. *Winters v. Taskila*, 88 F.4th 665, 672 (CA6 2023). The Supreme Court subsequently held that no second notice of appeal is necessary, treating the late-and-early notice as relating forward to the reopened window. *Parrish v. United States*, 145 S. Ct. 1664, 1671–72 (2025). The Court also pointed out that one and the same document may be construed to serve multiple purposes—*e.g.*, as a notice of appeal, as a motion to reopen, as an appellate brief, or as a request for a certificate of appealability. *Id.* at 1673; accord *id.* at 1676 (Jackson, J., concurring in the judgment). Yet both the majority and Justice Gorsuch noted that revisions to Rule 4 might make these propositions more explicit. See *id.* at 1675; *id.* at 1676–77 (Gorsuch, J., dissenting).

The Subcommittee (Judge Nichols (chair), Mr. Hicks, Judge Wesley, Mr. Wolpert) has been considering a possible amendment to Rule 4(a)(6) along these lines. It recommends forwarding a revised proposal and accompanying Committee Note to the Standing Committee, with an eye to publication for public comment.

At the October 2025 meeting, the draft language under consideration read as follows:

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.

28 **Committee Note**

29 **Subdivision (a)(6).** Rule 4(a)(6) is amended to clarify two issues.

30 First, if the court grants a motion to reopen the time to appeal,
31 and if the movant has already filed a notice of appeal that is otherwise
32 adequate, it need not file a new notice of appeal. Rather, as under Rule
33 4(a)(4)(B)(i), its prior notice of appeal becomes effective at a later date,
34 namely when the motion to reopen is granted. If the only problem with
35 the prior notice of appeal was that it was late, and the court has reo-
36 pened the time to appeal, no purpose is served by requiring a duplicative
37 notice of appeal. *See Parrish v. United States*, 145 S. Ct. 1664 (2025).

38 Second, this rule applies even if the document serving as the no-
39 tice of appeal is also construed by the court to serve other purposes, such
40 as serving as a motion to reopen the time to appeal, a brief, or a request
41 for a certificate of appealability. *See Parrish*, 145 S. Ct. at 1673. A docu-
42 ment serves as a notice of appeal if it makes clear who is appealing, from
43 what judgment, and to which appellate court. *See Becker v. Montgomery*,
44 532 U.S. 757, 767 (2001); Fed. R. App. P. 3(c)(1), (7).

The revised language responds to the following concerns.

First, rather than directly relieving the movant of the need to file a second notice, the revised language states the time at which a notice becomes effective, which has the effect of relieving any need for a second notice. In *Parrish*, the Court suggested that a rule of procedure cannot validate a notice that a statute renders jurisdictionally out of time, but that such a rule can specify the time at which a premature notice takes effect. See 145 S. Ct. at 1673 n.3; accord *id.* at 1677 (Gorsuch, J., dissenting). The language of the amendment was therefore revised to avoid any impression that it seeks to override § 2107(c)'s jurisdictional requirements. Instead, like other provisions concerning premature filings (such as Rule 4(a)(4)(B)(i) and the currently proposed amendment to Rule 15), the new language specifies the time the movant's notice becomes effective. This change also eliminated any need to refer in the Rule's text to "an otherwise-adequate notice of appeal," a term that the Subcommittee thought might produce confusion if used there rather than in the Committee Note. As the new language specifies the time at which a notice becomes effective, all other requirements for the adequacy of that notice apply unaltered.

Second, in the version discussed at the October meeting, a second sentence described how a document that serves other purposes might also be construed as a notice of appeal, so long as it meets certain requirements (tracking the minimum requirements of such a notice under Rule 3). At the Standing Committee meeting in

January 2026, the view was expressed that such a provision might more properly belong in Rule 3 itself. The Subcommittee concluded that Rule 3’s description of the required content of a notice of appeal is sufficient on its own. All that might be needed in the Rule’s text is a recognition that the document serving as the notice of appeal might also serve other purposes as well. (The proposed Rule text refers to “that document,” rather than “the notice,” to be more easily understood by courts and counsel when the nature of the document is unclear—such as when an ambiguous document is captioned as something other than a straightforward notice of appeal.) For convenience of parties and counsel, however, a reminder of Rule 3’s requirements is included in the Committee Note.

Third, the proposed language focuses on the *movant’s* notice of appeal, not that of any other party. During the Subcommittee’s deliberations, the question was raised about the effective date of a notice previously filed by a different party. For example, suppose that *A* files an untimely notice of appeal from a judgment, and then *B* files a motion to reopen its own time to appeal, which the district court grants. As a timely notice from any party reopens a 14-day window for every other party (per Rule 4(a)(3)), it might be thought that *A’s* late-and-early notice should become effective as soon as *B’s* notice becomes so. The Subcommittee decided, however, not to make any provision in the Rule for such a case. If *B*, having successfully reopened its own window, decides not to file a notice of appeal after all, then *A’s* notice should never become effective. Or if *B* chooses to appeal only part of the judgment (per Rule 3(c)(6)), *A* might itself choose to appeal only part of the judgment, or might choose not to appeal at all. As a result, it is reasonable to expect *A* to file a new notice after *B’s* notice is filed—especially when, by hypothesis, *A* lacks adequate grounds for its untimeliness to be forgiven through a successful reopening motion of its own.

TAB 6D

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Tribal Issues Subcommittee
DATE: March 25, 2026
RE: **Treatment of Tribes (25-AP-D)**

During this Committee’s consideration of the proposed amendments to Rule 29, it received a suggestion from the National Tribal Air Association (25-AP-D) that an Indian tribe should be authorized to file an amicus brief without leave of court in the same manner as a state might. The proper treatment of Indian tribes cuts across many different provisions of the Rules, and this Subcommittee (Prof. Huang, Justice Kruger, Judge Thomas, Judge Wesley) was formed at the October 2025 meeting to consider it.

From 2009 to 2012, the Committee had considered a prior suggestion (09-AP-B) to include Indian tribes in the definition of “state” under Rule 1(b). While that suggestion did not result in any amendments to the Rules, the Subcommittee believes that this agenda item should be pursued further. Like states, Indian tribes are sovereigns, and they have sovereign interests that might require special consideration under the Rules. Moreover, Rule 1(b) currently defines “state” to include “the District of Columbia and any United States commonwealth or territory,” and these are *not* sovereigns.

At present, the Subcommittee anticipates that including Indian tribes in every usage of “state” under Rule 1(b) may go too far. Some of the Rules discuss states or state courts in ways that may be legally inapplicable to Indian tribes. (For example, Rule 22 discusses certificates of appealability in habeas proceedings for state prisoners, which may not be relevant for a person detained by order of a tribal court and seeking habeas under 25 U.S.C. § 1303.)

The Subcommittee therefore plans to proceed on a Rule-by-Rule basis, identifying particular areas in which explicit reference to Indian tribes is warranted. This might include, for example, the provisions of Rule 29 on amicus briefs, or the draft Rule 7.1 on government intervention to defend the validity of a law.

The Subcommittee will also consider which entities ought to be included within a definition of “Indian tribe.” The Supreme Court’s Rule 37.6 on amicus briefs speaks generally of any “Indian Tribe,” while Criminal Rule 6(i)’s provision on disclosure of grand-jury materials refers only to “an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 479a–1 [now editorially reclassified as 25 U.S.C. § 5131].” Any such choice should also consider the proper treatment of Alaska Native Corporations, which are not federally recognized

Advisory Committee on Appellate Rules
Tribal Issues Subcommittee
March 25, 2026
RE: Treatment of Tribes (25-AP-D)

tribes under § 5131 but which are treated as Indian tribes for certain other purposes. See *Yellen v. Confed. Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434 (2021).

The Subcommittee plans to continue its work over the summer. Other advisory committees are considering changes along similar lines, and the Subcommittee will consult with them as it goes.

TAB 7

TAB 7A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Uniform Bar Admission (25-AP-B)**

At its October 2025 meeting, the Committee discussed a suggestion by the National Women's Law Center (25-AP-B) for a new uniform rule on bar admission across the courts of appeals. While Rule 46 provides some uniform standards, there may remain some varying requirements among the courts of appeals as to pro hac vice admissions, the attorneys on a brief who must be admitted to the court's bar, the different requirements applicable to attorneys who appear at oral argument, and so on. Moreover, while there have been cross-committee discussions regarding a similar proposal for the district courts (23-CV-E), the relevant issues may differ on appeal.

After discussing it, the Committee took no action on the suggestion in October but retained it on the agenda.

I recommend that further research be undertaken on the degree and significance of any variation across local rules. I would be happy to undertake that research before the Committee's next meeting—or it could be assigned to the rules law clerk, once that position is filled. The Committee could then decide whether to convene a subcommittee to consider potential amendments.

TAB 7B

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Double-Sided Printing (25-AP-E)**

Paula Anthony has submitted a rules suggestion (25-AP-E) regarding Rule 32(a)(1)(A)'s requirement that a brief be printed on "[o]nly one side of the paper." She argues that this requirement, if justified in the past, imposes unnecessary burdens on parties today, when it is easy to print duplex documents and when government agencies regularly receive them. Single-sided printing also increases costs for cost-constrained litigants and uses up more paper.

For the many judges and law clerks who read submissions electronically, Rule 32(a)(1)(A)'s requirement of single-sided printing does no work. For those judges and law clerks who read submissions on paper, however, single-sided printing might assist with legibility and annotation, avoiding "bleed" from one side of the page onto the other.

By way of comparison, the Supreme Court requires its booklet briefs to be printed in double-sided format. However, it also requires the paper to be opaque and of not less than 60 pounds in weight, which may avoid legibility concerns. See S. Ct. R. 33(b)–(c).

(Given the possible economies of scale, it is in some sense surprising that courts require paper copies of electronic briefs at all, rather than retaining in-house printers and charging filers at cost. But this is a larger question and not one easily settled by Rules amendments.)

The Committee may wish to consider soliciting the views of the Clerk's offices of the various courts, as well as of their judges, and to undertake research on the local rules on this question. Or it might convene a subcommittee to do the same. Or, if it does not perceive the issue as sufficiently significant, it may choose to remove this item from its agenda.

TAB 7C

From: Paula Anthony
To: RulesCommittee Secretary
Subject: suggestion/request
Date: Wednesday, October 1, 2025 7:20:32 PM

Paralegal Project
Paula Anthony, Paralegal
22437 N 29th Ave
Phoenix AZ 85027

2 October 2025

Rules Committee Staff
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle NE, Suite 7-300
Washington, DC 20544

Request for Rule Modernization (Paper-Saving / Duplex Printing)

To Whom It May Concern:

I respectfully request that the Court and the Rules Committee consider modernizing Federal Rule of Appellate Procedure 32(a)(1)(A), which currently requires that briefs be printed “on one side of the paper only.” This would also be good for district courts.

This rule, originally designed for older printing and binding technology, imposes unnecessary burdens on parties today. In 2025, virtually all printers can produce professional-quality double-sided (duplex) documents, and most courts and agencies now accept duplex filings. For pro se litigants and those with limited resources, the one-sided requirement significantly increases the costs of paper, printing, and mailing, while also increasing storage and environmental waste for the Court. This would also aid in environmental and resource protections.

Allowing duplex printing would:

1. Reduce costs for litigants, particularly indigent or pro se parties.
2. Cut the Court’s paper volume roughly in half, easing storage and handling.

3. Align appellate practice with modern standards in district courts, agencies, and state appellate systems that already permit duplex filings.

I respectfully suggest amending Rule 32(a)(1)(A) to permit briefs to be filed either single-sided or double-sided, at the filer's election, provided the text is clear and legible. This small modernization would save considerable time, expense, and resources while preserving the quality and readability of appellate filings.

Respectfully submitted,

Working under grace
King regards

Paula Anthony, Paralegal
Paralegal Project
Phoenix, AZ

"Life is not about waiting for the storms to pass, it's about learning how to dance in the rain."
Sistas

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Secured with Tuta Mail

TAB 7D

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Introductions to Briefs (25-AP-F)**

Judge Newsom and Judge Pryor have submitted a rules suggestion (25-AP-F) on “introduction” sections in briefs. Rule 28(a) does not currently list an introduction among the elements that “[t]he appellant’s brief must contain, under appropriate headings and in the order indicated.” The required order suggests that this list of elements is exclusive and that an introduction section is forbidden.

However, some litigants do include introductions in their briefs, and Judge Newsom and Judge Pryor argue that “elevator pitch” introductions can be very helpful to courts in framing the issues. They propose amending Rule 28 by inserting a new subdivision (d) and renumbering the existing subdivisions (d)–(i) accordingly:

- 1 (d) Although not required, counsel may include a short introduction
2 that briefly frames the case, identifies the key legal issue(s), and
3 recommends a resolution.

Alternatively (though perhaps in tension with the mandatory language of “must”), a new subdivision might be inserted in Rule 28(a) to specify the placement of an optional introduction—say, between the jurisdictional statement described in Rule 28(a)(4) and the statement of the issues required by Rule 28(a)(5), with the remaining subdivisions of Rule 28(a) (and any cross-references) renumbered accordingly. For example:

1 **Rule 28. Briefs**

- 2 **(a) Appellant’s Brief.** The appellant’s brief must contain, under ap-
3 propriate headings and in the order indicated:
- 4 (1) a disclosure statement if required by Rule 26.1;
- 5 (2) a table of contents, with page references;
- 6 (3) a table of authorities—cases (alphabetically arranged),
7 statutes, and other authorities—with references to the
8 pages of the brief where they are cited;
- 9 (4) a jurisdictional statement, including:

- 10 (A) the basis for the district court’s or agency’s subject-
11 matter jurisdiction, with citations to applicable stat-
12 utory provisions and stating relevant facts establish-
13 ing jurisdiction;
- 14 (B) the basis for the court of appeals’ jurisdiction, with
15 citations to applicable statutory provisions and stat-
16 ing relevant facts establishing jurisdiction;
- 17 (C) the filing dates establishing the timeliness of the ap-
18 peal or petition for review; and
- 19 (D) an assertion that the appeal is from a final order or
20 judgment that disposes of all parties’ claims, or in-
21 formation establishing the court of appeals’ jurisdic-
22 tion on some other basis;
- 23 (5) an (optional) introduction that briefly frames the case,
24 identifies the key legal issues, and recommends a resolu-
25 tion;
- 26 ~~(5)~~(6) a statement of the issues presented for review;
- 27 ~~(6)~~(7) a concise statement of the case setting out the facts rele-
28 vant to the issues submitted for review, describing the rel-
29 evant procedural history, and identifying the rulings pre-
30 sented for review, with appropriate references to the record
31 (see Rule 28(e));
- 32 ~~(7)~~(8) a summary of the argument, which must contain a suc-
33 cinct, clear, and accurate statement of the arguments made
34 in the body of the brief, and which must not merely repeat
35 the argument headings;
- 36 ~~(8)~~(9) the argument, which must contain:
- 37 (A) appellant’s contentions and the reasons for them,
38 with citations to the authorities and parts of the rec-
39 ord on which the appellant relies; and
- 40 (B) for each issue, a concise statement of the applicable
41 standard of review (which may appear in the discus-
42 sion of the issue or under a separate heading placed
43 before the discussion of the issues);

- 44 ~~(9)~~(10) a short conclusion stating the precise relief sought; and
- 45 ~~(10)~~(11) the certificate of compliance, if required by Rule 32(g)(1).
- 46 **(b) Appellee’s Brief.** The appellee’s brief must conform to the re-
47 quirements of Rule 28(a)(1)–~~(8)~~(9) and ~~(10)~~(11), except that none
48 of the following need appear unless the appellee is dissatisfied
49 with the appellant’s statement:
- 50 (1) the jurisdictional statement;
- 51 (2) the statement of the issues;
- 52 (3) the statement of the case; and
- 53 (4) the statement of the standard of review.

Rule 28(c) does not limit the contents of reply briefs, so no changes to that Rule would be necessary.

I recommend that the Committee form a subcommittee to discuss the current local rules on this question (if any), whether any amendments to the Rules might be advisable, and, if so, those amendments’ most appropriate form.

TAB 7E

United States Court of Appeals

ELEVENTH CIRCUIT
1729 FIFTH AVENUE NORTH, SUITE 918
BIRMINGHAM, AL 35203

KEVIN C. NEWSOM
CIRCUIT JUDGE

TELEPHONE (205) 321-7840
FACSIMILE (205) 321-7845

Professor Stephen Sachs
Reporter, Advisory Committee on Appellate Rules
Harvard Law School
1585 Cambridge, Massachusetts 02318

Dear Professor Sachs: 

We write to urge the Committee to consider an amendment to Federal Rule of Appellate Procedure 28. In particular, we recommend that the Rule be amended to permit – and perhaps subtly encourage – lawyers to include brief “introduction” sections in their appellate briefs. (We were chagrined to read a recent *New York Times* article suggesting, we think ill-advisedly, that the Solicitor General’s practice of including introductions in briefs filed at the Supreme Court has become a point of “contention.” Ann E. Marimow & Abbie VanSickle, *Despite Supreme Court Wins, Elite D.O.J. Unit Has Seen Mass Turnover*, N.Y. TIMES (Dec. 1, 2025), <https://www.nytimes.com/2025/12/01/us/trump-solicitor-general-supreme-court.html>.)

As matters currently stand, Rule 28 says nothing about introductions one way or the other, but savvy lawyers often use them – we think, to great effect. A well-crafted introduction allows a lawyer to orient the court to what Seth Waxman once called “the kernel” of his or her case. It is, in effect, the lawyer’s “elevator pitch”: It briefly introduces the dispute, tees up the key issues, and explains why they should be resolved in a particular way. (Another way of thinking about it: It’s how a lawyer might explain his or her case to a family member over Thanksgiving dinner.) An introduction can also refresh a busy appellate judge’s recollection of a case – oftentimes right before he or she takes the bench. Good for the lawyer, good for the judge.

An amendment along the lines we’re recommending should probably aim to communicate that an introduction is not just a warmed-over “statement of the issues,” nor is it a slimmed-down “summary of the argument.” To that end, the rule, if adopted, should provide at least some minimal guidance about a proper introduction’s purpose and content.

Because we think that introductions should be permitted, but not required, we recommend adding a new subsection (d) to Rule 28, rather than inserting a new sub-subsection into Rule 28(a), which lists the required elements of an opening brief and uses mandatory “must” language. (Subsections (b), which addresses answering briefs, and (c), which addresses reply

briefs, likewise use mandatory language.) Ideally, we think the introduction should come immediately after the jurisdictional statement and before the statement of the issues. However, because Rule 28(b) envisions that an answering brief might not contain those sections, we think it may be best not to specify an introduction's particular placement – lawyers will instinctively understand that any introduction should appear early in the brief.

Although we aren't wedded to any particular phrasing, we offer the following language as a starting point:

(d) Although not required, counsel may include a short introduction that briefly frames the case, identifies the key legal issue(s), and recommends a resolution.

Frankly, we think “elevator pitch” best captures – and best conveys – the essence of a good introduction, but we recognize that such phrasing is probably too colloquial for the rule's formal text. The committee might consider, though, including an “elevator pitch” reference in the notes.

One technical item: Because the decision to include an introduction is a strategic judgment best left to the lawyer, we believe that the words used in an introduction should count toward Rule 32(a)(7)'s length limitations. The committee should consider how best to make that clear.

Yours sincerely,



Judge Kevin C. Newsom



Chief Judge William H. Pryor Jr.

TAB 7F

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: March 25, 2026
RE: **Reopening Time to Appeal Suggestion
(26-AP-1)**

Devin N. Wesenberg has submitted a rules suggestion concerning the proposed amendments to Rule 4 (24-AP-M), on reopening the time to appeal. Wesenberg suggests an effective-date approach similar to that now suggested by the Subcommittee.

I recommend that this suggestion be referred to the Reopening Time to Appeal Subcommittee and consolidated on the agenda with 24-AP-M.

TAB 7G

March 4, 2026

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Suggestion concerning pending proposal to amend Federal Rule of Appellate Procedure 4.

Dear Ms. Dubay:

I am a law student at the University of Pennsylvania Carey Law school, and I write to provide a recommendation for the committee regarding the Rule 4 draft language set out in the December 12, 2025, report by the Advisory Committee on Appellate Rules to the Committee on Rules of Practice and Procedure.

Recently, the Advisory Committee considered a suggestion to look into reopening the time to appeal under Rule 4(a)(6). Following that suggestion, the Supreme Court decided *Parrish v. United States*, 145 S. Ct. 1664 (2025), holding that:

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.

I agree with the Advisory Committee that all would benefit from clarity regarding both parts of *Parrish*'s holding.

The language currently under consideration reads as follows:

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.

Putting aside the question of whether the second portion of the proposed language belongs in Rule 3 or 4, the language itself elegantly captures the holding of *Parrish* while providing clarity for everyday litigants.

That said, absent from the proposed language is a discussion of when the notice of appeal becomes effective. I therefore think the proposed rule would benefit from language that clarifies the point at which the previously-filed notice of appeal becomes effective. Rule 4(a) already addresses the question of the notice's effective date in two other contexts: Rule

4(a)(2) provides that “[a] notice of appeal filed after the court announces a decision or order—but before the entry of the judgement or order—is treated as filed on the date of and after the entry,” and Rule 4(a)(4)(B) provides that “[i]f 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.” Clarity concerning the time when the notice becomes effective is important because it marks the transfer of jurisdiction from the district court to the court of appeals.

For example:

The previously-filed notice of appeal becomes effective [on the date of and after] [upon] entry of the order granting reopening.

Language to this effect would further codify the *Parrish* holding. Absent this language, litigants—unsophisticated and sophisticated alike—may begin to wonder when the document, construed as a notice of appeal, becomes effective. Amending the rule to note the point at which the document becomes effective would bring litigants clarity and put the matter to bed.

Further, to the extent that it’s helpful, the *Parrish* holding consists of two parts: 1) an interpretive rule that allows a document serving other functions to be construed as a notice of appeal; and 2) a relation forward rule, finding that such a document relates forward to the order that reopens the time to file an appeal.

In my view, the second sentence of the language under consideration (“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.”), or the first part of the *Parrish* holding set out above, is a matter of content. That is, it addresses whether and to what extent a document satisfies notice of appeal requirements. To that end, the second sentence of the proposed language is textbook for Rule 3, but foreign as to Rule 4. As such, I believe the second sentence is more properly placed in Rule 3.

That in turn raises the question of how to amend Rule 4. After putting the second sentence in Rule 3. I think a precise and apt solution would be a cross reference. Observe:

If the court grants the motion to reopen, a party who has already filed a notice of appeal that complies with Rule 3(c) need not file a new notice of appeal. The previously-filed notice of appeal becomes effective [on the date of and after] [upon] entry of the order granting reopening.

An amendment of this nature would both codify the *Parrish* holding and recognize that there are many situations outside of reopening in which a document may functionally serve as a notice of appeal even if not filed as such in the first instance.

Ultimately, I urge the Committee to endorse an amendment to Rule 4 that codifies the *Parrish* holding. In particular, the Committee should consider adding language that codifies the relation forward part of the holding and language that informs litigants of the point at which the document that relates forward becomes effective. Such a change would further support the principle that technical defects should not prejudice an otherwise adequate notice of appeal and would be more accessible than Supreme Court opinions. Thank you for taking the time to consider my views.

Respectfully submitted,

Devin N. Wesenberg