
**ADVISORY COMMITTEE
ON
APPELLATE RULES**

October 6, 2026

ADVISORY COMMITTEE ON APPELLATE RULES

October 6, 2026
Washington, D.C.

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Next meeting: April 8, 2027, New Orleans, LA

TAB 1

TAB 1A

ADVISORY COMMITTEE ON APPELLATE RULES

Chair	Reporter
Honorable Allison H. Eid United States Court of Appeals Denver, CO	Professor Stephen E. Sachs Harvard Law School Cambridge, MA
Members	
Andrew L. Adler, Esq. Office of the Federal Public Defender Fort Lauderdale, FL	Linda Coberly, Esq. Winston & Strawn LLP Chicago, IL
George W. Hicks, Jr., Esq. Kirkland & Ellis LLP Washington, D.C.	Professor Bert Huang Columbia Law School New York, NY
Honorable Leondra R. Kruger Supreme Court of California San Francisco, CA	Honorable Eric Murphy United States Court of Appeals Columbus, OH
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	
Liaisons	
Honorable Daniel A. Bress (<i>Bankruptcy</i>) United States Court of Appeals San Francisco, CA	Andrew J. Pincus, Esq. (<i>Standing</i>) 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 FL (Southern)	2025	2028
Linda Coberly	ESQ	Illinois	2023	2029
George W. Hicks, Jr.	ESQ	Washington, DC	2022	2028
Bert Huang	ACAD	New York	2022	2028
Leondra R. Kruger	JUST	California	2021	2027
Eric Murphy	C	Sixth Circuit	2026	2029
Carl J. Nichols	D	District of Columbia	2021	2027
D. John Sauer*	DOJ	Washington, DC	----	Open
Sidney R. Thomas	C	Ninth Circuit	2023	2028
Stephen Sachs Reporter	ACAD	Massachusetts	2026	2031

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

* *Ex officio* representative

ADVISORY COMMITTEE ON APPELLATE RULES
SUBCOMMITTEES
(effective October 1, 2026)

<u>Administrative Stays Subcommittee</u> Mark Freeman, Esq. Prof. Bert Huang Andrew Pincus, Esq.	<u>Intervention on Appeal Subcommittee</u> Mark Freeman, Esq. Prof. Bert Huang Hon. Leondra Kruger
<u>Introductions in Briefs Subcommittee</u> Andrew Adler, Esq. Linda Coberly, Esq. Andrew Pincus, Esq.	<u>Printing Subcommittee</u> Mark Freeman, Esq. George Hicks, Esq. Chris Wolpert (Clerk)
<u>Privacy Subcommittee</u> Andrew Adler, Esq. Linda Coberly, Esq. Mark Freeman, Esq.	<u>Reopen Time to Appeal Subcommittee</u> Hon. Carl Nichols, Chair George Hicks, Esq. Chris Wolpert (Clerk)
<u>Rule 13 Subcommittee</u> Mark Freeman, Esq. Prof. Bert Huang Andrew Pincus, Esq.	<u>Rule 15 Subcommittee</u> Prof. Bert Huang, Chair Mark Freeman, Esq. Andrew Pincus, Esq.
<u>Tribal Issues Subcommittee</u> Prof. Bert Huang, Chair Hon. Leondra Kruger Hon. Sidney Thomas	

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
Staff

Carolyn A. Dubay, Esq.
Chief Counsel
Administrative Office of the U.S. Courts
Office of the General Counsel—Rules Committee Staff
Washington, DC

Bridget M. Healy, Esq.
Counsel

Shelly Cox
Management Analyst

Sarah A. Sraders, Esq.
Counsel

Rakita Johnson
Administrative Analyst

FEDERAL JUDICIAL CENTER
Staff

Hon. Robin L. Rosenberg
Director
Federal Judicial Center
Washington, DC

Standing Committee

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

Appellate Rules Committee

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

Bankruptcy Rules Committee

Carly Giffin, Ph.D., J.D.
Senior Research Associate

Civil Rules Committee

Emery G. Lee, Ph.D., J.D.
Senior Research Associate

Criminal Rules Committee

Brittany Ripper, Ph.D., J.D.
Research Associate

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

Evidence Rules Committee

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

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

TAB 1B

Appellate Rules Advisory Committee

Agenda Items, Fall 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
7	20-AP-D (19-AP-C)	Form 4: IFP Forms	Sai	Initial consideration F20, referred to IFP subcommittee Discussed at S21 meeting

Status	FRAP Item	Proposal	Source	Current Status
	21-AP-B)			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 Approved by SCOTUS, sent to Congress Apr 26
6	21-AP-C (21-AP-G 21-AP-H 22-AP-A 23-AP-A 23-AP-B 23-AP-I 23-AP-K 24-AP-A 24-AP-D)	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 Final approval for submission to Standing Committee S26 Approved by Standing Committee June 26 Approved by Judicial Conference Sept 26
6	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 Final approval for submission to Standing Committee S26 Approved by Standing Committee June 26 Approved by Judicial Conference Sept 26

Status	FRAP Item	Proposal	Source	Current Status
				Consolidated with 22-AP-G)
1	24-AP-L	Rule 8: Administrative Stays	Will Havemann	Initial consideration and subcommittee formed F24 Discussed at S25 meeting Discussed at F25 meeting Discussed at S26 meeting
1	24-AP-M (26-AP-1)	Rule 4: Reopening Time to Appeal (Reopening time to Appeal)	Judge Sutton Judge Gregory (Devin N. Wesenberg)	Initial consideration and subcommittee formed F24 Discussed at S25 meeting Discussed at F25 meeting Discussed at S26 meeting (Initial consideration S26 Consolidated with 24-AP-M)
1	25-AP-B	Uniform Bar Admission	National Women's Law Center	Initial consideration F25 Discussed at S26 meeting
1	25-AP-D	Tribal Issues	National Tribal Association	Initial consideration and subcommittee formed F25 Discussed at S26 meeting
1	25-AP-E	Rule 32: Double-Sided Printing	Paula Anthony	Initial consideration and subcommittee formed S26
1	25-AP-F	Rule 28: Introductions in Briefs	Judge Newsom & Judge Pryor	Initial consideration and subcommittee formed S26
1	None assigned	Rule 13: Tax Court Premature Appeals	Mark Freeman	Initial consideration F26
1	26-AP-2	Rule 25: Privacy	John A. Hawkinson	Initial consideration F26
1	26-AP-3	Rule 29: Amicus Disclosures	U.S. Chamber of Commerce	Initial consideration F26
1	26-AP-4	Rule 8: Administrative Stays	Garrett West	Initial consideration F26
1	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)

Status	FRAP Item	Proposal	Source	Current Status
0	26-AP-5	Transcript Integrity Disputes	John Anthony Castro	(To be discussed S27)
0	26-AP-6	Electronic Immigration Records	Roger Parloff	(To be discussed S27)
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 (no earlier than) December 1, 2026

Current Step in REA Process:

- Transmitted to Congress (Apr 2026)

REA History:

- Transmitted to Supreme Court (Oct 2025)
- Approved by the Judicial Conference (Sept 2025)
- 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 Form 4	The proposed amendments to Form 4 simplify the form to reduce the burden on individuals seeking <i>in forma pauperis status</i> (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.	BK 9006
BK 3018	The proposed amendments to Rule 3018(c) 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) provide an additional reminder notice to 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 Rule 9006 to the proposed amendments to Rule 1007.	BK 1007
BK 9014	The proposed amendments to Rule 9014(d) relax the standard for allowing remote testimony in contested matters to “cause and with appropriate safeguards.” The existing rule imports Civil Rule 43(a), requiring a showing of “good cause in compelling circumstances and with appropriate safeguards”) and applies in contested matters and adversary proceedings.	BK 7043; 9017
BK 9017	The proposed amendments to Rule 9017 remove the reference to Civil Rule 43 to conform to the proposed amendments to Rule 9014(d) and new Rule 7043.	BK 7043; 9014(d)
BK 7043	New Rule 7043 provides that the standard set forth in Civil Rule 43 applies to remote testimony in adversary proceedings.	BK 9014; 9017
EV 801	The proposed amendments to Rule 801(d)(1)(A) 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:

- Approved by Standing Committee (June 2026 unless otherwise noted)¹

REA History:

- Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)
- Approved for publication by Standing Committee (June 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 15	The proposed amendment to Rule 15 would remove the requirement that a party who files a petition for review of an agency order must refile or amend the petition after filing a request for rehearing before the agency.	
AP 29	The proposed amendments to Rule 29 set forth in renumbered Rule 29(a)-(d) would expand the disclosure obligations in amicus briefs filed at the initial stage of an appeal. Among other things, the amicus brief would be required to disclose whether the amicus is newly created and other information relating to its relationship to a party (such as whether a party has a majority ownership interest in the amicus) and nonparties (such as earmarked contributions to the amicus of more than \$100). Rule 29(e) incorporates most of these expanded disclosures to amicus briefs filed during the rehearing stage. The proposed amendments also set the length limit for amicus briefs at the initial stage to a specific word limit of 6,500 words.	AP 32; Appendix of Length Limits
AP 32	The proposed amendments to Rule 32 conform to the proposed amendments to Rule 29.	AP 29; Appendix of Length Limits
AP Appendix of Length Limits	The proposed amendments to the Appendix of Length Limits conform to the proposed amendments to Rule 29.	AP 29; 32
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 clarify that the requested EIN (employer identification number) is the debtor's EIN and not the EIN of any separate legal entity such as an employer, corporation, partnership, or LLC.	
BK Official Form 106C	The proposed amendments to Form 106C would amend Form 106C to provide a total of the specific-dollar exemption amounts	

¹ Proposed amendments to Evidence Rule 609 were approved by the Standing Committee in June 2026, but approval was subsequently withdrawn in August 2026 to allow the Advisory Committee on Evidence Rules to further consider the proposed amendments.

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2027

Current Step in REA Process:

- Approved by Standing Committee (June 2026 unless otherwise noted)¹

REA History:

- Published for public comment (Aug 2025 – Feb 2026 unless otherwise noted)
- Approved for publication by Standing Committee (June 2025 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
CR 17	The proposed amendments to Rule 17 address third-party subpoenas for production. Among other things, the proposed amendments would expand the availability of such subpoenas for proceedings other than trial; alter the standard for when such subpoenas may be obtained; and address when a motion and order are required for third-party subpoenas and when a party may make its request <i>ex parte</i> . The proposed amendments would further address the place of production, procedures when information regarding a victim is sought, and other issues.	
CV 7.1	The proposed amendments to Rule 7.1(a) would 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 would require parties to state in their pretrial disclosures whether they expect any witness they call at trial to testify in person or remotely.	CV 45(c)
CV 41	The proposed amendments to Rule 41(a) would clarify that the rule permits the dismissal of one or more claims in an action rather than only allowing dismissal of the entire action and that 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(b) would specify that the methods for service of a subpoena are personal delivery, leaving it at the person’s abode with someone of suitable age and discretion who resides there, sending it by mail or commercial carrier if it includes confirmation of receipt, or another method authorized by the court for good cause. The amendment would also add a default 14-day notice period and provide that the tender of witness fees is not required to effect service of the subpoena so long as the fees are tendered upon the witness’s appearance. The proposed amendments to Rule 45(c) would add a “place of compliance” for subpoenas for remote testimony and would specify that it is “the location where the person is commanded to appear in person.”	CV 26
CV 81	The proposed amendment to Rule 81(c) would clarify 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.	

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2028

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 25	The proposed amendments to Rule 25 would provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to file documents electronically and receive electronic notices of case activity. The proposed amendments would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system.	BK 5005, 8011, 9006, 9036; CV 5, 6; CR 45, 49
BK 2003	The proposed amendments would allow more time to convene the meeting of creditors in chapter 12 and 13 cases, extending the deadline in chapter 12 cases from 35 to 60 days, and in chapter 13 cases, from 50 to 60 days, after the order for relief. The proposed amendments would also expressly authorize meetings of creditors to be "conducted in person or remotely" and would allow the U.S. Trustee to designate in which manner a meeting would be conducted.	
BK 5005, 8011, 9006, & 9036	The proposed amendments to Rules 5005 and 8011 would provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system in bankruptcy cases and bankruptcy appeals, subject to any reasonable conditions on access that a court may establish. In addition, the proposed amendments to Rule 8011 and Rule 9036 would eliminate the requirement of separate (paper) service on a litigant who is registered to receive electronic notices of case activity. Further, the proposed amendments would provide that if a document is filed under seal, a court may provide an order or local rule that the document be served by other means. In addition, Rule 8011(c)(3) and Rule 9036(d) would deal with the impact of delays between filing and uploading to the court's electronic-filing system. The proposed amendments to Rule 9006 would change a cross-reference to conform to the proposed amendments to Civil Rule 5.	AP 25; CV 5, 6; CR 45, 49
BK 9037	The proposed amendments to Rule 9037 would require the use of pseudonyms rather than initials when referencing minors in bankruptcy cases, and would clarify that the redaction and pseudonym requirements apply to exhibits and attachments to electronically filed court documents.	CV 5.2; CR 49.1
CV 5 & 6	The proposed amendments provide that an unrepresented party is presumptively authorized to use a court's electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to both file documents electronically and receive notices of case activity and would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is	AP 25; BK 5005, 8011, 9006, 9036; CR 45, 49

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2028

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	registered to receive a notice of case activity from the court’s electronic-filing system.	
CV 5.2	The proposed amendments would require complete redaction of taxpayer identifying information, to include social security numbers, taxpayer identification numbers, employer identification numbers, and adoption taxpayer identification numbers, and would require the use of pseudonyms rather than initials when referencing minors. The proposed amendments would also clarify that these rules apply to exhibits and attachments to electronically filed court documents.	BK 9037; CR 49.1
CV 55	The proposed amendments to Rule 55(a) and (b)(1) would remove the requirement that the clerk “must” enter a default or default judgment, respectively, whenever the rules empower the clerk to do so. Instead, the proposed amendment would provide 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.	
CR 11	The proposed amendments to Rule 11(b)(1)(M) would remove the requirement that the court inform the defendant of possible departures under the U.S. Sentencing Guidelines in light of 2025 changes to the Guidelines eliminating most provisions on departures and revising the sentencing process.	CR 32
CR 32	The proposed amendment to Rule 32 would eliminate in its entirety subdivision (h) regarding possible departure from the U.S. Sentencing Guidelines in light of the 2025 changes to the Guidelines.	CR 11
CR 45 & 49	The proposed amendments to Rule 45 and Rule 49 provide that an unrepresented party is presumptively authorized to use a court’s electronic-filing system, subject to any reasonable conditions on access that a court may establish. This change would allow unrepresented litigants to both file documents electronically and receive notices of case activity and would eliminate the requirement for an unrepresented party to make a separate (paper) service on a litigant who is registered to receive a notice of case activity from the court’s electronic-filing system.	AP 25; BK 5005, 8011, 9006, 9036; CV 5, 6
CR 49.1	The proposed amendments require complete redaction of taxpayer identifying information, to include social security numbers, taxpayer identification numbers, employer identification numbers, and adoption taxpayer identification numbers in criminal cases, and would require the use of pseudonyms rather than initials when referencing minors. The proposed	BK 9037; CV 5.2

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2028

Current Step in REA Process:

- Published for public comment (Aug 2026 – Feb 2027 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (June 2026 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	amendments would also clarify that these rules apply to exhibits and attachments to electronically filed court documents.	
EV 104	The proposed amendments to Rule 104(a) would codify the holding in <i>Bourjaily v. United States</i> that preliminary questions of fact are to be determined by a preponderance of the evidence standard. The proposed amendments to Rule 104(b) would eliminate the concept of “conditional” relevance and provide that to establish that evidence is relevant, the proponent must demonstrate that the trier of fact could reasonably find that requirements of Rule 401 have been met.	
EV 902	The proposed amendment to Rule 902(1)(A) would add Indian Tribes and Nations to the list of entities whose signed and sealed public records are self-authenticating.	

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
Sunshine in the Courtroom Act of 2025	<u>S. 1133</u> <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	Most Recent Bill Text: https://www.congress.gov/119/bills/s1133/BILLS-119s1133is.pdf Summary: Would permit court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law, after JCUS promulgates guidelines.	6/23/2026: Placed on Senate Legislative Calendar under General Orders. Calendar No. 444 6/23/2026: Reported by Senator Grassley without amendment 6/18/2026: Ordered to be reported without amendment favorably 3/26/2025: Introduced in Senate; referred to Judiciary Committee
Protecting Our Courts from Foreign Manipulation Act of 2025	<u>H.R. 2675</u> <i>Sponsor:</i> Cline (R-VA) <i>Cosponsors:</i> <u>26 bipartisan cosponsors</u>	CV 26	Most Recent Bill Text: https://www.congress.gov/119/bills/hr2675/BILLS-119hr2675rh.pdf Summary: Would require additional disclosures under Civil Rule 26(a) for any non-party foreign person, foreign state, or sovereign wealth fund that has a right to receive payment that is contingent on the outcome of a civil action. Would also prohibit third-party litigation funding by foreign states and sovereign wealth funds.	6/15/2026: Placed on the Union Calendar, Calendar No. 608 6/15/2026: Reported (Amended) by the Committee on Judiciary 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
Protecting Our Democracy Act	<u>H.R. 8831</u> <i>Sponsor:</i> Raskin (D-MD) <i>Cosponsors:</i> <u>108 Democratic cosponsors</u>	CV – New Rule(s)	Most Recent Bill Text: https://www.congress.gov/bill/119th-congress/house-bill/8831/text Summary: Companion to S. 2838. 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.	5/14/2026: Introduced in House and referred to the Committee on Oversight and Government Reform, the Judiciary, House Administration, the Budget, Transportation and Infrastructure, Rules, Foreign Affairs, Ways and Means, and Intelligence

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Closing Bankruptcy Loopholes for Child Predators Act of 2026	<u>H.R. 8589</u> <i>Sponsor:</i> Ross (D-NC) <i>Cosponsors:</i> Tenney (R-NY) Sykes (D-OH) De La Cruz (R-TX)	BR 2004, 9018	Most Recent Bill Text: <u>https://www.congress.gov/119/bills/hr8589/BILLS-119hr8589ih.pdf</u> Summary: Would amend Rule 2004 to allow for examination of abuse allegations against the debtor in Chapter 11 cases related to the alleged sexual abuse of a child, and amend Rule 9018 to restrict the court's ability to seal evidence of alleged crimes relating to the sexual abuse of a child (other than to protect the individual alleging abuse).	4/29/2026: Introduced in House and referred to the House Committee on the Judiciary
No Free Passes for Cronies Act	<u>H.R. 8392</u> <i>Sponsor:</i> Scanlon (D-PA)	CR 48	Most Recent Bill Text: <u>https://www.congress.gov/119/bills/hr8392/BILLS-119hr8392ih.pdf</u> Summary: Would amend Criminal Rule 48(a) to clarify that federal judges have the authority to accept or reject the government's motion to dismiss in "the interests of justice."	4/20/2026: Introduced in House and referred to the House Committee on the Judiciary
Prohibiting Political Prosecutions Act of 2026	<u>H.R. 7575</u> <i>Sponsor:</i> Goldman (D-NY) <i>Cosponsors:</i> Norton (D-DC) Gomez (D-CA) Larson (D-CT)	CR 6, 16, 48	Most Recent Bill Text: <u>https://www.congress.gov/119/bills/hr7575/BILLS-119hr7575ih.pdf</u> 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).	2/13/2026: Introduced in House and referred to Committee on the Judiciary
Litigation Funding Transparency Act of 2026	<u>S. 3826</u> <i>Sponsor:</i> Grassley (R-IA) <i>Cosponsors:</i> Tillis (R-NC) Kennedy (R-LA) Cornyn (R-TX)	CV 26	Most Recent Bill Text: <u>https://www.congress.gov/119/bills/s3826/BILLS-119s3826is.pdf</u> 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.	2/11/2026: Read twice and referred to the Committee on the Judiciary

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Trafficking Survivors Relief Act	<u>H.R. 4323</u> <i>Sponsor:</i> Fry (R-SC) <i>Cosponsors:</i> 19 bipartisan cosponsors	CR 29	Most Recent Bill Text: https://www.congress.gov/119/plaws/publ73/PLAW-119publ73.pdf Summary: Permits 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 to the arrest and criminal proceedings be expunged from official records.	1/23/2026: Signed by President; became Public Law No. 119-73. 12/18/2025: Passed Senate without amendment by unanimous consent. 12/2/2025: Received in Senate; read twice. 12/1/2025: Passed by voice vote 10/17/2025: Placed on the Union Calendar, Calendar No. 299 9/10/2025: Committee Consideration and mark-up Session Held. Ordered to be Reported (Amended) by Voice Vote 7/10/2025: Introduced in House and referred to Committee on the Judiciary
Protecting TPLF From Abuse Act	<u>H.R. 7015</u> <i>Sponsor:</i> Issa (R-CA) <i>Cosponsors:</i> Fitzgerald (R-WI) Baumgartner (R-WA) Flood (R-NE)	CV 26	Most Recent Bill Text: https://www.congress.gov/119/bills/hr7015/BILLS-119hr7015ih.pdf Summary: Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to produce to the court and other parties any such agreement.	1/12/2026: Introduced in House; referred to Judiciary Committee
Sunshine for Regulatory Decrees and Settlements Act of 2025	<u>H.R. 6622</u> <i>Sponsor:</i> Cline (R-VA) <i>Cosponsor:</i> Tiffany (R-WI)	CV 24, 41	Most Recent Bill Text: https://www.congress.gov/119/bills/hr6622/BILLS-119hr6622ih.pdf 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.	1/8/2026: Committee Consideration and Mark-up Session Held. Ordered to be Reported (Amended) by the Yeas and Nays: 18-8. 12/11/2025: Introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Back the Blue Act of 2025	S. 3366 <i>Sponsor:</i> Cornyn (R-TX) <i>Cosponsors:</i> 38 Republican cosponsors	§ 2254 Rule 11	Most Recent Bill Text: https://www.congress.gov/119/bills/s3366/BILLS-119s3366is.pdf 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."	12/4/2025: Introduced in Senate; referred to Judiciary Committee
Litigation Transparency Act of 2025	H.R. 1109 <i>Sponsor:</i> Issa (R-CA) <i>Cosponsors:</i> 28 Republican cosponsors	CV 5, 26	Most Recent Bill Text: https://www.congress.gov/119/bills/hr1109/BILLS-119hr1109ih.pdf Summary: Would require a party or record of counsel in a civil action to disclose to the court and other parties the identity of any person that has a right to receive a payment or thing of value that is contingent on the outcome of the action or group of actions and to produce to the court and other parties any such agreement.	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
Protecting Our Courts from Foreign Manipulation Act of 2025	S. 3180 <i>Sponsor:</i> Kennedy (R-LA) <i>Cosponsor:</i> Ricketts (R-NE)	CV 26	Most Recent Bill Text: https://www.congress.gov/119/bills/s3180/BILLS-119s3180is.pdf Summary: Would require additional disclosures under Civil Rule 26(a) for any non-party foreign person, foreign state, or sovereign wealth fund that has a right to receive payment that is contingent on the outcome of a civil action. Would also prohibit third-party litigation funding by foreign states and sovereign wealth funds.	11/18/2025: Introduced in Senate; referred to Judiciary Committee
Protecting Our Democracy Act	S. 2838 <i>Sponsor:</i> Schiff (D-CA) <i>Cosponsors:</i> 10 Democratic and Independent cosponsors	CV – New Rule(s)	Most Recent Bill Text: https://www.congress.gov/119/bills/s2838/BILLS-119s2838is.pdf 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.	9/17/2025: Introduced in Senate; referred to Committee on Homeland Security and Governmental Affairs

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Lawsuit Abuse Reduction Act of 2025	H.R. 5258 <i>Sponsor:</i> Collins (R-GA) <i>Cosponsors:</i> 6 Republican cosponsors	CV 11	Most Recent Bill Text: https://www.congress.gov/119/bills/hr5258/BILLS-119hr5258ih.pdf 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.	9/10/2025: H.R. 5258 introduced in House; referred to Judiciary Committee
Restoring Artistic Protection Act of 2025	H.R. 4678 <i>Sponsor:</i> Johnson (D-GA) <i>Cosponsors:</i> 21 Democratic cosponsors	EV 416	Most Recent Bill Text: https://www.congress.gov/119/bills/hr4678/BILLS-119hr4678ih.pdf 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.	7/23/2025: H.R. 4678 introduced in House; referred to Judiciary Committee
Rape Shield Enhancement Act of 2025	H.R. 3596 <i>Sponsor:</i> Mace (R-SC)	EV 412; CV 26; CR 16	Most Recent Bill Text: https://www.congress.gov/119/bills/hr3596/BILLS-119hr3596ih.pdf Summary: Would require the Judicial Conference to submit to Congress reports reviewing Evidence Rule 412, Civil Rule 26, and Criminal Rule 16. Would also require the Judicial Conference to identify potential rules amendments that further limit the admissibility of or scope of discovery regarding information of an alleged sexual assault victim and that increase privacy protections for sexual assault victims.	5/23/2025: H.R. 3596 introduced in House; referred to Judiciary Committee
Supreme Court Ethics, Recusal, and Transparency Act of 2025	S. 1814 <i>Sponsor:</i> Whitehouse (D-RI) <i>Cosponsors:</i> 35 Democratic and Independent cosponsors	AP 29	Most Recent Bill Text: https://www.congress.gov/119/bills/s1814/BILLS-119s1814is.pdf 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.	5/20/2025: S. 1814 introduced in Senate; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text and Summary	Legislative Actions Taken
Alexandra's Law Act of 2025	H.R. 780 <i>Sponsor:</i> Issa (R-CA) <i>Cosponsors:</i> Kiley (R-CA) Oberholte (R-CA)	EV 410	Most Recent Bill Text: https://www.congress.gov/119/bills/hr780/BILLS-119hr780ih.pdf Summary: Would permit a previous nolo contendere plea in a case involving death resulting from the sale of fentanyl to be used as evidence to prove in an 18 U.S.C. § 1111 or § 1112 case that the defendant had knowledge that the substance provided to the decedent contained fentanyl.	1/28/2025: H.R. 780 introduced in House; referred to Judiciary and Energy & Commerce Committees
Protect the Gig Economy Act of 2025	H.R. 100 <i>Sponsor:</i> Biggs (R-AZ)	CV 23	Most Recent Bill Text: https://www.congress.gov/119/bills/hr100/BILLS-119hr100ih.pdf Summary: Would add a requirement to Civil Rule 23(a) that a member of a class may sue or be sued as representative parties only if "the claim does not allege the misclassification of employees as independent contractors."	1/3/2025: H.R. 100 introduced in House; referred to Judiciary Committee

TAB 1E



Date: August 27, 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 a Rules Committee

Deepfakes and Authenticity

The Evidence Rules Committee has been exploring whether the authenticity standard should be made more stringent than it is now for potentially fabricated evidence created by artificial intelligence. The committee asked the Center to survey all federal judges to ascertain their experiences and views. In a memorandum submitted to the committee in time for its spring 2026 meeting, the Center reported fifteen occurrences of a deepfake challenge.

Current Research for Rules Committees

Depositions in Criminal Litigation

The Criminal Rules Committee is considering amendments to Rule 15 on depositions in criminal litigation following suggestions that the rule should facilitate more depositions. The Center has been asked to prepare research protocols.

Subpoenas in Criminal Litigation

The Criminal Rules Committee has asked the Center to prepare research on Rule 17 subpoenas in light of amendments approved by the Standing Committee that are expected to go into effect in December 2027.

Discharge in Bankruptcy Rule 4004(a) and (c)

The Bankruptcy Rules Committee is considering a suggestion that the current wording of Bankruptcy Rule 4004(a) and (c) may lead to disparate applications of the rule. A subcommittee has approved a research plan to gather information on current interpretations and implementations of the rule.

Third-Party Litigation Funding

The Center is providing the Civil Rules Committee with research support as the committee considers possible rules amendments on disclosure of litigation funding by third parties.

Temporary Administrative Stays in the Courts of Appeals

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

Completed Research for Other Judicial Conference Committees

Unredacted Personally Identifiable Information in Federal Court PACER Documents

At the request of the Committee on Court Administration and Case Management, the Center (1) enumerated, in a large sample of public filings, unredacted Social Security numbers, individual taxpayer identification numbers, birthdates, minors' names, financial account numbers, and, in criminal cases, individuals' home addresses; (2) determined whether unredacted personally identifiable information is more common in particular types of court filings and proceedings, especially pro se filings, guardian ad litem documents, filings in Social Security actions, notices of removal from state court, and proof-of-claim filings in bankruptcy cases; and (3) assessed how often full nongovernment party names are included in opinions and orders in Social Security and immigration cases (www.fjc.gov/content/399402/unredacted-personally-identifiable-information-federal-court-pacer-documents).

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 the Administration of the Bankruptcy System. The weights were approved by the Judicial Conference in March.

Current Research for Other Judicial Conference Committees

Pro Se Parties in Bankruptcy Litigation

The Center is providing the Committee on the Administration of the Bankruptcy System with research on pro se participation in bankruptcy litigation.

Potential Adjustment to the Case Weight for Mega Chapter 11 Cases

Following the Center's recently updated bankruptcy-court case weights, which are used when assessing the need for judgeships, the Committee on the Administration of the Bankruptcy System asked the Center to conduct a targeted study to determine whether the weight for mega Chapter 11 cases should be modified to address the level of activity in those cases and to account for the number of jointly administered cases under a lead mega Chapter 11 case.

Harm to Cooperators

At the request of the Committees on Court Administration and Case Management, Criminal Law, and Defender Services, the Center is updating its 2016 research on harm 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.

JUDICIAL GUIDES

Completed Judicial Guide

Manual on Recurring Issues in Criminal Trials

The seventh edition of what previously was called *Manual on Recurring Problems in Criminal Trials* was published in July (www.fjc.gov/content/400176/manual-recurring-issues-criminal-trials). The manual addresses seven topics: Sixth Amendment rights, jury issues, witness statements and exculpatory evidence, enforcement of trial orders, trial performance of counsel, multiple defendants, and jury verdicts.

Judicial Guide 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).

HISTORY

Court of Appeals in Cases of Capture, 1780–1789

The Center’s history webpages include information about various special federal courts, including the local courts for the District of Columbia, the Foreign Intelligence Surveillance Court, and the U.S. Court for Berlin (www.fjc.gov/history/courts/other-federal-courts). Recently added is information about the first federal court, the Court of Appeals in Cases of Capture, which heard appeals from state-court cases seeking maritime prizes (www.fjc.gov/history/courts/court-appeals-in-cases-capture-1780-1789).

Spotlight on Judicial History

Since 2020, the Center has posted twenty-seven short essays about judicial history on a variety of topics (www.fjc.gov/history/spotlight-judicial-history). Recently posted is “Early Radio in the Federal Courts” (www.fjc.gov/history/spotlight-judicial-history/early-radio-in-federal-courts).

Summer Institute for Teachers

In June 2026, the Center collaborated with the ABA to present a weeklong professional-development conference for teachers, focusing on three famous historical trials: Sedition Act Trials, *U.S. v. Guiteau*, and *Clay v. United States*. The Center presents information about these and other famous federal trials on its website (www.fjc.gov/history/cases/famous-federal-trials).

EDUCATION

Specialized Workshops

Workshop on Science-Informed Decision Making

This three-day workshop provided judges and probation and pretrial-services officers with insights from behavioral sciences on decision making in ordinary criminal cases.

The Constitution and the Courts at the 250th

This two-day workshop offered in collaboration with the National Constitution Center explored a variety of perspectives in the early national period about the best approach to interpret and implement the Constitution.

Search and Surveillance Warrants in the Digital Age

This three-day workshop recruited national experts from the technology industry and the legal community—judges, academics, and practitioners—to provide magistrate judges with instruction on the application of evolving Fourth Amendment law to digital search and surveillance warrants.

Antitrust Judicial Law and Economics Institute for Federal Judges

This two-day workshop provided judges with instruction on various antitrust issues, including market definition, market power, competitive effects, horizontal and vertical restraints, and monopoly power.

Distance Education

Court to Court: Access to the Courts—Electronic Filing for Pro Se Litigants

In this episode of the Center’s periodic series of short documentaries, the District of Maryland and the Northern District of Illinois share their experiences with electronic filing by pro se litigants. A supplemental compilation of all ninety-four district courts’ related local rules and procedures was published in 2025: “United States District Courts’ Local Rules and Procedures on Electronic Filing by Self-Represented Litigants” (www.fjc.gov/content/391989/united-states-district-courts-local-rules-and-procedures-electronic-filing-self).

Court Web

This periodic webcast included as recent episodes “Generative Artificial Intelligence and the Federal Judiciary” (featuring Professor Gary Marchant, Arizona State University Sandra Day O’Connor College of Law Center for Law, Science and Innovation and Southern District of West Virginia Chief Judge Frank W. Volk), “Commemorating the 75th Anniversary of Judge J. Waties Waring’s Visionary Dissent in *Briggs v. Elliott*” (featuring District of South Carolina Judge Richard Gergel), and “Navigating the Labyrinth: Immigration Court Fundamentals” (featuring District of Utah Magistrate Judge Dustin B. Pead).

Supreme Court Term in Review for Bankruptcy Judges

This annual webcast discusses some of the most significant Supreme Court decisions, including key bankruptcy cases.

Consumer Case-Law Update for Bankruptcy Judges

This quarterly webcast features discussions of consumer-bankruptcy case-law updates prepared 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).

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. A recent workshop for bankruptcy judges included the session “How the Federal Judicial Center’s Research Division Supports the Bankruptcy Courts.”

Mid-Career Seminar for U.S. Magistrate Judges

In partnership with the University of California, Berkeley Law School, the Center has developed this two-day program for magistrate judges with roughly eight to twelve years of experience.

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

June 3-4, 2026

The Judicial Conference Committee on Rules of Practice and Procedure (the Standing Committee) met in Chicago, Illinois, on June 3 and 4, 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
Elizabeth J. Shapiro, Esq.¹
Judge Amul R. Thapar
Bart H. Williams, Esq.

The following individuals also attended to support the work of the Standing Committee: Professor Edward Hartnett, Standing Committee Reporter; Carolyn A. Dubay, Secretary to the Standing Committee; Professor Catherine T. Struve (attended remotely), Professor Daniel R. Coquillette (attended remotely), Professor Bryan A. Garner, and Professor Joseph Kimble, 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 Stephen Sachs, Reporter (attended remotely)

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 (attended remotely)
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

Judge Robert J. Conrad, Jr., Director of the Administrative Office of the U.S. Courts, also attended. Other attendees (participating remotely) included: Bridget Healy, Esq. and Sarah A.

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

Sraders, Esq., Rules Committee Staff Counsel; Shelly Cox, Rules Committee Staff; and Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC).

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. Dean Zachary Clopton, Dean of Northwestern Pritzker School of Law, also welcomed the attendees.

Judge Dever also paid tribute to Standing Committee member Judge D. Brooks Smith (3rd Cir.), who retired effective May 31, 2026. Judge Dever recounted Judge Smith's impressive career, noting that he had served as chief judge of the district court and Third Circuit and as Chair of the Judicial Conference Space and Facilities Committee, and been a member of the Criminal Rules Committee, the Committee on Judicial Conduct and Disability, and the Executive Committee. Judge Dever also read for the members a letter from Judge Brooks reflecting upon his time on the Standing Committee. Judge Dever then welcomed Judge Smith's successor, Judge Amul Thapar (6th Cir.) and announced that Judge Michelle Harner (Bankr. D. Md.) would become the chair of the Bankruptcy Rules Advisory Committee upon the end of the term of Judge Rebecca Connelly on September 30, 2026.

B. Discussion and Approval of the Meeting Minutes

Following these announcements, Judge Dever called for discussion and approval of the minutes of the January 6, 2026, meeting. After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee approved the minutes with one minor typographical correction.

C. 2025 Strategic Plan for the Judiciary

Judge Dever next asked the members for feedback on a request from Chief Judge Michael A. Chagares (3rd Cir.), Judiciary Planning Coordinator, to identify any agenda items that align with the Judicial Conference Executive Committee's priority goals from the 2025 Strategic Plan for the Judiciary. Judge Dever expressed support for prioritizing the use of public resources. After giving the members an opportunity to discuss the issue, upon motion and a second, with no opposition, the Standing Committee authorized the Chair, working with the Secretary, to respond directly to Chief Judge Chagares that the Committee would generally prioritize the goal to allocate and manage public resources more efficiently and effectively through the rules process.

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 included in the agenda book beginning on page 67. Ms. Dubay highlighted that final rule amendments had been delivered to Congress in April 2026, but that this package did not include Appellate Rules 29 and 32 and the Appendix of Length Limits, which were withdrawn for further consideration. Those amendments were withdrawn at the request of the Executive Committee of

the Judicial Conference for further consideration, and upon revision by the Appellate Rules Advisory Committee, they were submitted for final approval (see report of the Appellate Rules Advisory Committee).

E. Legislative Update

Ms. Dubay also provided an update on any pending legislation that directly or effectively amends the federal rules, referencing the chart of legislative proposals in the agenda book beginning on page 73. She drew the Standing Committee's attention to the Sunshine in the Courtroom Act of 2025, which would allow broadcasting in all court proceedings, including criminal proceedings, despite Criminal Rule 53's prohibition.

F. Federal Judicial Center Update

Dr. Tim Reagan provided the Standing 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 79. In addition to the topics covered in the report, Dr. Reagan stated that the FJC had recently released on the judiciary's intranet a video documentary featuring courts that allow *pro se* electronic filing.

2. JOINT COMMITTEE BUSINESS

Judge Dever then turned to joint committee projects and business.

A. Joint Subcommittee on Attorney Admission

Professor Bradt presented on behalf of the Joint Subcommittee on Attorney Admission. Professor Bradt explained that this project began in 2023 with a suggestion from Dean Alan Morrison of George Washington Law School arising from the challenges lawyers with nationwide practices face because of differing district court bar admission policies. For example, many districts require admission to the state bar in which the district sits, and that includes districts in a small number of states (four) that require taking the state bar exam in order to be admitted.

Professor Brandt then recounted how since 2023, the subcommittee engaged in a substantial amount of work, including six subcommittee meetings, formal and informal outreach to judges, state bars, and other important stakeholders. The results of this inquiry established that district courts do not favor national rule-making on this issue for a number of reasons, including their interest in sustaining their local court practices and ensuring adequate supervision of their own district bars. There was also some concern that, were such a proposal to be passed, district courts would enhance their local rules to require more engagement of local counsel. There were also various issues related to whether the proposal was appropriate for consideration under the Rules Enabling Act. With this background, Professor Bradt stated that it was the subcommittee's unanimous recommendation to end the project and disband the subcommittee. Professor Bradt also summarized Dean Morrison's comments in response to the subcommittee's recommendation.

The Committee then heard the views of various reporters and consultants, who expressed understanding of Dean Morrison's concern about the significant disparity among district court

admission practices (including local residency requirements), but also advised caution in proceeding with national rulemaking on this issue for a variety of reasons. The consultants and reporters noted the Committee's earlier efforts to consider national rules of attorney conduct, which proved unsuccessful in light of concern for sustaining local and state authority over the practice of law. A reporter underscored caution about adopting a "one-size-fits-all" approach.

The members then discussed the subcommittee's recommendation.

A judge member expressed support for the subcommittee's recommendation after sharing his concern that national admission rules may inhibit the ability of individual judges to require higher standards of conduct and professionalism in their courtrooms (as set forth in standing orders, for example). Another member raised the issue of admission fees and asked whether that issue had been driving concerns behind the district court judges' objections. Professor Bradt noted that the FJC had completed a study on the amount of those fees and their variation and the use of such fees to fund important operations and provide support for pro bono staff attorneys and libraries. Professor Bradt emphasized, however, that while the issue of fees did come up with judges, potential loss of fees was not the primary concern, which focused on supervisory responsibilities and preserving local legal culture and traditions.

With no further discussion, upon motion and a second, with no opposition, the Standing Committee voted to conclude the attorney admission project and disband the subcommittee.

B. Electronic Filing and Service by Self-Represented Litigants

Professor Struve presented the self-represented litigant filing and service project to the Standing Committee relating to Appellate Rule 25; Bankruptcy Rules 5005, 8011, and 9036 (with a conforming amendment to Bankruptcy Rule 9006); Civil Rule 5 (with a conforming amendment to Civil Rule 6); and Criminal Rule 49 (with a conforming amendment to Criminal Rule 45).

Professor Struve explained that the proposed amendments were focused on two issues. First, the proposed amendments eliminate the requirement for self-represented litigants to complete a burdensome and redundant paper service of court filings (other than the initial pleading) if the litigant to receive such service already receives such documents through the court's electronic filing system or electronic noticing system. Second, the proposed amendments presumptively permit self-represented litigants to file court documents electronically, unless a court order or local rule bars them from doing so. If a court adopts a local rule barring self-represented litigants from using the court's electronic filing system, the proposed amendments further provide that any such local rule must either include reasonable exceptions to that prohibition or permit the use of another electronic method for filing documents and receiving electronic notice of activity in the case.

Professor Struve also informed the Committee that each of these proposed amendments was approved for publication by the relevant Advisory Committee, although the support of some members of the Bankruptcy Rules Advisory Committee extended only to publication for public comment with reserved skepticism as to whether the amendments would proceed to final approval. Professor Struve further explained that there are some variances in the proposed

amendments across the four rule sets to ensure consistency of language and application within the same rule set.

After providing this background, Professor Struve directed the Standing Committee's attention to language in the proposed common committee notes to Appellate Rule 25(a)(2)(C)(ii) (agenda book page 160), Bankruptcy Rule 5005(a)(3)(B)(ii) (agenda book page 139), Bankruptcy Rule 8011((a)(2)(C)(ii) (agenda book page 146), Civil Rule 5(d)(2)(B)(ii) (agenda book page 134), and Criminal Rule 49(b)(2)(B)(ii) (agenda book page 125). These committee note sections address whether a court may continue to require self-represented litigants to seek permission to use its electronic filing system under the new rule provisions. The Clerk of Court liaisons to the Advisory Committees had stressed that it would be useful for the committee note to expressly affirm the use of a permission-based system to help communicate clearly with self-represented litigants about the court's role in allowing such access. But some advisory committee members had raised concerns that the original proposed language might seem to approve standardless discretion concerning whether or not to grant permission. In response, the Appellate Rules Committee had approved revised note language that addressed those concerns. The Appellate Rules Committee's meeting occurred after the Bankruptcy Rules and Civil Rules Committees had met and approved the initial proposed language. The Criminal Rules Committee thereafter approved the language in the committee note as revised and approved by the Appellate Rules Committee.

To show the two versions of the language in the committee note, Professor Struve pointed to page 134 of the agenda book, the committee note for the proposed amendments to Civil Rule 5. The language in the first bracket (lines 220-223) is the language approved by the Bankruptcy Rules and Civil Rules Committees at their spring meetings. The language in the second bracket (lines 223-227) is the modified language approved by the Appellate Rules and Criminal Rules Committees. Professor Struve proposed that the Standing Committee approve the second bracketed alternative. Professor Marcus added that the Civil Rules Advisory Committee was not enthusiastic about the first bracketed language and did not have the second alternative before it at its spring meeting.

The members then discussed the proposed amendments.

A judge member asked whether there had been discussion about AI use among self-represented litigants and whether there were adequate protections to prevent disclosure of private information if documents are filed electronically and available for public access. Professor Struve responded that the surge in AI-assisted filings was not itself a topic of discussion, but that she believed that clerks would likely say that to the extent there are more filings, they would prefer not to receive them in paper form and scan them into the system. As for privacy, Professor Struve noted that the proposed rules would allow courts to establish a different system – such as an upload portal or requiring email submissions—that would allow the clerk's office to review filings from self-represented litigants before they are made available to the public. Further, Professor Struve added that any social security number in the filing would most likely be the filer's own number, in which case the filer would not be violating the privacy rules.

Another judge member expressed his support for the proposal, noting that it would save time and money and improve access to justice. As an example, he noted that one-third of all filings are

made after 5 p.m. Allowing self-represented litigants to use electronic filing and be able to file after 5 p.m. would make the system fairer. The judge member then asked whether the rule should be extended to allow self-represented nonparties to use electronic filing. Professor Struve responded that this issue had been discussed, particularly in the Criminal Rules context with respect to victims, and the choice was made to limit the presumptive access to e-filing to parties. This would not preclude a court from allowing electronic access to self-represented nonparties, but they would not receive the same presumptive right to use it as a default principle set forth in the revised rules.

Another judge member asked whether the Committee on Court Administration and Case Management (CACM) had been consulted on this project. Professor Struve explained that CACM had not been officially consulted, but CACM leadership and staff have been involved in a number of issues that overlap, including coordination on the Privacy Report to Congress. Judge Dever added that these proposed amendments are only at the publication stage, which will enable CACM to weigh in as well, and there will have to be coordination on training if the amendments are adopted, including training on privacy requirements.

The state judge member stated that his state recently moved to a rule that required self-represented litigants to file electronically unless they fell into an excepted group (such as confined persons) or filed a motion for good cause to not file electronically. He added that the state courts had not had problems with this new rule.

With no further discussion, upon motion and a second, with no opposition, the Standing Committee approved for publication and public comment the proposed amendments to Appellate Rule 25; Bankruptcy Rules 5005, 8011, and 9036 (with a conforming amendment to Bankruptcy Rule 9006); Civil Rule 5 (with a conforming amendment to Civil Rule 6); and Criminal Rule 49 (with a conforming amendment to Criminal Rule 45), as revised to include adoption of the second bracketed language approved by the Appellate and Criminal Rules Committees in the committee notes to Civil Rule 5(d)(2)(B)(ii) (page 134, lines 223-227), Bankruptcy Rule 5005(a)(3)(B)(ii) (agenda book page 139-140, lines 104-107), and Bankruptcy Rule 8011(a)(2)(C)(ii) (agenda book page 146, lines 151-154).

C. Privacy Rules Related to Taxpayer Identification Numbers and Minors

Judge Dever then turned to Ms. Dubay to present the proposed amendments to the privacy rules. Ms. Dubay noted that there were two privacy-related items on the agenda: (1) the proposed amendments to the privacy rules (Bankruptcy Rule 9037, Civil Rule 5.2, Criminal Rule 49.1), and (2) the Judicial Conference's biennial report to Congress regarding the status of the judiciary's efforts to address privacy concerns in public court filings.

Turning to the rule amendments, Ms. Dubay explained that initially the Advisory Committees had hoped to present a package of privacy amendments including updated privacy rules applicable in appeals through proposed amendments to Appellate Rule 25 and a new provision in Bankruptcy Rule 8011. The Appellate Rules Committee, however, decided at its spring meeting to further consider the proposed amendments given some concerns expressed about the redaction requirement in voluminous appendices. Ms. Dubay further explained that because of the desire for consistency with the approach to appeals, the Chair and Reporter of the Bankruptcy Rules

Advisory Committee would not put forward proposed amendments to Rule 8011 at this time to allow the members of the Bankruptcy Rules Advisory Committee to consider changes that the Appellate Rules Advisory Committee may suggest as to appeals. These changes would not affect the pending proposed privacy amendments Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1.

Like the package of proposed amendments regarding access to electronic filing and notice for self-represented litigants, Ms. Dubay noted that there is common language in the proposed committee notes that requires attention in light of a suggested modification received from the Department of Justice after the agenda book was published. The suggested revised committee note language was provided as a handout and is found immediately after page 587 of the agenda book.

Professor Hartnett, Reporter to the Standing Committee, added that the proposed amendments involved the replacement of minors' names with pseudonyms (rather than the use of initials) and complete rather than partial redaction of social security numbers (SSNs) and individual taxpayer identification numbers (ITINs). The amendments (to the Civil and Criminal Rules) would also clearly apply the redaction requirement to adoption taxpayer identification numbers (ATINs) and employer identification numbers (EINs). Professor Hartnett explained that the Advisory Committees generally considered the risk of fraud in making these recommendations, and although ATINs are low risk they were included to avoid confusion and for completeness.

Professor Beale, Reporter to the Criminal Rules Advisory Committee, then advised the Standing Committee that, to the extent that members were concerned that a minor could be identified because the parents are named publicly, the current rule does not prevent this because it only requires using a minor's initials. DOJ, which proposed the use of pseudonyms for minors in criminal cases, raised the concern that the existing rule with initials made it too easy to determine a minor's identity. The proposed amendment was narrow and responded only to this concern. Professor Beale also stated that strong concerns had been raised regarding protecting EINs, because EINs are used by individuals and not only corporate entities. Professor Beale added that DOJ's position was that EINs should not be redacted, but the Criminal Rules Advisory Committee believed that there was utility and convenience in treating all such numbers similarly, which also avoided the possibility of fraud.

Professor Hartnett then turned to the changes to the common committee note that DOJ had proposed. The proposed revision concerned the impact of expanding the redaction requirement to document exhibits and attachments, and whether this conflicted with the exemptions from the redaction requirement under subsection (b) of the current rules (exempting records of administrative proceedings, records of state court proceedings, and other court records). DOJ's proposed revision to the committee note to Civil Rule 5.2, Criminal Rule 49.1, and Bankruptcy Rule 9037 would make clear that the exemptions in subsection (b) still apply. Professor Beale added that although the Criminal Rules Advisory Committee had not had the opportunity to consider this proposed clarification, the revision was acceptable to the Criminal Rules Chair and Reporters.

The members then discussed the proposed amendments.

A judge member asked whether the Advisory Committees had considered full redaction of financial account numbers with respect to the risk of fraud. Professors Beale and King, Reporters to the Criminal Rules Committee, explained although the Committee learned there was a risk that someone could replicate an entire SSN with access to the last four digits, it had received no information that the same risk existed for financial account numbers.

On the issue of pseudonyms for minors, another lawyer member said that in some cases, due to the sensitive nature of the allegations, courts have permitted non-minor plaintiffs to use pseudonyms rather than initials because of a concern that the plaintiffs would otherwise be identifiable. She offered an example of the Uber sexual assault MDL cases and said that this practice was working well there. Professor Beale said that her understanding was that the practice of using pseudonyms was already widespread in criminal cases. Professor Garner asked whether the proposed amendments should include any guidance to courts on devising pseudonyms. He expressed concern that a judge may create a distinctive pseudonym, causing an innocent person with that name to be misidentified as the person involved.

On the issue of exemptions and the requirement to redact exhibits and attachments, Ms. Shapiro, on behalf of DOJ, said that the discussion of the exemptions versus the redaction rule was one of the most significant items of debate when the privacy rules were originally drafted some twenty years ago. DOJ's concern was that the proposed amended note language regarding exhibits and attachments could create some confusion about whether it was meant to supersede the exemptions in subsection (b). DOJ had therefore suggested a friendly amendment to the committee note to make clear that the rest of the rule remains intact. Professor Capra, Reporter to the Evidence Advisory Committee, noted that CACM was involved with the privacy rules when they were originally adopted, and expressed deep concern about the burdens of redaction. He suggested that these burdens may not be as great today with the potential for AI to assist in the redaction process.

A lawyer member asked generally whether the exemptions from the redaction requirement in subsection (b) were so broad that they undermined the proposed rule amendments. Professor Hartnett responded that this issue had been discussed, and there was concern about imposing new requirements on state administrative records that previously were not required to be redacted. The lawyer member acknowledged that it would be difficult to redact a voluminous record, but the committee note to the privacy amendments referred to parts of the record that are attached as exhibits, which may be lengthy but not as lengthy as an entire administrative record or entire state court proceeding. Professor Beale added that the language requiring redaction in documents and exhibits flowed from the FJC research on when SSNs are most often erroneously included in public filings. Dr. Reagan added that the CACM study involved a very exhaustive investigation into unredacted SSNs, and he examined civil, criminal, and appellate cases. He found that unredacted SSNs appear most often in exhibits, not in briefs.

Professor Beale also noted that under the proposed amended rule, the parties would be responsible for redactions and for choosing a pseudonym. The committee note advises that where possible gender-neutral pseudonyms should be used, but provides flexibility because in some cases, gender may be relevant. A judge member asked whether self-represented litigants needed to use pseudonyms when identifying minors and expressed concern that in habeas proceedings, for example, a petitioner convicted of molesting a minor may be able to file a

habeas petition with the minor's name in the filing. Professor Beale responded that this was beyond the scope of the current proposal to change the use of initials to pseudonyms.

Another judge member added that she had no issue with the limited amendments proposed but thought that the time may have come to review the exemptions in subsection (b). A lawyer member agreed and proposed adding a question about exemptions when the proposed amendments are published for public comment. As to the committee note language, the lawyer member thought that the exemptions should not apply to something that would be filed electronically because it would undermine exactly what the privacy rules intend to do.

Judge Dever then asked Ms. Shapiro whether DOJ would oppose publication for public comment if the proposed amendments included the committee note language approved by the Advisory Committees. Ms. Shapiro responded that DOJ wanted the proposed amendments published for public comment to achieve the initial objective of using pseudonyms rather than initials for minors. If the additional language proposed by DOJ was not accepted, however, this would not change what the rule required and the exemptions would still apply. Judge Dever next asked the Advisory Committee Chairs and Reporters if they had anything further to add. Regarding the Criminal Rules, which had taken the lead on the privacy amendments project, Judge Mosman supported publication of the proposed amendments, with or without the proposed addition from DOJ, and reviewing the exemptions at a future date. Judge Connelly added that the proposed amendments to Bankruptcy Rule 9037 included the language about exhibits and attachments and replacing minors' initials with pseudonyms but did not include full redaction of SSNs because of the special needs in bankruptcy cases to identify the debtor. Professor Bartell added that EINs are also not included in the proposed amendments to Rule 9037 because EINs are affirmatively required on a petition and further, the Bankruptcy Rules Committee saw no reason to extend protections to non-individuals, which would happen if EINs were uniformly redacted.

A judge member then raised the issue of whether this amendment would require a judge to let a person proceed under a pseudonym, such as in a Title 9 or Individuals with Disabilities Education Act (IDEA) case, which may conflict with a body of law instructing judges on whether to allow someone to proceed under a pseudonym or not. Professor Marcus said that the existing case law was not meant to be changed by these amendments. Judge Dever asked whether the lawyer member who had previously shared her experience with pseudonyms in MDLs could respond to the judge member's question. The lawyer member responded that in the Uber MDL, there were different approaches to pseudonyms and it seemed to be an evolving practice. Judge Dever added that in his experience in criminal cases, DOJ had been using pseudonyms for quite some time.

Judge Dever then focused the discussion on whether the committee members preferred the new DOJ-proposed language in the committee note to the language approved by the Advisory Committees. A judge member said that she favored including the revised DOJ language. A lawyer member agreed and reiterated the suggestion to also ask a question in the published proposal about revising subsection (b) on exemptions and supported clarifying that amending the rule to address the exemptions in (b) would not apply to exhibits and attachments filed with a pleading. Professor Hartnett added that there had been occasions where questions were posed, and Professors Marcus, Beale, and Kimble suggested including the text of subsection (b) in the published version of the rule. Ms. Shapiro, on behalf of DOJ, agreed with including subsection

(b) in the published materials, but advised against including a question because this would distract from the changes being proposed for subsection (a). Another judge member, however, supported including a question because he thought that otherwise the exceptions would swallow the rule.

Judge Dever then observed that there was consensus on publishing the text of subsection (b) on exemptions even if it was not the subject of the proposed amendments and the proposed committee note as revised by DOJ. Judge Dever also expressed his view that it was rare for the committees to ask specific questions when publishing proposed amendments for public comment, and he thought the committees would receive robust commentary even without a specific question or prompt. Judge Dever also supported adding the text of subsection (c). As an additional note, Professor Hartnett added that there were minor technical differences in cross-references in the proposed committee notes because Criminal Rule 49.1 and Civil Rule 5.2 have their protective order provision in subsection (e), while Bankruptcy Rule 9037's protective order provision is in subsection (d). Professor Hartnett also pointed out a typographical error that required changing a cross-reference to Rule "5.2" and not "52."

With no further discussion, upon motion and a second, with no opposition, the Standing Committee approved for publication and public comment the proposed amendments to Criminal Rule 49.1, Civil Rule 5.2, and Bankruptcy Rule 9037, including publication of the entire text of each rule, the technical corrections, and the text suggested by the DOJ to be added to the end of the committee notes found on page 169 (Criminal Rules), page 172 (Civil Rules), and page 174 (Bankruptcy Rules) of the agenda book.

D. Draft 2026 Privacy Report to Congress

Following approval of the proposed privacy amendments for publication and public comment, Ms. Dubay presented the 2026 Privacy Report to Congress for the Standing Committee's approval. She explained that the report is required by law every two years, and that if approved by the Standing Committee, it would be transmitted to the Judicial Conference at its September session for approval, and if so approved, the Director of the Administrative Office of the U.S. Courts would transmit the report to Congress.

Ms. Dubay then provided background on the development of the report. She explained that the report was a product of work and coordination between the Rules Committee Staff, CACM staff, and the FJC. She also advised that the CACM Privacy Subcommittee had reviewed the draft report and recommended that CACM endorse the report, which it did at its May 27, 2026, meeting. Ms. Dubay also noted that CACM approved the FJC's most recent report on privacy issues, which appears at the end of the agenda book, and thanked Kristin Garri for her work on the project. Ms. Dubay also noted that the reporters had all weighed in on the report and thanked them for their work.

With no questions or further discussion, upon motion and a second, with no opposition, the Standing Committee approved the 2026 Privacy Report to Congress, including any necessary modifications to reflect the Committee's action on the privacy amendments, and recommended its adoption.

3. ACTION ITEMS – REPORTS OF THE ADVISORY COMMITTEES

The Standing Committee next heard reports on action items from each of the five Advisory Committees.² A list of changes made by the Standing Committee to proposed amendments presented for final approval are set forth in Appendix A to these minutes.

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

Judge Eid presented action items on behalf of the Advisory Committee on Appellate Rules, which last met on April 16, 2026, in Charlotte, North Carolina. The first item was to request final approval of amendments to Rule 29, and conforming amendments to Rule 32 and the Appendix of Length Limits, relating to amicus briefs. The second item was to request final approval of amendments to Rule 15 relating to petitions for review of agency decisions. The Advisory Committee had no proposed amendments for publication and public comment to present beyond the proposed amendments to Rule 25 as part of the package of amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning on page 190.

Prior to turning to the action items, Judge Eid introduced the Advisory Committee's new reporter, Professor Stephen Sachs of Harvard Law School. Judge Eid also thanked Professor Hartnett for his tremendous service while serving as reporter to the Appellate Rules Committee.

1. *Amendments for Final Approval*

a. Rules 29, 32, and the Appendix of Length Limits (Amicus Briefs)

Judge Eid presented the Advisory Committee's request for final approval of amendments to Rule 29, along with conforming amendments to Rule 32 and the Appendix of Length Limits, found on page 231 of the agenda book. Judge Eid began with background as to why these proposed amendments were to be considered again after the Committee's final approval in June 2025 and subsequent approval by the Judicial Conference and transmission to the Supreme Court. Judge Eid explained that in early 2026, the Judicial Conference Executive Committee expressed concerns about language in proposed Rule 29(e)(2) relating to the disclosure requirements regarding new members of an amicus organization. To address these concerns, the Appellate Rules Advisory Committee and the Standing Committee voted to withdraw the proposed amendments for further consideration. The Supreme Court approved that request and the proposed amendments to Rules 29 and 32 and the Appendix of Length Limits were not forwarded to Congress.

The Advisory Committee then revisited the proposed amendments at its spring 2026 meeting, concentrating on the Executive Committee's concern about the new member provision. The proposed committee note had described this as an anti-evasion rule, treating new members of an amicus as if they were non-members. The concern about the rule was that an organizational amicus would have to disclose the identities of its contributing new members, which could dissuade either the organization or its new members from participating and filing a brief in the

² Information items presented by the Advisory Committees are set forth in Part 4 of these minutes.

first place. At its spring meeting, the Advisory Committee also considered the extent of the negative reaction to the proposal not only from the Executive Committee, but from the public during the public comment period. The Advisory Committee voted 5-1, with one abstention, to remove the new member provision from the proposal.

Additionally, Judge Eid explained that two additional modifications were proposed. First, after the amendment package was submitted to the Supreme Court, an ambiguity was identified in the language of proposed Rule 29(c) requiring a party or its counsel to make certain disclosures if the amicus failed to do so (the backup disclosure requirements). After discussion, the Advisory Committee voted without opposition to rephrase the requirement, removing proposed Rule 29(c) and inserting clarifying language into proposed Rule 29(b). Second, the Advisory Committee approved the removal of an erroneous cross-reference to Rule 29(a)(5). Judge Eid also reported that the Advisory Committee considered whether to submit these revisions for an additional round of public comment. Because the issue of the new member provision had been exhaustively discussed by the Advisory Committee, the Standing Committee, and public commenters, and the other revisions were technical in nature, the Advisory Committee voted without opposition to seek final approval without republication.

Before turning to member discussion, Professor Beale raised a question about the removal of language on page 193 of the agenda book indicating that the new member provision was stricken along with the provision requiring a new organization to disclose the date of its formation. Professor Sachs responded that it was stricken because it was duplicative (with the other provision found on page 234, lines 61 to 63 of the agenda book).

The members then discussed the proposed amendments.

A judge member raised a question about the text on page 234, line 58 of the agenda book requiring the amicus to provide an explanation of both how the brief will help the court and how the perspective of the amicus will help the court. He asked why an amicus should have both obligations. Professor Sachs responded that this requirement puts the onus on the amicus to tell the court how its brief provides information in addition to what the parties have said. The judge member and an attorney member then briefly discussed how the timing provisions of the rule, which were not being amended, operated in practice.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rules 29 and 32 and the Appendix of Length Limits and recommended their adoption.

b. Rule 15

Judge Eid next presented the Advisory Committee's request for final approval of amendments to Rule 15, which concerns petitions for review or enforcement of agency orders. The text of the proposed amendment begins on page 227 of the agenda book, and the written report begins on page 195.

Judge Eid explained that the proposed amendments to Rule 15 were designed to address the "incurably premature" doctrine, under which certain petitions to rehear or reconsider an agency decision render the decision nonreviewable in a court of appeals; in such cases a pending petition

for review of the agency decision must be dismissed, and a new petition for review must be filed after the agency disposes of the rehearing petition. Judge Eid stated that the amendment was intended to mirror previous amendments to Rule 4, which deals with appeals from district court judgments. Rule 4 used to work in a similar way as Rule 15, with various post-judgment motions resulting in the dismissal of a premature notice of appeal, but Rule 4 was amended to provide that a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposed amendments to Rule 15 would do the same for a premature petition for review.

Judge Eid reported that the Advisory Committee received three public comments on the proposed amendments, all of which were broadly supportive and conveyed no specific concerns. Judge Eid also noted that the Advisory Committee made two post-publication changes. First, it renumbered the proposed new subdivision from (d) to (f) to avoid confusion with the existing rule structure. Second, to avoid attempts to obtain premature review of orders that are non-final for reasons other than a pending rehearing petition, the Advisory Committee added language reaffirming that the order in question must be otherwise reviewable. The Advisory Committee voted unanimously to seek final approval of the proposed amendments to Rule 15. Professor Hartnett added that there were a few minor technical corrections made to the text of the rule after the Advisory Committee met that were included in the updated agenda book materials.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 15 and recommended its adoption.

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

Judge Connelly presented action items on behalf of the Advisory Committee on Bankruptcy Rules, which last met on April 15, 2026, in Charlotte, North Carolina. These action items included requests for final approval of amendments to Rule 2002, Form 101, and Form 106C and a request for approval for publication and public comment on proposed amendments to Rule 2003. This latter request was in addition to the requests for publication and public comment on the proposed amendment packages relating to privacy and electronic notice and filing for self-represented litigants. The Advisory Committee's report and the draft minutes of its last meeting are included in the agenda book beginning on page 190.

Prior to turning to the action items, Judge Connelly thanked Judge Dever for his kind comments earlier in the meeting and for the opportunity to serve as chair of the Bankruptcy Rules Committee, which she described as a fabulous and enriching experience.

1. Amendments for Final Approval – Rule 2002, Form 101 and Form 106C

Judge Connelly reported on the Advisory Committee's request for final approval of amendments to Rule 2002 and to Official Forms 101 and 106C. The text of the proposed amendments begins on page 286 of the agenda book, and the written report begins on page 252.

With respect to Rule 2002, which relates to notices, Judge Connelly explained that the current version of Rule 2002(o) requires that captions of every notice given under Rule 2002 comply with Rule 1005. Rule 1005 requires, among other things, the debtor's name and the last four digits of the social-security number or individual debtor's taxpayer-identification number. The

Advisory Committee received a suggestion from clerks of court to amend the rule to reduce the burden on the clerks by requiring captions of Rule 2002 notices to include only the name of the court, the names of the debtor, the case number, the chapter under which the case was filed, and a description of the document's character. Judge Connelly reported that after the proposed amendment was published no comments or opposition were received regarding this change.

Judge Connelly then turned to the Advisory Committee's request for final approval of amendments to Official Form 101, the initial petition for an individual's bankruptcy case. In the petition, a debtor must set forth identifying information, including who the debtor is, the last 4 digits of the debtor's SSN, the debtor's address, and if they have one, an EIN. Judge Connelly noted that the way the form asked for the EIN sometimes induced self-represented debtors to list the EIN of their employer rather than their own, triggering concerns when multiple bankruptcy petitions listed the same EIN. The amendment, suggested by a clerk of court, clarifies in the instructions that the petitioner is to disclose the petitioner's EIN, not the EIN belonging to someone else, including the petitioner's employer. Judge Connelly reported that no comments or opposition were received regarding this change after publication.

Finally, Judge Connelly presented the Advisory Committee's request for final approval of amendments to Official Form 106C, which relates to property that can be claimed as exempt. The form is part of the package that every debtor must file to initiate a bankruptcy case and is where an individual debtor claims property exemptions. In the current version of Form 106C does not contain the total value of the property claimed as exempt. This omission requires trustees to manually add up the claimed exemptions to prepare their final report. A suggestion was made to amend Form 106C to require a statement of the total value of the claim exemptions. The Advisory Committee proposed amending the form to require a total for all entries (in Column C) that are stated in a specific amount. It also considered a second change to Form 106C to provide a total dollar value for Column B (which identifies the dollar value of the debtor's portion of the property for which exemptions are claimed). Judge Connelly reported that when the proposed amendments were published, the National Association of Consumer Bankruptcy Attorneys objected to the wording of the requirement to total column B, and based on that opposition, the Advisory Committee decided that only the total for column C would be included in the amendment.

The members then discussed the proposed amendments.

A judge member raised a question about the committee note for Rule 2002(o) relating to captions for notices and asked why the committee note referred to "most" notices, and why in one part it states "may" use the caption in Official Form 416B and why the note goes on to state that debtor notices "must" include the information in Section 342(c) of the Bankruptcy Code. Professor Bartell and Judge Connelly explained that the committee note was referring to notices other than the initial notice of bankruptcy, so "most" means all other notices. As to the "may" versus "must" language, not all notices under Rule 2002 are sent by the debtor, such as the notice of a meeting of creditors, so the language includes the additional statutory requirement for debtors. Another member asked a style question about Rule 2002(o) where it refers "this Rule 2002" and not simply "this rule." Professor Garner explained that this reference follows the style guide to make clear that when a rule refers to itself in a subpart of the rule, it is referring to the rule in its entirety, not simply the subpart.

A judge member asked a question about Official Form 106C and whether every entry in Column C had to have a specific amount to include in the total. Judge Connelly and Professor Bartell explained that the total only includes those entries in Column C that have a specific amount. Debtors have the option in Column C to provide either a specific amount or claim 100% of the fair market value of an exemption, up to any applicable statutory limit, such as the debtor's proceeds from a personal injury case. The total amount in the revised Form 106C would total only those items where the specific dollar amount is listed and not those where the box is checked for the fair market value.

The following day, during discussion of information items, another judge member asked about another pending suggestion to amend Official Form 106C. Professor Bartell explained that, due to the order in which certain questions were asked on the current form, debtors in Florida — where there is an unlimited homestead exception—do not answer a question that could reveal that they are subject to a federal limit on their exemption. The Advisory Committee is considering modifying the form so this question is asked in a way that debtors in Florida have to answer.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 202, Official Form 101, and Official Form 106C and recommended their adoption.

2. Preliminary Drafts for Publication and Public Comment – Rule 2003

Judge Connelly next presented the Advisory Committee's request for approval for publication and public comment on proposed amendments to Rule 2003, which concerns holding a meeting of creditors. The text of the proposed amendments begins on page 301 of the agenda book, and the written report begins on page 254.³

Judge Connelly explained the meeting of creditors is required in Section 341 of the Bankruptcy Code and involves an examination of the debtor conducted by a trustee. Under the current rule, the meeting of creditors must be held no fewer than 21 and no more than 40 days after the order for relief in a chapter 7 or chapter 11 case, no fewer than 21 and no more than 35 days after the order for relief in a chapter 12 case, and no fewer than 21 and no more than 50 days after the order for relief in a chapter 13 case. The rule also requires that the meeting “be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.” A suggestion was made by trustees to amend the rule to allow the meeting of creditors to be held no more than 60 days after the order for relief in chapter 12 and chapter 13 cases, and to revise the language to recognize that these meetings may be held remotely. The U.S. Trustee raised concerns about this suggestion but reached an agreement with the trustees who made the suggestion and the Advisory Committee now recommends publication of these proposed amendments. Professor Gibson noted that after

³ As noted earlier in these minutes, this request was made in addition to the prior requests for approval for publication for public comment on the proposed amendments relating to privacy (Rule 9037) and electronic notice and filing by self-represented litigants (Rules 5005, 8011, and 9036, with a conforming amendment to Rule 9006).

approval by the Advisory Committee the last paragraph of the committee note was corrected to include a phrase that was previously left out.

The members then discussed the proposed amendments.

A judge member asked why there was a comma after the word “court” on page 302, line 31. Professor Kimble said that the comma made clear that “designated by the United States trustee” modified only “any place in the district,” not “a regular place for holding court[.]” The judge member and the Style Consultants then discussed other options for making the language clear, including by adding “either” before “at” on line 30. Judge Connelly preferred to solicit public comment on the version approved by the Advisory Committee, which had been approved by the Executive Office of U.S. Trustee. Ms. Shapiro, on behalf of DOJ, underscored that the proposed language was sensitive to the trustees and there was careful negotiation on this language. Dean McKenzie, as liaison from the Standing Committee to the Bankruptcy Rules Committee, concurred with the suggestion not to alter the language prior to publication for public comment.

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 2003 for publication and public comment.

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

Judge Vance presented action items on behalf of the Advisory Committee on Civil Rules, which last met on April 14, 2026, in Charlotte, North Carolina. The Advisory Committee’s report and the draft minutes of its last meeting are included in the agenda book beginning at page 305. The action items sought final approval of proposed amendments to Rule 7.1, Rule 41(a), Rule 45(b) and (c), Rule 26, and Rule 81. The Advisory Committee had no proposed amendments for publication and public comment to present beyond the proposed amendments to Rule 5.2 as part of the privacy amendments, and Rules 5 and 6 as part of the package of amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting.

1. Amendments for Final Approval

a. Rule 7.1

Judge Vance presented the Advisory Committee’s request for final approval of amendments to Rule 7.1. The text of the proposed amendments appears on page 388 of the agenda book, and the written report begins on page 307.

Judge Vance explained that the proposed amendments were designed to facilitate judges’ compliance with recent guidance from the Code of Conduct Committee that a judge’s financial interest in an owner of ten percent or more of a party creates a rebuttable presumption of recusal. The proposed amendments (1) replace references to “corporations” with the broader term “business organization”; and (2) add a requirement that a party disclose business organizations that directly or indirectly own ten percent or more of the party (e.g., corporate parents or grandparents).

Judge Vance next informed the Committee that during the publication period, the Advisory Committee received eight written comments and four witnesses testified about the rule. Most of the commentary expressed support for the rule changes, noting that the rule would assist judges in making informed recusal decisions. Following this feedback, the Advisory Committee voted unanimously to recommend final adoption of the Rule 7.1 amendments as published.

After an opportunity for discussion and hearing no comments, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 7.1 and recommended its adoption.

b. Rule 41(a)

Judge Vance next presented the Advisory Committee's request for final approval of amendments to Rule 41(a). The text of the proposed amendments appears on page 394 of the agenda book, and the written report begins on page 308.

Judge Vance explained that the current rule refers to plaintiff's dismissal of an action, which led to conflicting interpretations of whether the rule permitted dismissal only of entire cases or narrower dismissal of claims or parties. The proposed amendments to Rule 41(a) would clarify that narrower dismissals are permitted to conform to the widespread practice developed in multi-claim and multi-party litigation to narrow the issues and facilitate settlement. The proposed amendments also clarify that only the parties who have appeared and remain in the case must sign a stipulation of dismissal.

Judge Vance further reported that during the publication period, three witnesses testified and 28 written comments were received. All of the feedback was favorable and lauded the amendments as eliminating procedural barriers to streamlining cases, facilitating settlements, and eliminating confusion among the circuits. The Advisory Committee voted unanimously to recommend final approval of the proposed amendments to Rule 41(a) as published.

After an opportunity for discussion and hearing no comments, upon motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 41(a) and recommended its adoption.

c. Rule 45(c)

Judge Vance then presented the Advisory Committee's request for final approval of amendments to Rule 45(c). The text of the proposed amendments appears on page 403 of the agenda book, and the written report begins on page 309.

Judge Vance reported that the main purpose of the amendments is to address the Ninth Circuit's decision in *In re Kirkland*, which interpreted Rule 45(c) to mean that a subpoena could not compel remote trial testimony from a witness outside the geographic limits in Rule 45(c)(1), even if a court found that the Rule 43(a) requirements for remote testimony had been satisfied. The proposed amendments would clarify that a court's subpoena power for remote trial testimony extends nationwide, so long as the witness is not required to appear and give the remote testimony from a location farther than the distance authorized in Rule 45(c)(1).

Judge Vance also reported that during the publication period, the Advisory Committee received 31 public comments and testimony from 10 witnesses, most of which favored the amendment. A few comments opposed the amendments on the merits and argued that they should be deferred until the Advisory Committee completed its consideration of proposed amendments to Rule 43(a) governing remote testimony in general. A few other comments offered stylistic changes.

Judge Vance then advised the Committee that after hearing the testimony and reviewing the public comments, the Advisory Committee concluded that there was no reason to defer amending Rule 45(c) in light of continued reliance on the *Kirkland* decision. The Advisory Committee decided, however, to modify the fourth paragraph of the committee note. These modifications included clarification to wording that suggested that Rule 43(a) standard for remote trial testimony could apply to non-trial remote testimony in hearings. Judge Vance also noted a technical change made later to delete the cross-reference to Rule 26(a)(3)(A)(i) as potentially confusing and unnecessary.

The members then discussed the proposed amendments briefly, with a judge member commenting that this was a very good rule amendment and that he was supportive of the changes.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 45(c) and recommended their adoption.

d. Rule 26

Judge Vance next presented the Advisory Committee's request for final approval of amendments to Rule 26(a)(3). The text of the proposed amendments appears on page 391 of the agenda book, and the written report begins on page 310.

Judge Vance explained that the proposed amendments to Rule 26(a)(3) would be a small change to clarify pre-trial disclosure of trial witnesses who are expected to testify remotely, which is necessary because of the need to address the issue of court permission for remote trial testimony under Rule 43(a). Judge Vance noted that the proposed amendments attracted very little public commentary, some of which were based on the misapprehension that the rule applied to initial disclosures, not the disclosures made at least thirty days before trial. The Advisory Committee voted unanimously to recommend final approval of the proposed amendment as published.

The members then discussed the proposed amendments.

A lawyer member asked whether the proposed amendment was intended to disclose earlier in the process whether a party was proffering a remote witness. Professor Marcus responded affirmatively. A judge member then asked about the word "will" on page 392, line 20 of the agenda book, when whether the person can be called as a remote witness depends on the court's permission. Professor Marcus acknowledged that a judge may deny a request for remote testimony, but the Rule 26 disclosure is accurate at the time it is made. Judge Dever added that the committee note on page 393, lines 37-39, talked about alerting the parties and the court that a party "proposes to present" witnesses remotely. The judge member suggested replacing the word

“will” with “is proposed to” to incorporate some concept of expectation as to what the party will present.

Another judge member asked whether there was any discussion about what lawyers would do to comply with this new disclosure because he could imagine lawyers disclosing that they expect to call a witness in person, but may later need to ask for the witness to appear remotely. A lawyer member added the concern that parties may start listing every witness as potentially remote to preserve the right to call that witness remotely later. Another lawyer member suggested that the adversary nature of the proceedings would result in parties specifying who they truly intend to present remotely, and counterintuitive trial strategy for a party to list all witnesses as remote if there was no need to present their testimony remotely. Judge Dever further added that in his experience, case management orders usually provide a period for people to object to pretrial disclosures.

As to the suggestion from the judge member to modify the text language to conform to the committee note, Professor Beale suggested that the language on page 392, line 20 be modified to read “it expects the testimony to be in person or remote.” Professor Kimble endorsed this language as a matter of style.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 26(a)(3)—as revised to read “it expects the testimony to be in person or remote” and set forth in the Appendix to these minutes—and recommended their adoption.

e. Rule 45(b)

Judge Vance presented the Advisory Committee’s request for the Standing Committee to recommend final approval by the Judicial Conference of amendments to Rule 45(b)(1). The text of the proposed amendments appears on page 398 of the agenda book, and the written report begins on page 310.

Judge Vance explained that the proposed amendments were designed to clarify the authorized methods of delivery of a subpoena to the named person. First, the amendments would authorize service of a subpoena by the service methods permitted in Rule 4(e)(2)(A) and (B) for service of a summons and complaint. Second, the proposed amendments would authorize service by U.S. mail or commercial carrier, if the chosen method provided confirmation of actual receipt. Third, it would authorize the court, for good cause, to permit another method of service that was reasonably calculated to give notice. Judge Vance further explained that the proposed amendments would (1) add a 14-day notice requirement for subpoenas requiring appearances for trials, hearings, or depositions; and (2) allow the witness fee to be tendered at the time and place of appearance instead of at the time of service.

Judge Vance then reported that the Advisory Committee heard testimony from 11 witnesses and received close to 200 comments, most of which were from professional process servers who opposed the rule change as either detrimental to their business or having other fundamental defects. After review of these concerns, the Advisory Committee concluded that these objections were not persuasive and did not warrant a change to the published rule. The Advisory Committee

did vote, however, to modify the third paragraph of the committee note to address certain concerns raised by committee members regarding service by U.S. mail or commercial carriers. The Advisory Committee voted to modify the committee note to specify that for service by U.S. mail or commercial carriers, the person identified in either Rule 45(b)(1)(A)(i) or (ii) must receive the service. The modification to the committee note also removed a potentially confusing reference to Rule 45(b)(4). The Advisory Committee's changes to the committee note are identified on page 311 of the agenda book. With this change to the committee note after publication, the Advisory Committee voted unanimously to recommend final approval of the amendments to Rule 45(b)(1).

Professor Marcus added that several public comments raised concerns about the language that the subpoena must be delivered at an individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there, even though this language was taken directly from Rule 4. Additionally, many process servers commented that a process server is necessary. But the rule does not currently say this. It requires someone who is at least 18 years old and not a party to the action. Perhaps many people would prefer to have a professional handling service, but the rule does not require it.

The members then discussed the proposed amendments.

A judge member asked why the committee note was modified to address confirmation of actual receipt by the subpoena recipient but the text of the rule did not say this. A lawyer member added that the last paragraph of the committee note also suggested that tender of the fee at time of service was only required where practicable, but the rule text does not say this. As to the latter question, Professor Marcus responded that it is possible to change the rule language, but the rule does not make service ineffective if the fee is not tendered at the same time. As to the former question, Professor Marcus thought that the rule was clear that if a party had to confirm actual receipt, the receipt would need to be by someone who would have been a proper recipient. A judge member then asked why the rule no longer requires tender of payment at the time of service. Professor Marcus responded that the Advisory Committee had learned that delivering the check was sometimes an obstacle to fulfilling the service and that lawyers who want witnesses to appear would not want the cost of travel to stand in the way. Additionally, the Advisory Committee heard that attorneys may not want to serve those subpoenas with the fee if a case may settle and may prefer to instead to pay the fees when the witness appears. The judge member then asked whether there were ever instances of witnesses not being paid when they appeared to testify. Professor Marcus said that the rule requires payment at the time the witness appears, not after the testimony occurs, which prevents a party from saying that they would not pay a witness unless they like what the witness has to say.

Judge Dever suggested that revisions to the proposed rule text may be appropriate in accordance with the committee members' suggestions. After a break, Judge Vance and Professor Marcus proposed new language for the rule text on page 399, line 23 of the agenda book to add, after "of actual receipt," the following: "by a person identified in (i) or (ii)[.]" This change would align with the language in the committee note on page 401, line 67.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 45(b)(1)—as revised to include "by a

person identified in (i) or (ii)” and set forth in the Appendix to these minutes—and recommended their adoption.

f. Rule 81

Judge Vance presented the Advisory Committee’s request for final approval of amendments to Rule 81, which concerns jury demands after removal. The text of the proposed amendments appears on page 408 of the agenda book, and the written report begins on page 312.

Judge Vance explained that the proposed amendments were designed to eliminate uncertainty about whether and when a jury demand is required after a state case is removed to federal court. The proposed amendments: (1) preserve the right to a jury trial if a jury demand is made before removal; and (2) allow a jury demand under Rule 38(d) after removal if no demand was made in the state court if made within 14 days from when a party files a notice of removal or is served with a notice of removal by another party. Judge Vance added that there were four comments on the rule after publication, all favorable. The Advisory Committee voted unanimously to recommend final approval of the amendment to Rule 81(c)(3) as published.

Following this presentation, Professor Beale raised a question regarding language on page 409, lines 18 to 20, about whether the word “one” refers to a jury trial. Judge Vance confirmed that this was correct, and Professor Kimble said that he thought that the language was clear as a matter of style.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 81 and recommended their adoption.

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

Judge Mosman presented action items on behalf of the Advisory Committee on Criminal Rules, which last met on April 29, 2026, 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 413. The action items sought final approval of amendments to Rule 17 and proposed amendments to Rules 11 and 32 for publication and public comment. The proposed amendments for publication and public comment were in addition to the proposed privacy amendments and amendments relating to electronic notice and filing by self-represented litigants approved earlier in the meeting.

1. *Amendments for Final Approval – Rule 17*

Judge Mosman presented the Advisory Committee’s request for final approval of amendments to Rule 17 relating to subpoenas for production in criminal cases. The text of the proposed amendments appears on page 490 of the agenda book, and the written report begins on page 414.

Judge Mosman explained the major changes proposed in the rule amendments, which are outlined on page 417 of the agenda book. First, the amendments expand the scope of proceedings for which a subpoena is available from trials to also include detention hearings, sentencing hearings, and the like. Second, the amendments relax the evidentiary standard for subpoenas to a “likely to be admissible” standard. Third, the amendments clarify when a motion and order is required to obtain a subpoena. Fourth, the amendments allow *ex parte* requests for subpoenas

upon a showing of good cause. Finally, the amendments allow direct production of responsive items to counsel in some instances. Judge Mosman further informed the Committee that the Advisory Committee received significant public comments, both written and oral, during the public comment period noting that the oral testimony was entirely from victims' representatives.

Judge Mosman next described the Advisory Committee's changes to the proposed amendments after publication, described in detail in the Committee Report starting at page 410 of the agenda book, noting that any changes were adopted unanimously after serious and substantial discussions. These post-publication changes included changes to Rule 17(a) (a technical correction making explicit that a subpoena can require testimony, production, or both testimony and production); Rule 17(c)(3)(A) (clarifying that a motion and order for a subpoena seeking personal or confidential information about a victim from a third party is required when the third party receiving the subpoena is a victim); and Rule 17(c)(5) (addition of presumptive requirement of return to the court for subpoenas requiring the production of personal and confidential information about a victim).

Judge Mosman added that the Advisory Committee also concluded that none of the proposed post-publication changes to Rule 17 required republication. Professor Coquillette later added that deciding whether republication is required depends on whether there are people who are interested in the rule change who are taken by surprise by a new rule, and he did not feel that in this context people would be taken by surprise by the proposed changes after publication.

On the Advisory Committee's post-publication changes to Rule 17(c)(3)(A) (and a corresponding change in the committee note), Judge Mosman explained that the Advisory Committee decided to add "including a victim" in this portion of the rule to make clear that victims are third parties for purposes of the protection of this particular rule. This change reflected concerns from a commenter, Professor Paul Cassell, that the rule, which requires a motion and order for subpoenas seeking personal and confidential information about victim from a third party, as well as notice to the victim whose information is sought, did not apply to subpoenas seeking such information from victims themselves, because they were not "third parties."

Judge Mosman next explained changes to Rule 17(c)(5) regarding the place of production with a corresponding change to the committee note. The commenters expressed strong concerns with privacy and safety based on information gained from records, such as medical or psychiatric records, that would reveal when and where recurring appointments were held. This information could make its way from counsel to the client putting the person in danger of unauthorized contact. As amended after publication, Rule 17(c)(5) added "unless the court orders otherwise" to clarify that the court would retain discretion to order otherwise. Judge Mosman also explained that absent the court ordering otherwise, the defaults set forth in the rule would apply (such as return to the court if the subpoena is issued by a self-represented party or requires the production of personal or confidential information about a victim). Professor Beale directed the Committee to page 422 of the agenda book, which contained a description of how the process had been working in many districts to allow victims the opportunity to ask the court to impose limitations or to negotiate with the party seeking that material. Professor Beale also explained that while this may be a substantial change to the published rule on place of production because it altered the default, republication was not required because this change put back in place the current

practice and there was no controversy in the Advisory Committee, from the defense lawyers, judges, or prosecutors, as to whether this should be done.

The members then discussed in detail the proposed amendments over the course of the first and second days of the meeting. Those discussions included the following comments and feedback.

First, a judge member asked about two potential language changes in proposed Rule 17(c)(2)(B) on page 493: (1) on line 53, change the word “seek” to match language elsewhere in the rule saying “requires production of” something; and (2) on lines 56-57, remove the words “to the party” to read simply “are not reasonably available from another source.” The judge member also asked about a change in proposed Rule 17(c)(2)(C) on page 493, line 66, to update the reference from “(3) or (4)” to include the subsection (c). Professors Beale and King supported the changes to the word “seek” and adding subsection (c) to the references to (3) and (4). As to the suggestion to remove “to the party,” Professors Beale and King explained that the language “to the party” is necessary because some information that the subpoena seeks may not be available to the defense but may be available to the government. For example, under the Stored Communications Act, the government could get information that an individual could not and therefore that information would not be reasonably available to the person who needed it. In light of this explanation, the judge member agreed that the language in proposed Rule 17(c)(2)(C) need not be changed.

Second, the judge member raised concerns about the committee note to Rule 17(c)(6), which he felt should address a timing issue with respect to the required disclosure of an item received in response to the subpoena and Rule 16, which is referenced in the committee note (page 511, line 527-531). The judge member had concerns about Rule 16, which only requires production of discoverable items “before trial,” and the timing of the disclosure under the proposed amendments to Rule 17(c)(6) at earlier proceedings (such as detention hearings and suppression hearings). This timing could lead to a surprise for the opposing party when the document received under the subpoena is introduced, and he anticipated disputes about timing issues like this that are not addressed in the committee note.

Professor King explained in response to these concerns that the point of the proposed amendments to Rule 17(c)(6) was to address case law from some districts that required a party seeking a subpoena to disclose everything received in response to that subpoena to the other side—even if the request for the subpoena was an *ex parte* application. The proposed amendments in Rule 17(c)(6) seek to maintain the protections and scope of discovery under Rule 16 when the items are received through a Rule 17 subpoena. With the focus on this goal, the timing of disclosures was not addressed in the proposed amendments in Rule 17(c)(6). That issue, as Professor King explained, would be determined by case law or another rule. Professor Beale added that Rule 17 reflects the notion that whatever a party gathers by subpoena or by its own investigative efforts is not discoverable until the trial itself. Judge Dever further added that Rule 16, and not amended Rule 17, would have to answer when the items are discoverable. Judge Mosman also responded that there may be a weakness in Rule 16, which only requires disclosure before trial, with the adoption of the proposed amendments to Rule 17 on pretrial subpoenas for production, but courts could continue to handle issues of timing through existing practices relating to discovery when suppression and detention hearings take place. Judge Dever added that in his experience, if information was received at a hearing that a party had not seen, it

would not be uncommon for a lawyer to ask for a brief adjournment of the hearing to review the evidence presented.

The members then discussed potential revisions to the text of Rule 17(c)(6) to address the concerns raised. On page 497, lines 133-137, the judge member suggested the following: (1) insert the word “only” after “party” on line 134; (2) remove the word “only” from line 136, and (3) add “and when” to lines 136-137. The suggested text would read, “[a] party only must disclose to an opposing party an item that the party receives from a subpoena recipient if and when the item is discoverable.” Professor Hartnett supported adding the language “if and when” to clarify the intent to refer readers to Rule 16 on the timing of discovery. Both Judge Mosman and another judge member said that they did not see any downside to including the “if and when” language, although this language would not address the timing issue. Professor Garner added that as a matter of style, if the addition of “if and when” is adopted, the “only” should not be moved within the provision and should say “only if and when.” He also offered two alternative language choices - that a party must disclose “as soon as the item becomes discoverable” or that a party “need not disclose to an opposing party an item receives from a subpoena’s recipient unless and until the item becomes discoverable.”

The judge member also raised concerns about use of the language “must” disclose in the beginning of the text to Rule 17(c)(6) (page 497, line 134), which he felt could raise an issue of reciprocal discovery that could be very concerning to both the government and the defense. Judge Mosman agreed that the word “must” could be removed.

The members also discussed whether reference to case law would be appropriate in the committee note to address the interplay between Rule 17 and Rule 16. A judge member asked whether reference to case law from judges who have already allowed pretrial subpoenas even without the amendments to Rule 17 would be helpful on the disclosure issue. Professor King said that there were districts where third-party subpoenas were allowed for non-trial hearings and judges had managed those situations as needed such as by allowing a recess if necessary to accommodate the other party or issuing a standing order addressing subpoenas for non-trial hearings. Professor Coquillette added that it was dangerous to reference case law to make a point in the committee note because the committee note could not be changed unless the rule was changed. If a case were overruled or changed in a significant way, the rule would still contain a clearly misleading committee note. Professor Capra added to this discussion by noting that the only case cited in the committee note was *Nixon*, which could not be avoided given the nature of the amendments. A lawyer member said that he thought the suggestion was not to add specific cases to the committee note, but to instead point out that there was case law governing the timing of discovery, which would not run afoul of the rule against citing cases.

Following this discussion, Judge Dever asked Professor Garner for his views on proposed revisions to the rule text to address the concerns discussed. Professor Garner responded that he understood the consensus to be that on page 497, line 134, the text in Rule 17(c)(6) would read, “party need not disclose to an opposing party an item the party received from a subpoena’s recipient unless and until the item becomes discoverable.” Alternatively, the rule could move “unless and until” to the beginning of the sentence, such that it would say that “unless and until it becomes discoverable, a party need not disclose . . .” A judge member however, felt that the

issue was the word “discoverable” in 17(c)(6), which does not answer the timing question. He did not think that adding “if and when” would solve the timing problem.

The members then discussed the committee note’s language with respect to Rule 17(c)(6) and discovery. Professor Beale and Professor King then offered suggestions for revisions to the committee note based on the feedback. This included revising the committee note (page 511, line 530) to refer to “other discovery rules and applicable case law”; to add “and the timing of such disclosure” after “subpoena” on page 511, line 529; and to restate the sentence as “Rule 16, other discovery rules, and applicable case law” on line 530. A judge member also noted that the existing committee text (page 511, line 530) stating that “Rule 17 does not modify that carefully developed law” was not accurate because one of the purposes of the change to Rule 17 was to modify case law holding that parties must deliver subpoena responses to each other regardless of discovery obligations. Professor Beale agreed the language could be changed regarding Rule 16 to be clearer. Professor Garner also noted generally referencing “case law” was unclear as to whether that referred to case law as it existed as of the adoption of the rule or referred to an ongoing evolution of case law that would come after adoption of the rule. A consensus was then reached to delete reference to the words “case law” in the committee note.

Professor Sachs suggested that instead of case law, the committee note could reference “other applicable sources of law” to make the point that there are other authorities which govern this issue. Professor Beale responded that a general reference would not work because the rule change was intended to limit the ability of courts to require things that were not governed by existing discovery requirements, especially on the part of defendants. A judge member then asked if Rule 17(c)(6) was needed if the only purpose was to stop judges from ordering defendants to disclose things that they otherwise would not need to under Rule 16. The judge member suggested that if it needed to be included, it could say that the rule does not create disclosure obligations separate from those that already exist. With this feedback, Judge Dever suggested returning to this issue the next day to give the reporters time to develop revised language for Rule 17(c)(6).

Judge Mosman then directed the Committee’s attention to the committee note to Rule 17(c)(3) (lines 422-436 on page 508 of the agenda book) regarding *ex parte* applications for subpoenas for personal and confidential information (a good cause standard to proceed *ex parte*) and the notice to victims requirement (required absent “exceptional circumstances”). The Advisory Committee revised language in this section of the committee note after it heard testimony from victims’ rights advocates that the “exceptional circumstances” exception to the notice requirement, if satisfied by the disclosure of sensitive defense strategy, will be interpreted too broadly to almost always apply. In an effort to strengthen protections to victims, the Advisory Committee revised the committee note accompanying the new provision allowing an *ex parte* subpoena for good cause to emphasize the important distinction between the good cause requirement for an *ex parte* motion—which does require laying out defense strategy to some degree—and the mere notice requirement—which requires only notice there is a subpoena but not an explanation of what was requested in the subpoena. Professor Beale and Professor King noted that the *ex parte* provision was not intended to create “exceptional circumstances” or erode the notice requirement, and that the new committee note explains how the new provision on good cause for *ex parte* applications relates to the existing notice requirement for victims. Finally, Judge Mosman noted that on line 426 of the committee note to Rule 17(c)(3), the words “a

showing” appear in brackets as a stylistic suggestion he made for the Standing Committee to consider.

As a final post-publication change, Judge Mosman next turned to the committee note’s discussion of Rule 17(c)(2)(B)(iii) (requiring that each item requested in the subpoena either be, or contain information that is, “likely to be admissible as evidence in the designated proceeding”), and revisions made to lines 326-328 on page 505. The Advisory Committee made changes to language in the committee note regarding the modified *Nixon* standard because the previous sentence had been wordy and unclear.

Judge Mosman then explained that the Advisory Committee recommended no change to the published rule on the expanded scope of proceedings in which subpoenas are available, despite hearing opposition from victims’ advocates who argued it would greatly expand the use of subpoenas for victim information. Judge Mosman noted that a substantial number of districts already did not limit Rule 17 subpoenas to trial, many cases are resolved without any pretrial hearings, and few sentencing hearings involve third-party information that involves a subpoena. Two lawyer members asked whether the testimony from victims’ advocates included specific examples of how expanded access to subpoenas in districts that allowed it had created a problem. Judge Mosman and Professor Beale responded that this question was asked at the hearings and no one could provide specific examples. The lawyer member then asked whether the victims’ advocates had an alternative proposal for Rule 17. Judge Mosman answered that they offered an unworkable suggestion to restrict it to trials and to have a carve-out for victims or certain kinds of crimes if it were expanded beyond trials. Professor Beale added that while the victims’ advocates opposed the amendments, if the rule were to be amended, they vociferously opposed the *ex parte* provisions, the expansion to proceedings other than trial, and the loosening of the *Nixon* standard.

A judge member then asked whether the Advisory Committee heard from any tribes on this issue. Professor Beale said that while the Advisory Committee had not heard from anyone in tribal government, when the Advisory Committee met in Phoenix at an earlier meeting to evaluate the proposed amendments, it heard from several local witnesses about their experiences with looser standards and more subpoena availability. Many of the people from Arizona, including the prosecutor, stated that they had not been applying *Nixon* strictly for years and had not had any difficulty. Judge Mosman added that the Advisory Committee heard from one witness from Oregon, whose responsibilities included working with tribal governments and victims from tribal cases, and the issue of tribes was not raised.

Judge Mosman then turned to another public comment that did not lead to a revision of the published rule. One commenter suggested that the Supreme Court precedent (*Carpenter*) regarding cell site location information suggested that the expansion of subpoenas would run afoul of the Fourth Amendment. Judge Mosman stated that while *Carpenter* may have been limited to its facts and not applicable to any kind of information that might be sought in Rule 17 subpoenas, the Advisory Committee was concerned about privacy interests in personal and confidential information. As a result, after a lengthy discussion, and as discussed on page 433 of agenda book, no text change was recommended for the rule, but the Advisory Committee added a short statement to the committee note about judicial oversight, reminding readers that judges have the ability in some instances to impose greater protections. The Advisory Committee also

suggested other approaches to protect privacy interests, including facilitating the development of best practices and working with the FJC to monitor the implementation of these amendments to see whether problems develop. Professor Beale added that the Advisory Committee expected that once the rule goes into effect, it would start to see the development of best practices, local options, and any problems that may arise and that by closely monitoring the situation, the Advisory Committee would be able to take appropriate action. Professor Coquillette expressed disagreement, however, with putting guidance in the committee note rather than a bench book. A lawyer member said that he supported the Advisory Committee's approach to privacy protection because personal and confidential information is now held by many third parties, and sometimes those third parties are not vigilant about protecting it. Judge Mosman also added that seeking personal and confidential information, independent of Rule 17, involved application of many state and federal privacy laws. A judge member also expressed support for the Advisory Committee's approach and noted that many judges look at the committee notes for guidance before exploring best practices. Judge Dever added that guidance in the committee note could remind judges that they also have the power to address issues in protective orders.

At the close of this discussion, a judge member spoke in favor of the proposed amendments and that hearing about how the current rule was being implemented in different ways across the country convinced him that significant amendments to Rule 17 were necessary. He also noted that there would likely still be variability in how judges approach it, but that this could be valuable as the Advisory Committee gained more information over time. He also stated his feelings that the rule did a careful job of balancing competing concerns.

With this feedback, and after adjourning until the next day to allow time to revise the rule, Judge Mosman presented a revised version to the text of Rule 17(c)(6) to solve the problem of judges who make Rule 17(c) subpoenas contingent upon disclosure to other parties. Judge Mosman added that the language in brackets was supported by the reporters but DOJ would like the bracketed language eliminated. Judge Mosman stated that the committee note, on page 510, line 512, quoted the former language in (c)(6), so that would need to be changed to match the new language.

The revised language to replace the text on page 497, lines 134-137, would read as follows:

Disclosure and discovery requirements [established by the Constitution, statute, and other rules] are not altered by this rule, and govern the disclosure of produced items to a party that did not request the subpoena.

Professor Garner said that if the bracketed language were removed, the comma after "rule" should be removed. Professor Beale added that the title of (c)(6) would be revised to, "Disclosing to Other Parties the Items Produced." Professor Bartell said that the revised language essentially said that disclosure and discovery requirements govern disclosure, and questioned whether that was the intent. Professor King said that the word "discoverable" in the formerly proposed (c)(6) raised concerns about how this applied to non-trial proceedings. Inserting "disclosure" not only added a set of law to the discovery rules for trial, but also added disclosure rules imposed by the Constitution that were not part of discovery. Professor Bartell said that she understood this, but questioned whether the end of the provision should say "govern

the disclosure and discovery,” or “govern the production of items to a party that is not requesting to see it.”

A judge member asked for more information on concerns about including the bracketed language. Judge Mosman said that his concern with deleting the language was that, if the rule simply says that “disclosure and discovery requirements are not altered by this rule,” it leaves open the possibility that a court order or other local rule might still remain in place. If the rule says that the only place a court can look for these requirements are the Constitution, statute, and other rules, it means that the court cannot find them in its own local rule requiring disclosure. Ms. Shapiro, on behalf of DOJ, stated her concern that by listing out sources in this new version, it would prevent judges from issuing orders with disclosure requirements that are not covered by the Constitution, statute, or other rules. A party might argue that the court cannot order something to be disclosed because it was not otherwise in the rule, statute, or Constitution.

Another judge member asked whether “other rules” in the bracketed language could be interpreted to mean “local rules.” Ms. Shapiro said yes, this was another concern, whether “other rules” referred only to federal rules. Professor Sachs suggested changing “other rules” to “other law,” given that there may be common law on this issue. He also suggested beginning the provision by saying “Any disclosure and discovery requirements,” to avoid suggesting that there are such requirements. Professor Capra suggested ending the sentence after “rule,” but committee members said that the second clause was the most important point in the provision. Professor Garner expressed his support for using “other law,” to foreclose the possibility of including local rules, which he thought would arguably be included in “other rules.” Other members argued that rules were law, and court orders would be considered law as well.

Another judge member had concern that about removing the strong language in the original draft stating that a party must disclose “only if” the information was discoverable. With the revised language, a judge could still conclude that revised Rule 17 did not change the parties’ obligations, but those obligations existed now, and courts had issued orders saying that a party must turn over any information obtained in response to its subpoena. Professor Beale responded that those who discussed the revisions considered saying that a court “must not” order disclosure unless discovery was otherwise required. A lawyer member asked whether the point was not to say that courts cannot do something, but instead that this particular rule does not authorize them to impose a disclosure requirement other than those established by other laws. Professor Beale said that some judges already thought that they had this authority and that fairness requires disclosure to the other party. That authority was not previously in Rule 17, so these judges may still find that authority elsewhere, outside of Rule 17. The lawyer member said that this proposed language would not prevent those judges from doing so, because it would confirm that other existing law gives courts authority to require disclosure.

With this additional feedback another draft version of Rule 17(c)(6) was provided for the Committee’s consideration:

This rule does not

(a) authorize the court to disclose—or require disclosure of—a produced item to a party that did not request the subpoena; or

(b) alter the disclosure requirements set by the Constitution, a statute, or other rule.

Professor Beale said that this language responded to the fact that if the material were produced to the court, the court could simply tell the clerk to send it to all parties. She thought, however, that the original language worked well. Ms. Shapiro, on behalf of DOJ, said that this language said that was incorrect, because it said that the rule did not authorize the court to disclose a produced item to a party that did not request it, but it may be that the item was discoverable, so the court should be ordering it disclosed. Professor Struve suggested that “other authorities” might be an option, rather than “other rules.”

A judge member strongly opposed this proposed language because he felt it stated the opposite of what the original draft Rule 17(c)(6) had said, which was that a party “must disclose.” The revised draft said that the rule did not even authorize the court to disclose. He suggested that the Committee focus instead on the first language suggested and debate whether to include the bracketed language. He favored removing the bracketed language so that courts retained whatever existing timing rules they had on reciprocal discovery. Professor Kimble added that the Standing Committee was trying to avoid saying that the court “must not,” do something but there were 22 uses of “must not” in the Criminal Rules and there was no strict policy against saying that the court “must not” do something. Another judge member said that he had also found a few instances of the Criminal Rules stating that “the court must not,” and those were situations where a statute explicitly prohibited the court from doing something. Here, however, the Committee would be saying that a court “must not” require disclosure, which would be difficult because it could not foresee all of the circumstances that could arise.

Taking this feedback, Judge Mosman agreed that neither revision completely accomplished what the Advisory Committee had hoped to accomplish, but the case law and the revised language and committee note would teach judges that they could not condition use of Rule 17 subpoenas categorically on disclosure of everything obtained through a subpoena. He then recommended moving forward with one of the two versions of the language first proposed this morning, either with or without the brackets. For further clarity, Judge Dever asked whether anyone other than DOJ was opposed to including the bracketed language and changing “rules” to “law.” Two judge members said that they preferred not to include the bracketed language but were not opposed to it. A third judge member agreed and suggested saying, “This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.” Professor Garner suggested instead saying, “Discovery and disclosure requirements, which are not altered by his rule, govern the disclosure.” Judge Dever then suggested that Judge Mosman and the reporters settle on another revision.

After additional break, Judge Mosman presented the following language for Rule 17(c)(6):

Disclosing to Other Parties the Items Produced. This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.

He also proposed two changes to the committee note: first, to change the quoted text of (c)(6) to match the new language, and second to add “regulation and timing regarding” before

“disclosure” on line 527 on page 511. Judge Mosman said that this language made the point that use of Rule 17 subpoenas should not be conditioned upon automatic disclosure to other parties. It also changed the title of (c)(6) to match the usage elsewhere in the rule. Professor Sachs clarified that the language in the committee note would now say that “the regulation . . . is regulated by . . .” He suggested changing “regulated” to “governed,” and others suggested changing “is” to “are,” since there were multiple subjects (regulation and timing).

Professor Beale then set forth the proposed changes. On page 493, line 53, “seek” would be changed to “require production of[.]” On that same page, line 66, “(c)” would be inserted before “(3)[.]” On page 506, line 376, “(c)” would be added before “(3)” and at line 384, “(c)” would be inserted before “(2)[.]” On page 508, line 426, the brackets would be deleted. On pages 510 and 511, the committee note would be changed as just discussed. Paragraph (c)(6) would be revised as just discussed.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 17— as revised to include the changes discussed in the prior three paragraphs and set forth in the Appendix to these minutes— and recommended their adoption.

2. Preliminary Drafts for Publication and Public Comment

a. Rule 11

Judge Mosman next presented the Advisory Committee’s request for approval for publication for public comment on proposed amendments to Rule 11. The text of the proposed amendments begins on page 521 of the agenda book, and the written report begins on page 447. Judge Mosman began by explaining that the amendments to Rules 11(b)(1)(M) were driven by 2025 amendments to the U.S. Sentencing Guidelines, which eliminated the concept of departures. As a result, as Professor Beale added, the proposed changes would delete the language requiring the sentencing judge to inform the defendant of possible “departures under the Sentencing Guidelines.” Judge Mosman further added that tying language in Rule 11 to the Sentencing Guidelines was impractical because it would require a change every time the Sentencing Guidelines changed.

The members then discussed the proposed amendments.

A judge member raised concerns that the proposed amendments went further than removing the reference to departures and deleted the language requiring the judge to inform the defendant that the court has an obligation to calculate the applicable Sentencing Guideline range. Professor Beale responded that under the new two-step process in the Sentencing Guidelines, after determining the Guideline range, the court must consider the other applicable factors in § 3553. The Rule 11 Subcommittee felt that the rule text should follow this simplified instruction. The judge member agreed but said that some case law provides that a judge has an independent obligation to calculate the range, and if the rule just refers to the Sentencing Guidelines, then this suggests the judge has a smaller obligation than to accurately determine what the Guideline range is before applying the § 3553(a) factors.

Other judges then discussed their views on this issue, some saying that there is no independent obligation outside of what § 3553(a) provides, and others supporting the idea that the judge does have an independent obligation that should be recited to the defendant. During this discussion, Judge Mosman reminded members that Rule 11 refers only to what the court must tell a defendant at a plea colloquy. Professor King responded that DOJ, the defense bar, the subcommittee, and the Advisory Committee felt that the language in Rule 11 should not include calculating the advisory guideline range because of the simplification process that the Guidelines were currently undergoing and the proposed amendments were designed to avoid having to change Rule 11 again. Judge Vance stated, however, that the proposed amendment may communicate to judges that they no longer had to actually calculate the range by assessing the Guidelines.

Following this discussion, the members discussed possible changes to the language in the proposed rule text. Judge Furman suggested that the language “including the Sentencing Guidelines” at the end of the proposed rule was unnecessary because that factor is listed in § 3553(a) and did not need to be repeated. Professor King responded that the Rule 11 Subcommittee had debated whether to include a reference to the Sentencing Guidelines at all because they are part of the statute but decided to leave it in because judges are accustomed to it.

The members, advisory committee chairs, and reporters then discussed potential revisions that could be made to address the concerns raised about informing defendants of the obligation to calculate the range. Suggestions included bracketing some words or omitting only the words “possible departures under the Sentencing Guidelines.” A judge member suggested including more words in brackets so that the Advisory Committee could obtain more public feedback. Judge Mosman suggested that the Committee consider whether to approve the Advisory Committee’s proposed language with the addition of bracketing “calculate the applicable Sentencing Guidelines.” The provision would read, “in determining a sentence, the court’s obligation to [calculate the applicable sentencing guideline range and] consider the factors under 18 U.S.C. § 3553, including the Sentencing Guidelines.” Judge Furman asked whether it would be necessary to include two references to the Sentencing Guidelines. After further discussion, Judge Mosman said that he and the reporters would propose language for the Committee’s consideration the following morning.

After the midmorning break on the second day, Judge Mosman proposed language for the Standing Committee’s consideration that would remove “possible departures under the Sentencing Guidelines,” from Rule 11(b)(1)(M), such that the rule would read:

(M) in determining a sentence, the court’s obligation to calculate the applicable sentencing-guideline range and to consider that range and other sentencing factors under 18 U.S.C. § 3553(a);

Following this discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 11 as revised for publication and public comment.

b. Rule 32

Judge Mosman then presented the Advisory Committee's request for approval for publication for public comment on proposed amendments to Rule 32. The text of the proposed amendments begins on page 523 of the agenda book, and the written report begins on page 450. Judge Mosman explained that this proposed amendment, which relates to the amendment to Rule 11, addresses current language in Rule 32(h) referring to possible departure under the Guidelines. The amendment would strike the language in Rule 32(h) and mark it reserved in order to preserve the numbering system in the rule.

With no questions or further discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 32 for publication and public comment.

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

Judge Furman presented the action items on behalf of the Advisory Committee on Evidence Rules, which last met on May 7, 2026, 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 525.

1. *Amendments for Final Approval*

a. Rule 609

Judge Furman presented the Advisory Committee's request for final approval of amendments to Rule 609. The text of the proposed amendments begins on page 572 of the agenda book, and the written report begins on page 526.

Judge Furman provided background on the proposed amendments to Rule 609, which governs impeachment through prior convictions. The proposed amendments add a single word, "substantially," to Rule 609(a)(1)(B), to make the balancing test a bit more favorable to a testifying defendant. The other proposed amendment was to address a split in authority under Rule 609(b) because the rule did not prescribe the endpoint of the ten-year period for older convictions. The proposed amendment to Rule 609(b) clarifies the end date to be the date trial begins.

During the public comment period, the Advisory Committee received fifteen comments, including comments from the Magistrate Judges Association, the American College of Trial Lawyers, the New York City Bar, the National Association of Criminal Defense Lawyers, and others. The comments were strongly supportive with the sole critical comment proposing a different endpoint under Rule 609(b), which the Advisory Committee had previously considered and rejected. Judge Furman also noted that one comment urged the Advisory Committee to address the Supreme Court decision that made the court's decision appealable only if the defendant took the stand, but the Advisory Committee had already decided not to do address that issue. With no changes after publication, the Advisory Committee recommended final approval of the amendments by a 7-2 vote, with DOJ in the majority.

The members then discussed the proposed amendments.

A judge member raised a question about language in the committee note and whether it would allow the prosecutor to explore details of the crime underlying the past conviction. Judge Furman responded that the rule amendment would not alter the existing law, but the committee note did address a problem in which some courts had allowed prosecutors to ask only about the fact of the conviction itself, which left the jury guessing what the nature of the felony was. Judge Furman said that the committee note did include, at the Standing Committee's suggestion, the language, "absent agreement by the parties," because there could be situations where the defendants preferred allowing more questions. Professor Capra added that there is substantial case law saying that the questioning cannot delve into the facts of the prior conviction, and the committee note states that Rule 608 cannot be used as an end-run around the limitations in Rule 609.

With no further discussion, upon a motion and a second, with no opposition, the Standing Committee gave final approval to the amendments to Rule 609 and recommended their adoption.

2. Preliminary Drafts for Publication and Public Comment

a. Rule 902(1)

Judge Furman next presented the Advisory Committee's request for approval of publication for public comment on a proposed amendment to Rule 902(1). The text of the proposed amendment begins on page 582 of the agenda book, and the written report begins on page 527.

Judge Furman reported that the proposed amendment would add federally-recognized Indian tribes and nations to the list of entities in Rule 902(1)(A) whose sealed and signed public documents are self-authenticating. Judge Furman noted that this amendment was suggested by Judge Frizzell in the Northern District of Oklahoma and has gained more significance after the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), which expanded federal jurisdiction in Indian country. Judge Furman also noted that the Advisory Committee solicited input from the tribes themselves and Judge Furman wrote to the 578 federally recognized tribes and nations. Although only eight responses were received from the tribes and nations, all strongly supported the proposed amendment to recognize tribal sovereignty and dignity and address the burden and expense of sending people from the tribes long distances to authenticate records.

Judge Furman and Professor Capra then explained the difference of opinion on the issue expressed by Ms. Shapiro on behalf of DOJ in support of the amendment, and the Federal Defender, who opposes it and voted against moving forward with publication. The Federal Defender felt that such records could be admitted under either the business records exception or Rule 902(11) and that authentication problems in cases were the result of prosecutor problems and not the rules. The Federal Defender also cited inconsistent and problematic record-keeping among tribes and the fact that some tribes did not have robust FOIA-type disclosure rules and therefore restricted access to their records. Professor Capra added that the Federal Defender was concerned that a party would no longer receive a Rule 902(11) certificate signed by a real person that described how the records were kept. Judge Furman added that the FJC had done some research into how often this issue came up, and it was very rarely litigated.

The members then discussed the proposed amendment.

A lawyer member who practices in civil litigation added that federally recognized tribes are increasingly appearing as government entity plaintiffs in civil litigation, particularly environmental litigation. She supported the amendment for both symbolic dignitary inclusion and practical application to tribes as parties to civil cases because it would make the discovery burden they face equal to that of other government parties. Ms. Shapiro, on behalf of DOJ, expressed support for the rule to put federally-recognized tribes on the same footing as the smallest territories or municipalities. She also noted that the rule amendment would not prevent anyone from challenging the authenticity of these records at trial. Judge Furman added that the committee note underscored the point that the amendment did not preclude challenging the documents at trial.

With no questions or further discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendment to Rule 902(1) for publication and public comment.

b. Rule 104

Judge Furman presented the Advisory Committee's request for approval of publication for public comment on proposed amendments to Rule 104. The text of the proposed amendments begins on page 584 of the agenda book, and the written report begins on page 528.

Judge Furman explained that the proposed amendment to Rule 104(a) is intended to codify the Supreme Court's decision in *Bourjaily v. United States*, 483 U.S. 171 (1987), which held that the preponderance of the evidence standard applies in deciding preliminary questions under the rule. The proposed amendment to Rule 104(b) would eliminate the confusing concept of conditional relevance and incorporate the standard for determining whether evidence is relevant from the Supreme Court's holding in *Huddleston v. United States*, 485 U.S. 681 (1988). Judge Furman further added that the Advisory Committee considered adding the *Huddleston* standard into Rule 401 insofar as it defines relevance. Because there is a great deal of case law interpreting Rule 104(b), however, the Advisory Committee decided to simply amend Rule 104(b).

Professor Capra added the amendment to Rule 104(a) was also necessary because one of the concerns with proposed new Rule 707 (governing opinions generated by artificial intelligence) was whether the preponderance of the evidence standard needed to be put in new Rule 707 as found in Rule 702. Amending Rule 104(a) to include the preponderance standard would eliminate the need for this addition to new Rule 707 if adopted, or to any other rule that is amended in the future. Judge Furman also noted that at the Advisory Committee meeting, a Standing Committee member had suggested amending Rule 104(a) and not 104(b), but the Advisory Committee decided that without the amendment to Rule 104(b) to include the proper standard, a court could inadvertently conclude that relevance questions are subject to the preponderance standard.

During his presentation, Judge Furman also called the Committee's attention to two stylistic changes that needed to be made to the committee note to change the word "relevancy" to "relevance" (page 587, lines 87 and 94). Professor Kimble also raised a style point and said that

on lines 6-7, “Unless otherwise provided in these rules” should instead say, “Unless these rules provide otherwise.”

The members then discussed the proposed amendments.

A judge member asked whether there was a problem in courts applying the improper standard under Rule 104(b) that needed to be corrected. Professor Capra responded that there were many points of confusion in Rule 104(b), including that the term “condition” could be misinterpreted to mean any condition to admissibility, not just a conditional fact. Professor Capra also pointed to clarifying that the lower standard of proof applies.

Another judge member asked whether the explanation of relevance and examples set forth in the committee note (page 587, line 78) was necessary. Judge Furman said that it could be taken out, but said that this was only for publication, and was intended to explain the “common knowledge and experience” language set forth in the rule. A lawyer member said that he found the comment helpful to understand “common knowledge and experience.” The judge member agreed that for purposes of publication, the example was fine.

Another judge member raised a concern about language in the committee note (page 587, line 88) stating that the judge “would” overrule the objection, but on line 92, the committee note said that the judge “would likely” reach a certain conclusion. At his suggestion, Professor Capra agreed to add the word “likely” to line 88 as well.

With no further questions or discussion, upon a motion and a second, with no opposition, the Standing Committee approved the proposed amendments to Rule 104 for publication and public comment, as revised to modify the rule text on page 584, line 6-7 (changing “Unless otherwise provided in these rules” to “Unless these rules provide otherwise”); and the committee note on page 587 (changing “relevancy” to “relevance” on lines 87 and 94, and adding “likely” after “would” on line 88).

4. INFORMATION ITEMS – REPORTS OF THE ADVISORY COMMITTEES

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

Judge Eid referred to the Advisory Committee’s report, which begins on page 196 of the agenda book, for information items. She also highlighted and solicited feedback on the Advisory Committee’s consideration of new Rule 12.2 governing intervention on appeal. Judge Eid summarized the information in the Advisory Committee’s report, noting that whether to create a rule about intervention on appeal had been discussed for quite some time, and concerns had previously been raised that creating such a rule would incentivize people to move to intervene. The Advisory Committee decided, however, that a rule was necessary to give structure to the practice through a narrow rule that would also avoid an onslaught of meritless motions to intervene. She also described the structure of the proposed rule as set forth in the Advisory Committee report.

The members then discussed the proposal for new Rule 12.2.

A judge member suggested that the description of intervention as “disfavored” in subdivision (b) might be superfluous, given the language in that subdivision reserving intervention for exceptional cases. As for timing, the judge member also suggested that the proposed language “as soon as is practical after the appeal is docketed” in (c)(1) may prove difficult when administrations change, because the government may take a different position at that point. As for the choice of language between “legally protected” or “legally cognizable” interest stated in subdivision (e)(4)(B), the judge member said that he would remove both modifiers. Finally, he asked why (e)(3) referred to the United States’ “foreign-relations interests” as a ground for intervention. Ms. Shapiro, on behalf of DOJ, later responded that subparagraph (e)(3) was proposed to accommodate specific government interests in things like state secrets privilege that can arise in private litigation, or protecting classified information, or uniquely governmental interest that relate to protection of national security.

The academic member raised the issue of whether this rule was truly necessary, given that courts of appeal had been using Civil Rule 24’s provisions and given that intervention on appeal is rare. A lawyer member stated that while he had only had a few matters involving intervention on appeal and had learned that appellate courts are essentially using a modified Civil Rule 24, he did not think that this was ideal. Another lawyer member added that she had only seen a few intervention requests in civil appeals, but that recently there has been a significant uptick in AI-assisted pro se filings for intervention at the appellate level such that creating a strict rule would be helpful.

During the members’ discussion, the reporters and consultants also provided suggestions. Professor Garner added that if the title of subdivision (d) were changed from “Grounds for Mandatory Intervention” to “Mandatory Intervention,” then the title of subdivision (e) should be changed from “Other Grounds for Intervention” to perhaps “Permissive Intervention” to make it parallel. A lawyer member suggested not using the term “permissive intervention” because, in the Civil Rules, permissive intervention required a lesser showing. Another judge member suggested merging (d) and (e) in the proposed rule and titling the new subdivision, “Grounds for Intervention.” Within that new subdivision, one paragraph could address when the court may permit intervention, and another paragraph could address when the court must permit intervention. Professor Sachs later clarified that Civil Rule 24 is much more flexible than what the Appellate Rules Advisory Committee was proposing and that the Committee had generally been averse to the concept of “permissive intervention” in appeals.

Professor Bartell suggested looking at Bankruptcy Rule 8013(g) on intervention on appeal. Professor Hartnett noted there are competing themes among circuit judges who either apply Civil Rule 24 on appeal and others who adhere to a more traditional notion that intervention on appeal was for rare and exceptional circumstances; the goal of the new rule would be to get ahead of this divide. Professor King pointed out that that the Rule 12.2 language proposed carving out § 2254 and § 2255 motions in subdivision (a) but should also include § 2241 motions.

Judge Eid thanked the Standing Committee members for their input on the draft proposed rule.

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

Judge Connelly referred to the information items from the Advisory Committee report, beginning on page 255 of the agenda book. She then highlighted one of the issues under consideration involving potential amendments to Bankruptcy Rule 9031, which provides that Civil Rule 53—which authorizes the use of masters—does not apply in a bankruptcy case. The Advisory Committee had received two suggestions to amend the rule to permit masters in a bankruptcy case. The Advisory Committee was considering a draft amendment to allow masters, but on March 17, 2026, the DOJ Office of Legal Counsel issued a published opinion suggesting that the use of masters by bankruptcy judges would be unconstitutional. The Advisory Committee has decided to defer further consideration of this issue until its fall meeting.

Judge Connelly then explained the nature of the DOJ objection. Bankruptcy judges, who are Article I judges, are referred cases that fall within the district court’s original jurisdiction. If it is a core bankruptcy proceeding, the bankruptcy judge has the authority to issue a final ruling. If it is not a core proceeding, the bankruptcy judge may issue a ruling with the parties’ consent. If the parties do not consent, the bankruptcy judge may issue proposed findings of fact and conclusions of law, and the district judge enters a final judgment. One concern was whether, in a non-core proceeding where the parties do not consent to the bankruptcy court’s final authority, the bankruptcy judge could appoint a special master when the bankruptcy judge could not enter a final ruling. Professor Gibson added that the rule would also apply to district judges who are exercising bankruptcy jurisdiction, but the constitutional issues would not apply in those cases.

A judge member noted his general skepticism regarding masters because of cronyism and paying the master could leave less money available for the estate. Another judge member echoed those concerns and added that bankruptcy judges in his court were uniformly against the proposal. Professor Bartell observed, however, that having a rule that explicitly barred the appointment of a special master in bankruptcy cases but not civil cases seemed strange, especially as the cronyism argument could be applied to many areas of the law, and further, she did not think that the DOJ opinion was persuasive as to why there was a constitutional concern with this rulemaking.

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

Judge Vance reported on several information items detailed in the Advisory Committee report beginning on page 313 of the agenda book.

1. Potential Amendments to Rule 43 on Remote Trial Testimony

Judge Vance first highlighted the status of the Advisory Committee’s work on potential amendments to Rule 43(c) regarding remote trial testimony, which the Standing Committee had already expressed concerns about loosening the standard for remote trial testimony at its January 2026 meeting.

Judge Vance reported that since that time, the Rule 43 Subcommittee had met three times to consider those concerns and had received research from Ms. Sraders, Counsel to the Civil Rules Committee. The research showed that judges were relying on the 1996 committee note to insist that unforeseeable last-minute developments were generally the only thing that could satisfy the

“compelling circumstances” standard in Rule 43. After much deliberation, the Rule 43 Subcommittee still favored removing the “compelling circumstances” requirement from the rule, but it had substantially revised the proposed committee note, found on page 316 of the agenda book. The revised note made clear that the rule does not authorize fully remote trials, and that the judge was not required to authorize remote testimony even if the parties agreed to it. A court can authorize remote testimony only on an individualized showing of good cause to a particular witness. The rule does not affect any other aspect of trial. The revised note stated that witness inconvenience alone was not grounds to authorize remote testimony, and emphasized that the good cause determination required an assessment of the circumstances in the particular case, always mindful of the importance of in-person testimony. The note explained why the 1996 requirement of “compelling circumstances” a term used nowhere else in the Civil Rules, warranted re-examination. It pointed out that when a witness cannot attend trial, the choice was not between in-court testimony and remote live testimony, but between remote live testimony and depositions.

A number of members expressed concern that removing the “compelling circumstances” language would be read as a softening of the rule to allow greater use of remote trial testimony. Judge Vance explained that one of the reasons to take it out was that the 1996 committee note explaining that language had been interpreted by some judges to confine remote testimony to last-minute emergencies. Other members did not feel that the language of Rule 43 was causing any problems, and that the practices of some judges who interpreted the rule strictly did not necessitate a rule change.

A judge member also offered specific feedback on the proposed committee note. First, he suggested explicit recognition in the rule text that allowing remote testimony is a case management issue in the trial judge’s discretion and not to be reviewed on appeal under a “good cause” standard. Even if the parties agree to it, the judge is not required to allow it. Second, on page 317, the proposed committee note states that judges had found the “compelling circumstances” requirement too constricting, but he did not know any judges who felt this way. Third, the following paragraph said that some jurors found video testimony easier to view than in-person testimony, but the judge member suggested that this seemed like a courtroom configuration problem, not an issue with the rule. Fourth, he disagreed with the conclusion in the proposed committee note that designating portions of a deposition was a time-consuming process that would be obviated by live remote testimony. Finally, where the last sentence of the proposed committee states “Court approval is essential to management of remote trial testimony,” the judge member questioned what it meant in the context of this rule amendment.

One member added that he supported a very limited amendment to the rule to address the concerns about interpretation of the 1996 committee note. He noted that the draft committee note on page 318 stated that remote testimony may be more acceptable for a less significant witness, and he agreed with this concept. He also asked whether any thought had been given to a preference for remote testimony in a more formal setting, such as a courthouse, compared to a witness’s basement. Judge Vance noted that the parties generally work these issues out on their own.

Other members noted disagreement with the existing committee note because if a witness cannot be in person, live remote testimony is better than a video deposition or reading a deposition

transcript. Judge Dever added, however, that remote testimony would not save the district judges time from resolving deposition designation objections because every attorney would designate portions of the depositions in case the technology failed. Another judge stated that he would support changing the committee note to say that deposition transcripts are not superior to live remote testimony. As to the rule text, however, he thought that while most judges would prefer remote testimony to depositions, that should be left to the trial court's discretion.

Another lawyer member also expressed her preference for live in-court testimony, but noted that there had been a lot of experimentation and experience with hybrid trials and remote depositions since the COVID-19 pandemic. The rule change, however, would signal to practitioners that there may be more flexibility if they could show good cause in a given case. This standard could also make trials less expensive, more accessible, and shorter. Overall, the lawyer member supported publishing a rule for public comment to see whether the legal community would support a change to enable courts to have trials more efficiently and less expensively.

A judge member suggested that the Advisory Committee review the Texas Supreme Court's rule on remote testimony. Judge Vance responded that Justice Jane Bland from the Texas Supreme Court is on the Rule 43 Subcommittee and supports remote testimony in Texas because of the huge distances in Texas and the types of cases in state courts. Another judge member added that almost all state civil trials in Minnesota are now fully remote.

As a practical matter, a judge member asked for clarification as to when the Committee can change the committee note for a rule if there are no changes to the rule itself. Several of the reporters responded that an existing committee notes cannot be changed, and new committee notes are intended to explain a change in the rule text. Professor Hartnett added that the Committee could consider revising the text of the rule to say that compelling circumstances need not arise at the last minute, or that, in determining whether there were compelling circumstances, live remote testimony was generally preferable to a deposition. Professor Capra agreed with Professor Hartnett's suggestion, and proposed using the term "foreseeable." He also thought that it might be helpful to structure the rule to accommodate different choices in testimony available to the court; for example, the standards a court might use when deposition testimony is available versus when it is not. Professor Bartell added that Bankruptcy Rule 7043 bore on this same topic and recommended that the reporters look at the public commentary received for that rule when it was published.

c. Third-Party Litigation Funding

Judge Vance next directed the Committee's attention to the Advisory Committee's work on third-party litigation funding (TPLF), which is described on page 351 of the agenda book. Judge Vance reported that the TPLF Subcommittee continued to consider a disclosure rule for third-party litigation funding in Rule 26(a)(1) or including third-party litigation funding as a matter a court can consider and take action on under Rules 16 or 16.1. She also described the practice in the District of New Jersey, which requires certain disclosures and contemplates discovery under limited circumstances regarding the terms of the funding agreement. Judge Vance also noted that the FJC is currently studying the experience under the New Jersey rule and the TPLF Subcommittee continues to evaluate how to define the types of funding arrangements that would trigger disclosure, what should be disclosed to whom, whether it should go to the court alone or

to all parties, what the court can do with the information, and whether to authorize discovery. With that introduction, Judge Vance asked for the Standing Committee's views on the aforementioned issues.

A judge member asked for more information on the New Jersey disclosure rule. Judge Vance explained that both sides were told to make the disclosures, if any, on the record, and that judges were mostly concerned with knowing who had the power to settle and make decisions about case strategy. She added that in a class action or MDL case, the judges want to know whether any of the representatives have conflicts or would be compromised by funding arrangements. Later in the discussion, the academic member mentioned that he heard that it was not uncommon for funders to require their lawyer to approve the litigation strategy at every step.

Another judge member said that he issued a standing order based on the New Jersey rule, as had other districts. He added that the Northern District of California has a rule that essentially applies only to class actions; some Texas courts require disclosures; and more than 25% of appellate and district courts require some sort of real party in interest disclosure. He also shared that he had enforced the rule and uncovered real abuses and violations of professional conduct, such as aggregating a pool of clients to be represented by the same law firm. Later in the discussion, a lawyer member also raised ethical concerns in third-party litigation funding, adding that there was tremendous pressure for profitability within law firms, which is leading to more plaintiff-side contingency matters. At the same time, funders (as he understood the practice) would only provide funding if there were enough cases to aggregate (15-25). He thought this had negative effects on the lawyer's ethical duties in an individual case, and also wondered what judges thought about having a completely unrelated matter, with different parties and a different topic, potentially impacting the case in front of them. The judge member continued that he issued his standing order in 2022 and about 15% of his cases had made a disclosure of third-party litigation funding. The judge member also said that he had recently issued a standing order requiring anyone seeking pro hac vice to certify that they were complying with ABA Model Rule 5.4 that they were not sharing fees.

A lawyer member asked whether there was significant opposition to a disclosure rule. Judge Vance said that some funders had told her that they would not oppose a pure disclosure request, but the issue was with discovery. Another lawyer member noted that disclosure rules like the Northern District of California's rule had been in place for some time and that MDL transferee judges will often, as a matter of case management and selecting leadership, require at least disclosure in chambers of funding arrangements.

A judge member thought that it would be helpful to have something in the rule that specifically authorized the court to inquire about third parties. Professor Marcus responded that he did not think judges were currently unable to require disclosures of funding. Instead, Professor Marcus suggested that the question might be framed as whether disclosure should always be required even without a request from the presiding judge. Professor Marcus also noted that the EU was gradually moving towards regulating third-party funding.

With this feedback, Judge Vance thanked the Committee.

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

Judge Mosman stated that the Advisory Committee’s work on Rules 15 and 40 was summarized in the agenda book and he had nothing further to add.

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

Judge Furman reported on several information items contained in the Advisory Committee report, found beginning on page 530 of the agenda book.

1. Artificial Intelligence

Judge Furman first provided an update on the Advisory Committee’s work concerning artificial intelligence in two areas: (1) the reliability of machine-generated output offered without an expert witness (either by a lay witness or pursuant to Rule 902(13)), and (2) the authenticity issue posed by “deepfakes.”

On the first issue, Judge Furman reported that after publication of new Rule 707 on machine-generated opinions, the Advisory Committee received 59 written comments and about a dozen witnesses testified at two hearings. The feedback from the public was mixed between unqualified support, supportive with revisions, and opposed. Judge Furman described some of the criticisms of the proposed rule, which focused on issues ranging from overbreadth or vagueness of terms and exceptions, the interaction with Rule 702, and general concerns about the prematurity or lack of need for the rule. Another issue raised was the potential need for the civil and criminal rules to be modified to require disclosure of AI-generated opinion evidence in advance of trial. Judge Furman also advised the Committee that in response to this feedback, the Advisory Committee revised the rule (as set forth in the Committee Report beginning on page 534). At the Advisory Committee’s spring meeting, however, and at the suggestion of Judge Dever, the Advisory Committee decided to take the potential rule amendment under further advisement and hold a mini-conference with panels of technical experts and experienced lawyers at its fall 2026 meeting.

On the second issue, Judge Furman reported that the Advisory Committee continues to consider a proposed amendment to Rule 901(c) to address authentication of an item of evidence that one side claims is a deepfake. Because the existing authenticity standard is relatively low, the Advisory Committee is considering a proposed amendment that would create a burden-shifting framework where the opponent of the evidence would have to make a threshold showing enough for a reasonable person to find that an item was fabricated or altered by generative artificial intelligence. If that showing were made, the burden would shift to the proponent of the evidence to show, by a preponderance of the evidence, that the item was authentic. Judge Furman also described the results of an FJC sent a survey at the request of the Advisory Committee. The survey results, discussed in the Advisory Committee’s report, showed that 15 judges reported that they have encountered a deepfake challenge and a strong majority indicated that if such an issue arose, they would require a showing akin to what the proposed rule provides (even without a rule in place). Judge Furman and Professor Capra also discussed a recent New York Court of Appeals decision relating to deepfakes indicating that the issue is coming up in state courts as well. To gather more expert input, however, the Advisory Committee decided to address the

issue of deepfakes at the mini-conference at the fall meeting along with its consideration of new Rule 707.

Following this report, Judge Furman solicited the Standing Committee's views on the need for rule amendments and whether the working drafts took the right approach. Professor Capra added that this was the first time in his experience that a rule published for public comment did not go forward. He expressed that he had hoped that the public feedback would be an opportunity for the Advisory Committee to learn from the comments, but he did not believe the Advisory Committee learned much because most of the practicing lawyers were misunderstanding the rule. For this reason, refining the rule with the help of experts at a mini-conference would be very helpful in drafting a better rule.

A judge member supported the approach and thought information gathering was exactly what the Advisory Committee needed. Judge Furman noted that there was a concern that the technology was moving very quickly and the rules would not be adequate to address it given that the rulemaking process takes a long time. A lawyer member supported moving forward to demonstrate that the rules process is not merely reactive and suggested not waiting until the problem became unbearable to try to address it. Professor Marcus added that he and Professor Capra had discussed some coordination with the Civil Rules Advisory Committee on definitions and to determine if the civil disclosure rules would need to be amended if Evidence Rule 707 went forward in order to get those issues before the court in a timely fashion.

d. Rules 703 and 606(b)

Judge Furman concluded his report on information with an update on the Advisory Committee's consideration of two other potential amendments to address Supreme Court decisions potentially impacting the constitutionality of Rule 703 and Rule 606(b). First, the Advisory Committee is considering potential amendments to Rule 703 to add a "red flag" noting possible constitutional concerns in light of the Supreme Court's decision in *Smith v. Arizona*, 602 U.S. 779 (2024). The Advisory Committee is concerned that if construed broadly, it could prohibit reliance on a non-testifying expert, but is waiting to see if the Supreme Court takes up a circuit split on this issue. Second, in light of potential action on Rule 703, the Advisory Committee also revisited whether to add "red flag" language to Rule 606(b) in light of the Supreme Court's decision in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), but decided that it was not warranted.

5. CONCLUDING REMARKS AND ADJOURNMENT

Judge Dever concluded by thanking the Standing Committee members for their hard work and adjourned the meeting. The next meeting would take place in Washington, D.C. on January 5, 2027.

APPENDIX

Summary of Standing Committee Revisions to Final Amendments

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

Civil Rule 26(a)(3)

The proposed amendments to Civil Rule 26(a)(3) begin on page 391 of the agenda book. The Standing Committee discussed and approved one change to the rule text:

1. Page 392, line 20: “it expects” was inserted before “whether” and the word “will” was changed to “to.” Lines 20-21 as revised read “whether it expects the testimony to be in person or remote.”

Civil Rule 45(b)(1)

The proposed amendments to Civil Rule 45(b)(1) begin on page 398 of the agenda book. The Standing Committee discussed and approved one change to the rule text:

1. Page 399, line 23: “by a person identified in (i) or (ii)” was inserted after “actual receipt.”

Criminal Rule 17

The proposed amendments to Criminal Rule 17 begin on page 490 of the agenda book. The Standing Committee discussed and approved the following changes to the rule text:

1. Page 497, lines 133 through 137, were replaced with the following: “(6) *Disclosing to Other Parties the Items Produced*. This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.”

The Standing Committee discussed and approved the following changes to the committee note:

1. Page 510, lines 512 through 515: “A party must disclose to an opposing party an item the party receives from a subpoena’s recipient only if the item is discoverable under these rules” was replaced with “This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.”
2. Page 511, line 527: “the regulation and timing regarding” was inserted before “disclosure.”
3. Page 511, line 529: “is” was replaced by “are.”

TAB 2B

SUMMARY OF THE
REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

1. Approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law p. 4
2. Approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law pp. 5-8
3.
 - a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and
 - b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date pp. 9-10
4. Approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law..... pp. 13-15
5. Approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law..... pp. 18-19

NOTICE

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

(Rev. 8/27/26)

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

- E-Filing and Service by Self-Represented Litigants..... pp. 2-3
- Privacy Rules for Taxpayer Information and Minors’ Names.....p. 3
- Federal Rules of Appellate Procedure pp. 8-9
- Federal Rules of Bankruptcy Procedure pp. 10-13
- Federal Rules of Civil Procedure..... pp. 16-18
- Federal Rules of Criminal Procedure..... pp. 20-22
- Federal Rules of Evidence pp. 23-26

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 3-4, 2026. All members participated. Representing the advisory committees were Judge Allison H. Eid (10th Cir.), chair, and Professor Stephen Sachs, 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 (E.D. La.), chair, Professor Richard L. Marcus, Reporter, and Professor Andrew Bradt, Associate Reporter, 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 Edward Hartnett, Standing Committee Reporter; Professor Catherine T. Struve, 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; Sarah Sraders, Rules Committee Staff Counsel; Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC); and Elizabeth J.

NOTICE

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

Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of the Deputy Attorney General.

In addition to its general business and consideration of the Advisory Committee reports and recommended action items as discussed below, the Committee also received an update on the work of its subcommittee concerning uniform attorney admissions in the trial courts and concluded that no further action on the project is warranted. The Committee further authorized the Chair, working with the Secretary of the Committee, to respond to the request of the Judiciary Planning Coordinator, Chief Judge Michael A. Chagares (3d. Cir.), to identify any agenda items of the Rules Committees that align with the Executive Committee’s priority strategies and goals in the *Strategic Plan for the Federal Judiciary*. The Committee’s views were communicated to Chief Judge Michael A. Chagares, the judiciary planning coordinator, by letter dated June 11, 2026.

E-FILING AND SERVICE BY SELF-REPRESENTED LITIGANTS

The Standing Committee unanimously approved, with minor revisions to the committee notes to make them more uniform, the recommendations of the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to electronic service and filing by self-represented litigants (SRLs). The proposed amendments (collectively, “proposed SRL rules”) seek to: (1) increase SRL access to a court’s electronic-filing system (or allow a form of electronic filing by alternative means) to file pleadings and other court documents; and (2) after a complaint is filed and served, allow SRLs to achieve service of subsequently filed documents in the electronic-filing system through the electronic notice of filing or through a court-based electronic noticing program. The proposed SRL rules relate to Appellate Rule 25; Bankruptcy Rules 5005, 8011, 9006, and 9036; Civil

Rules 5 and 6; and Criminal Rules 45 and 49. With minor differences,¹ these proposed amendments are uniform across the four sets of rules. Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

PRIVACY RULES FOR TAXPAYER INFORMATION AND MINORS' NAMES

The Standing Committee unanimously approved, with the addition of clarifying revisions in each of the committee notes, the recommendations of the Advisory Committees on Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to the redaction of social security and individual taxpayer identification numbers and the use of pseudonyms to reference minors. The proposed amendments (collectively, the “proposed privacy amendments”) seek to: (1) expand the redaction requirement of taxpayer identifying information in civil and criminal cases; (2) require the use of pseudonyms rather than initials when referencing minors in bankruptcy, civil, and criminal cases; and (3) clarify that these rules apply to exhibits and attachments to electronically filed court documents. The proposed privacy amendments relate to Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1.² Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

¹For example, the Bankruptcy, Civil, and Appellate Rules proposals use the term “unrepresented,” while the Criminal Rule uses “self-represented.” (Many existing Bankruptcy, Civil, and Appellate Rules already use “unrepresented.”) The Civil, Criminal, and Appellate Rules use the term “parties,” while the Bankruptcy Rules use the term “individual.” (In the Bankruptcy context, there is a concern that some small business entities might think that the use of “parties” would enable them to proceed without counsel, while in the other contexts the greater worry is that nonparties might think that they could file in any case they want.) Finally, the Civil, Criminal, and Appellate Rules refer to “the party’s case,” while the Bankruptcy Rules refer simply to “the case.” (In the Bankruptcy context, “the party’s case” might suggest that only the debtor is covered by the amendment.)

²Any amendments to these rules will apply on appeal through existing Appellate Rule 25, which incorporates them by reference. As set forth in the information items for the Appellate Rules Advisory Committee, there is ongoing consideration of potential privacy amendments relating to certain aspects of appeals.

PRIVACY REPORT TO CONGRESS 2026

Following the Standing Committee’s approval of the proposed privacy amendments for publication and comment, the Committee also considered a draft 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002 (the “2026 Privacy Report to Congress”). Section 205(c)(3)(C) of the E-Government Act directs that, every two years, “the Judicial Conference shall submit to Congress a report on the adequacy of [the privacy rules] to protect privacy and security.” The most recent prior report was submitted to Congress in 2024.

The 2026 Privacy Report to Congress covers the period from June 2024 to June 2026. Part I of the report describes the proposed privacy amendments, as well as the status of other privacy-related proposals to amend the Rules of Practice and Procedure. Part II of the report describes ongoing judiciary implementation efforts by the Committee on Court Administration and Case Management (CACM Committee), the Administrative Office of the U.S. Courts, and the FJC to protect privacy in court filings and opinions. Part III of the 2026 report discusses the FJC’s recent studies relating to privacy concerns in court filings.

The CACM Committee at its May 2026 meeting reviewed the draft 2026 Privacy Report to Congress and endorsed a recommendation from the Standing Committee to the Judicial Conference to approve the report (see Report of the Committee on Court Administration and Case Management, at Agenda E-6). The Standing Committee then approved the report at its meeting, to include any necessary changes to address the revisions to the privacy amendments approved by the Standing Committee or other minor stylistic or technical changes.

Recommendation: That the Judicial Conference approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law.

FEDERAL RULES OF APPELLATE PROCEDURE

Amendments Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits. The Standing Committee unanimously approved the Advisory Committee’s recommendations, with minor revisions correcting the placement of a sentence in the committee note to Rule 15 and correcting cross-references in Rules 29 and 32(g) and the Appendix of Length Limits.

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

The proposed amendments to Rule 15 address issues that may arise when a petition for review or enforcement of an agency decision is filed prematurely. In circuits that apply the “incurably premature” doctrine, if a pending motion to reconsider an agency decision makes the decision unreviewable in the court of appeals, then a new petition to review that agency decision must be filed in the court of appeals once the agency decision becomes final. The proposed amendments to Rule 15 would eliminate the need to refile the petition by adding a subdivision providing that the original petition for review becomes effective upon the agency’s disposition of the last reconsideration request. These changes would align Rule 15 with Rule 4(a)(4)(B)(i), which relates to the effectiveness of a notice of appeal filed after a judgment is entered or announced in the district court, but before the district court disposes of certain post-judgment motions authorized under the Federal Rules of Civil Procedure. The proposed amendment also makes clear that it applies only when the agency order is “otherwise reviewable.”

Rule 29 (Brief of an Amicus Curiae)

At its September 2025 session, the Judicial Conference approved final amendments to Rule 29, together with conforming amendments to Rule 32 and the Appendix of Length Limits, and authorized their transmittal to the Supreme Court with a recommendation that they be

adopted by the Court and transmitted to Congress in accordance with the law (JCUS-SEP 2025, p. 20). The amendments addressed several issues with respect to the contents of amicus briefs, particularly as to required disclosures of relationships between the amicus and parties or nonparties. In particular, the amendments would have required disclosure of whether a party or its counsel has a majority ownership interest in or majority control of an amicus. In addition, whereas the current rule requires disclosure of whether any nonparty (other than the amicus, its members, or its counsel) contributed money intended to fund preparation or submission of the brief, the proposed amendments would have limited this disclosure requirement to instances in which the amount contributed or pledged to be contributed is greater than \$100. The proposed amendments also would have added a broader disclosure concerning the background of the amicus—including its identity, history, experience, and interest. Finally, the proposed amendments would have imposed an express word limit of 6,500 words on amicus briefs at the initial merits stage rather than reference to “one half the maximum length authorized . . . for a party’s principal brief.”

After the amendments were transmitted to the Supreme Court, the Executive Committee of the Judicial Conference raised concerns about a provision in what was then proposed Rule 29(e) relating to disclosures as to new members of amicus organizations. That provision would have obligated 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. The Executive Committee noted 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. Additionally, after transmission to the Supreme Court, two other ambiguities or errors were separately identified in the proposed amendments:

first, a potential ambiguity in what was then proposed Rule 29(d) regarding what required disclosures a party or counsel must make when an amicus is required to disclose certain information but fails to do so; and second, an unrevised cross-reference in the Appendix of Length Limits. To address the Executive Committee's concerns and to make appropriate corrections, the Advisory Committee and the Standing Committee voted in March 2026 to withdraw the amendment package, and the proposed amendments were not forwarded to Congress.

After further consideration by the Advisory Committee and the Standing Committee, the revised proposed amendments to Rules 29 and 32 and the Appendix of Length Limits are presented for approval. Specifically, the Advisory Committee and Standing Committee removed the requirement of new-member contribution disclosure from the proposed amendments to Rule 29 and corrected the identified ambiguity by clarifying that the requirement that parties and counsel disclose information that an amicus must but has failed to disclose does not extend to information about nonmember contributions. The Advisory Committee further determined that republication of the amendments to Rule 29, with the conforming changes to Rule 32 and the Appendix of Length Limits, was not required given the extensive public comment on the issue of member disclosures and the technical nature of the additional revisions.

The remainder of the proposed amendments to Rule 29, as revised, are the same.

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

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

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Rules Approved for Publication and Comment

Rule 25 (Filing and Service)

As part of the proposed SRL rules package, the Advisory Committee on Appellate Rules recommended that a proposed amendment to Rule 25 be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

The proposed amendments to Appellate Rule 25 provide that an unrepresented party is presumptively authorized to use the court's electronic-filing system to file documents in the case and receive notice of case filings. The proposed amendments further provide that a court may set reasonable conditions on an unrepresented party's access to the court's electronic-filing system, but a court may not bar all unrepresented parties from using a court's electronic-filing system unless the court either includes reasonable exceptions to the prohibition or permits unrepresented parties to use another electronic method for filing documents and for receiving notice of court filings and orders. Finally, the proposed amendment would eliminate the requirement for an unrepresented party (who files other than through the court's electronic-filing system) to make a separate (paper) service on a litigant who is registered to receive notice of case activity from the court's electronic-filing system. Service by the notice of case activity is not effective if the filer learns that the filing did not reach the person to be served. In addition, the proposed amendment provides that a court may require by local rule or court order a different method of service for filings under seal and/or filings that initiate a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21.

Information Items

The Advisory Committee met on April 16, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continuing its consideration of possible amendments to Rule 25 (Filing and Service) to require complete redaction of taxpayer identifying information and the use of pseudonyms for minors, so that some of the exemptions from privacy requirements at the trial level (Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1) would not carry forward on appeal. The Advisory Committee also continues its consideration of potential amendments to Rule 4 (Appeal as of Right—When Taken) regarding reopening the time to appeal, Rule 8 (Stay or Injunction Pending Appeal) regarding limits on administrative stays, and a possible new Rule 12.2 regarding intervention on appeal, as well as the treatment of tribes in the Appellate Rules. Finally, the Advisory Committee considered several new issues including a possible amendment to Rule 28 (Briefs) regarding introductions in briefs.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Amendments Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval amendments to Bankruptcy Rule 2002 and amendments to Official Forms 101 and 106C. The Standing Committee unanimously approved the Advisory Committee’s recommendations.

Rule 2002 (Notices)

The proposed amendment to Rule 2002(o) would simplify the caption of most notices given under Rule 2002 by requiring that they include only the information required by Form 416B (the court’s name, the debtor’s name, the case number, the chapter under which the case was filed, and a brief description of the document’s character) rather than the more extensive information required under Rule 1005. As noted in the 2026 Privacy Report to

Congress, this change would mean that most Rule 2002 notices would no longer be required to include the last 4 digits of the debtor's social-security or individual taxpayer-identification number.

Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy)

The proposed amendment to Official Form 101 relates to the prompt in Question 4 in Part 1 and clarifies that the question is attempting to elicit only the Employer Identification Number (EIN), if any, of the individual filing for bankruptcy and not the EIN of any other person (such as the debtor's employer). The modification will help debtors avoid the error of providing their employer's EIN. Because multiple debtors have the same employer, deterring such debtors from erroneously providing their employer's EIN will avoid triggering an erroneous automated report that the debtor has engaged in repeat filings.

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

The proposed amendment to Form 106C requires the debtor to add the total dollar value of the exemptions with a specific amount claimed under Column C in the form.

Recommendation: That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
- b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

Rules Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Bankruptcy Rules 2003, 5005, 8011, 9006(f), 9036, and 9037 with a recommendation that they

be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee’s recommendations.

Rule 2003 (Meeting of Creditors or Equity Security Holders)

The proposed amendments to Rule 2003 would allow more time to convene the meeting of creditors in chapter 12 and 13 cases, extending the deadline in chapter 12 cases from 35 to 60 days, and in chapter 13 cases, from 50 to 60 days, after the order for relief. The proposed amendments would also expressly authorize meetings of creditors to be “conducted in person or remotely” and would allow the U.S. trustee to designate in which manner a meeting would be conducted.

Rules 5005 (Filing Papers and Sending Copies to the United States Trustee), 8011 (Filing and Service; Signature), 9006(f) (Computing and Extending Time; Motions), and 9036 (Electronic Notice and Service)

As part of the SRL rules package, the proposed amendments to Rules 5005 and 8011 would provide that unrepresented individuals are presumptively authorized to use the court’s electronic-filing system to file documents. The proposed amendments would permit courts to set reasonable conditions and restrictions on access by unrepresented individuals to the court’s electronic-filing system. However, the proposed amendments would not permit a bar on all unrepresented individuals from using a court’s electronic-filing system, unless the court also either includes reasonable exceptions to the prohibition, or permits unrepresented individuals to use another electronic method for filing documents and an alternative electronic means for receiving notice of court filings and orders.

In addition, the proposed amendments to Rule 8011 would make service via a court’s electronic-filing system the primary means of service. The proposed amendments would eliminate the requirement of separate (paper) service (of papers filed other than through the court’s electronic-filing system) on a litigant who is registered to receive a notice of case activity

from the court's electronic-filing system. However, service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide an order or local rule that the document be served by other means.

The proposed amendments to Rule 9006 would change a cross-reference to conform the rule to match proposed amendments to Civil Rule 5.

The proposed amendments to Rule 9036 would address filings by unrepresented individuals, providing that because documents filed in paper form are uploaded by the court 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. In addition, Rule 9036(d), like Rule 8011(c)(3), deals with the impact of delays between filing and uploading to the court's electronic-filing system.

Rule 9037 (Protecting Privacy for Filings)

As part of the package of proposed privacy amendments, the proposed amendments to Bankruptcy Rule 9037 share two features with the proposed amendments to Criminal Rule 49.1 and Civil Rule 5.2. First, the proposed amendments would make clear that the redaction requirement applies to attachments, exhibits, and all other documents in a court filing. Second, the proposed amendments would require the use of pseudonyms for minors. Because of the unique context of bankruptcy proceedings and practice, the proposed amendments do not adopt the complete redaction requirement for taxpayer identifying information or the extension of the redaction requirement to EINs that is proposed in the privacy amendments to the civil and criminal rules.

Information Items

The Advisory Committee on Bankruptcy Rules met on April 15, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several matters, including continued consideration of a suggestion to amend Rule 9031 (Using Masters Not Authorized) to permit the use of special masters in bankruptcy cases and new suggestions regarding possible amendments to Rule 4004 (Granting or Denying a Discharge) and possible amendments to Form 106C (Schedule C: The Property You Claim as Exempt (individuals)).

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules recommended for final approval proposed amendments to Civil Rules 7.1, 26, 41(a), 45(b), 45(c), and 81. After minor clarifying revisions to the proposed amendments to Rules 26 and 45(b), the Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 7.1 (Disclosure Statement)

The proposed amendment to the disclosures required under Rule 7.1(a)(1) requires any party or would-be intervenor that is a private business organization to disclose any publicly held business organization that “directly or indirectly” owns 10 percent or more of the party or intervenor. The proposal responds to concerns raised that the current rule, which requires disclosure only of “any parent corporation and any publicly held corporation owning 10 percent or more of its stock,” may result in nondisclosure of a “grandparent” corporation. This change is intended to assist judges in evaluating if recusal is appropriate consistent with updated guidance in Committee on Codes of Conduct Advisory Opinion No. 57, which explains that corporate ownership of at least 10 percent of a party creates a rebuttable presumption of parental control and that a judge must recuse if they “conclude that a party is controlled by a corporation in which

the judge owns stock.” Another change substitutes the term “business organization” for the word “corporation” to clarify that the disclosure requirement applies to different forms of business entities.

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

The proposed amendment to Rule 26(a) relating to pretrial disclosures requires disclosure of the party’s expectation as to whether each of its witnesses’ testimony will be in person or remote. The Committee made a minor revision to the language in the proposed amendment to clarify that it relates only to the party’s expectations as to whether testimony will be in person or remote at the time the disclosure is made.

Rule 41(a) (Dismissal of Actions)

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

Rule 45(b) (Subpoena—Service)

The proposed amendment to Rule 45(b) clarifies how a subpoena for testimony may be served and whether the witness fee must be tendered simultaneously with service. The proposed amendment borrows two methods of service from Rule 4(e)(2)’s methods for serving a complaint on an individual—personal service or leaving a copy at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there. The proposed amendment also adds an additional method of service through the mail or commercial carrier if confirmation

of actual receipt can be provided, and further authorizes the court to approve another means of service for good cause. The proposed amendment also includes two other changes: (1) relaxing the current requirement that witness fees be tendered at the time of service, and (2) providing a 14-day notice period (subject to shortening by the court for good cause) when the subpoena requires attendance at a trial, hearing, or deposition. The Committee made a minor revision to the language in the proposed amendment to move clarifying language in the committee note into the rule text relating to confirmation of actual receipt when a subpoena is served by mail or commercial carrier.

Rule 45(c) (Subpoena—Remote Testimony)

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

Rule 81 (Jury Demand After Removal)

The proposed amendment to Rule 81(c) would provide that a jury demand must always be made after removal if no such demand was made before removal and a party desires a jury trial. It would also set the time limit to make the required demand.

Recommendation: That the Judicial Conference approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Rules Approved for Publication and Comment

The Advisory Committee on Civil Rules submitted proposed amendments to Civil Rule 5 with conforming amendments to Rule 6(d), and Civil Rule 5.2, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rules 5 (Serving and Filing Pleadings and Other Papers) and 6(d) (Computing and Extending Time; Time for Motion Papers)

As part of the SRL rules package, the proposed amendments to Rule 5 are generally consistent with the proposed amendments to the Bankruptcy Rules and the Criminal Rules and would presumptively allow unrepresented parties in civil cases to 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 provides otherwise. The courts would be expressly authorized to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice.

The proposed amendments to Rule 5 retain the existing authority to require electronic filing by a self-represented litigant by case-specific order or by local rule with reasonable exceptions. Additionally, Rule 5 would state that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. Finally, proposed amended Rule 5 would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the

court's electronic-filing system, and deals with the impact of delays between filing and uploading to the court's electronic-filing system.

The proposed amendments to Rule 6 would conform cross-references to Rule 5.

Rule 5.2 (Privacy Protections for Filings Made with the Court)

As part of the package of proposed privacy amendments, the proposed amendments to Civil Rule 5.2 are generally consistent with the changes to Criminal Rule 49.1 and require complete redaction of social security numbers (SSNs) and individual taxpayer identification numbers (ITINs), as well as EINs and adoption taxpayer identification numbers in civil cases. The proposed amendments to Rule 5.2 would further require the use of pseudonyms when a filed document references a person who is a minor at the time of filing. Finally, the proposed amendments would clarify that the redaction requirements apply to all documents in the court filing, including exhibits and attachments. The proposed committee notes make clear, however, that existing exemptions to the redaction requirement, or additional redactions required pursuant to a protective order, are not altered by the proposed amendment.

Information Items

The Advisory Committee on Civil Rules met on April 14, 2026. In addition to the matters discussed above, the Advisory Committee continued to discuss proposals to require disclosures regarding third-party litigation funding and to amend Rule 43 (Taking Testimony) to relax the standards governing permission for remote testimony. The Advisory Committee also continues to study suggestions relating to Rule 23 (Class Actions), Rule 35 (Physical and Mental Examinations), and Rule 58's "Separate Document" requirement.

The Advisory Committee decided to remove from its agenda proposals concerning Fair Labor Standards Act collective actions, artificial intelligence "hallucinations," algorithmic

spoliation of discoverable material, protective order templates, and mandatory assistance for self-represented litigants.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules recommended for final approval proposed amendments to Criminal Rule 17. The Standing Committee unanimously approved the Advisory Committee's recommendation after rephrasing proposed paragraph (c)(6), making a minor stylistic change to the rule, and clarifying the committee note (as described below).

Rule 17 (Subpoena)

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

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

Other proposed amendments to Rule 17 clarify when a party must file a motion requesting the court's permission to serve a subpoena for production of documents: when the subpoena requests personal or confidential information about a victim, when the subpoena is

requested by a self-represented party, or when a local rule or court order requires a motion.

When no motion is required, a party may serve a subpoena for production on an ex parte basis.

When a motion is required, the proposed amendments provide that the court “must” allow a party to file it ex parte if good cause is shown. The proposed amendments further address ex parte subpoena practice by setting a default rule that a party need not disclose its subpoena to another party if no motion is required.

The proposed amendments also state the circumstances under which the recipient of the subpoena must produce the designated items to the court rather than directly to the requesting party. In addition, the amendments address the disclosure of material produced in response to a subpoena, disapproving the practice in some courts in which all produced items must be provided to the opposing party, regardless of whether the items would otherwise be subject to discovery. By providing that the rule does not require the disclosure of produced items to a party that did not request the subpoena, the proposed amendments seek to ensure that Rule 17 is not interpreted to disturb the law regulating disclosure between the parties found in Rule 16 and elsewhere. Finally, the proposed amendments clarify, as to each subdivision of Rule 17, whether it applies to subpoenas for testimony, subpoenas for production, or both.

The Standing Committee rephrased proposed paragraph (c)(6) to make clear that Rule 17 does not require disclosure of produced items to a party that did not request them and does not alter existing disclosure and discovery requirements. It revised the corresponding section of the committee note to clarify that the amendments to Rule 17 do not modify existing law regarding the timing of any disclosures.

Recommendation: That the Judicial Conference approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Rules Approved for Publication and Comment

The Advisory Committee on Criminal Rules submitted proposed amendments to Rule 11 (with conforming amendments to Rule 32), Rule 49 (with conforming amendments to Rule 45(c)), and Rule 49.1, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee’s recommendations, with revisions to clarify language in the text of the rule (as described below).

Rule 11 (Pleas)

Rule 11(b)(1)(M) requires the court to advise the defendant at the plea proceeding of “the court’s obligation to . . . consider . . . possible departures under the Sentencing Guidelines.” However, the 2025 amendments to the U.S. Sentencing Commission Guidelines Manual deleted most of the provisions in Chapter Five, Part K (Departures), and revised U.S.S.G. § 1B1.1(a) to eliminate the requirement that the court consider departures at step two of a three-step sentencing process. As revised, § 1B1.1 now provides for a two-step process, considering at step one “the kinds of sentence and the guideline range as set forth in the guidelines,” and at step two, “other applicable factors in 18 U.S.C. § 3553(a).” The proposed amendment to Rule 11(b)(1)(M) would remove the reference to “possible departures under the Sentencing Guidelines,” thus reflecting the current two-step sentencing process. The Standing Committee revised the proposed rule text to ensure that defendants would continue to be advised of the court’s obligation to calculate and consider the sentencing-guideline range.

Rule 32 (Sentencing and Judgment)

Rule 32(h) requires the court to provide the parties with reasonable notice of a possible departure from the Sentencing Guidelines range on a ground not identified for departure in the presentence report or in a party’s prehearing submission. Because the Sentencing Guidelines no longer employ the concept of departures, the proposed

amendment to Rule 32 would eliminate subdivision (h). To avoid re-lettering the remainder of the rule, subdivision (h) would be reserved.

Rules 49 (Serving and Filing Papers) and 45(c) (Computing and Extending Time)

As part of the SRL rules package, the proposed amendments to Rule 49 and conforming amendments to Rule 45(c) are generally consistent with the proposed amendments to the Bankruptcy and Civil Rules regarding electronic filing and service by self-represented litigants. The proposed amendments to Rule 49 would allow self-represented parties to 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 provides otherwise. They would expressly authorize courts to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice. Unlike the Bankruptcy and Civil Rules, and in accordance with the current Criminal Rule, proposed amended Rule 49 would not authorize a court to require self-represented litigants to file electronically.

The proposed Rule 49 amendments would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the court's electronic-filing system, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. The amendments also provide that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions.

Criminal Rule 45(c) would be amended to conform cross-references to Rule 49.

Criminal Rule 49.1 (Privacy Protections for Filings Made with the Court)

As part of the package of proposed privacy amendments, the proposed amendments to Rule 49.1 addresses two privacy-related issues—redaction of taxpayer-identification information and the use of pseudonyms for minors—in criminal filings that are available to the public through the judiciary’s electronic-filing system. These proposed amendments are consistent with the proposed amendments to the parallel privacy provisions in Civil Rule 5.2.

First, the proposed amendment requires complete redaction of taxpayer identifying information rather than redaction of all but the last four numbers. Second, the proposed amendments expand the covered taxpayer identifying information that must be redacted to include not only SSNs and ITINs, but also EINs. Third, the proposed amendment clarifies that the redaction requirement applies not only to pleadings and briefs, but also any attachments and exhibits. Fourth, the proposed amendment changes the requirement to provide initials for minors when they are referenced in filings and would now require the use of a pseudonym.

Information Items

The Advisory Committee on Criminal Rules met on April 29, 2026. In addition to the matters discussed above, the Advisory Committee continued its discussions regarding proposed amendments to 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 proposed revisions to Rule 15, which governs depositions.

FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules recommended for final approval proposed amendments to Evidence Rule 609. The Standing Committee unanimously approved the Advisory Committee’s recommendations.

Rule 609 (Impeachment by Evidence of a Criminal Conviction)

The proposed amendment to Rule 609(a)(1)(B) addresses the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant’s character for truthfulness. Under the proposed amendment, evidence of a non-falsity based prior conviction would not be admissible to impeach a criminal defendant unless its probative value “substantially” outweighs the risk of unfair prejudice to the defendant. The proposed amendment would result in the provision becoming more exclusionary, because many courts have erred in allowing broad impeachment with prior non-falsity based convictions, contrary to the original intent of the rule—a problem compounded by the fact that a ruling admitting convictions is not appealable unless the defendant takes the stand and gets impeached. With this amendment, the Advisory Committee aims to reduce the risk that Rule 609 will unduly deter criminal defendants from exercising their right to testify. In addition, the proposed amendment to Rule 609(b) would clarify that the 10-year time period for the rule’s applicability is measured from the date of conviction or end of confinement, whichever is later, until the date of trial.

In August 2026, the Executive Committee, during its preparation of the proposed discussion and consent calendars for the September 2026 Judicial Conference session, called the Standing Committee’s attention to several concerns with the proposed amendments and

requested further examination. The Executive Committee's concerns relate primarily to the explanations in the committee note for inserting the word "substantially" into the rule. If changes are made to the committee note to address those concerns, then the question becomes what justifies the proposed change to the rule. These concerns include the following:

- First, the Executive Committee raised concerns that Congress in enacting Rule 609(a) did not impose "a reverse balancing test" as stated in the committee note. Instead, Congress imposed a neutral balancing test allowing admissibility "if the probative value of the evidence *outweighs* its prejudicial effect" (emphasis added). In the Executive Committee's view, the proposed amendment would create a presumption of inadmissibility contrary to the intent of Congress reflected in the text of the rule adopted in 1975.
- Second, the Executive Committee raised concerns about language in the proposed committee note that the new proposed test "is more protective so as not to infringe on the accused's constitutional right to testify." The Executive Committee does not believe that the Supreme Court has held that impeachment by prior felony conviction infringes on a constitutional right to testify.
- Third, the Executive Committee raised concerns about the fourth paragraph of the proposed committee note, which may be perceived as setting forth rule-like guidance rather than explaining the proposed rule. Specifically, the paragraph purports to guide district courts on how to admit "evidence of a criminal conviction" without a rule to support the guidance.

In response to these concerns, the Standing Committee in August 2026 unanimously voted to withdraw the recommendation and to return the proposal to the

Advisory Committee on Evidence Rules to allow it to further consider the proposed amendments in light of these concerns.

Rules Approved for Publication and Comment

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 902 and 104 with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations with a minor revision to Rule 104.

Rule 902 (Evidence That Is Self-Authenticating)

The proposed amendment to Rule 902 would add Indian Tribes and Nations to the list of entities in Rule 902(1)(A) whose public records are self-authenticating, as the Advisory Committee saw no reason to differentiate the Tribes and Nations from the many other government entities whose records are currently self-authenticating under the rule.

Rule 104 (Preliminary Questions)

The proposed amendment to Rule 104(a) would codify the holding in *Bourjaily v. United States*, 483 U.S. 171, 175 (1987), that preliminary questions of fact under Rule 104(a) are to be determined by a preponderance of the evidence. The proposed amendments to Rule 104(b) would eliminate the concept of “conditional” relevance and provide that the standard of proof for all questions of relevance is whether a jury could reasonably find that the evidence has a tendency to make a fact of consequence more or less probable than without the evidence. In addition, the proposed amendments would eliminate the phrase “proof sufficient to support a finding” from Rule 104(b); but the rule does not change the standard of proof established by the Supreme Court in *Huddleston v. United States*, 485 U.S. 681, 687 (1988), that the court must decide whether the “jury could reasonably find” that the evidence is relevant.

Information Items

The Advisory Committee met on May 7, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continued consideration of a possible New Rule 707 to address evidence that is the product of artificial intelligence and a possible new subsection (c) in Rule 901 (Authenticating or Identifying Evidence) to address deepfake evidence. Finally, the Advisory Committee considered the implications of *Smith v. Arizona* on Rule 703 (Bases of an Expert’s Opinion Testimony).

Respectfully submitted,

A handwritten signature in black ink that reads "James C. Dever III". The signature is written in a cursive, flowing style.

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
Allison J. Rushing
Amul Thapar
Bart H. Williams

* * * * *

TAB 3

Minutes of the Spring Meeting of the
Advisory Committee on Appellate Rules

April 16, 2026
Charlotte, NC

Judge Allison Eid, Chair, Advisory Committee on Appellate Rules, called the meeting of the Advisory Committee on Appellate Rules to order on Thursday, April 16, 2026, 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 Coberly, Professor Bert Huang, Justice Leandra Kruger, and Judge Carl J. Nichols. The Solicitor General was represented by Mark Freeman, Director of Appellate Staff, Civil Division, Department of Justice. George Hicks attended via Microsoft Teams, as did Judge Sidney Thomas, who joined the meeting after it began. Judge Richard Wesley could not attend.

Also present in person were: Judge James C. 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; Judge Daniel Bress, Member, Advisory Committee on Bankruptcy Rules and Liaison to the Advisory Committee on Appellate Rules; Christopher Wolpert, Clerk of Court Representative; Carolyn Dubay, Secretary to the Standing Committee, Rules Committee Staff (RCS); Bridget M. Healy, Counsel to the Rules Committees, RCS; Sarah Sraders, Counsel to the Rules Committees, RCS; Tim Reagan, Federal Judicial Center (FJC); Judge Robert J. Conrad, Jr., Director, Administrative Office of the U.S. Courts (AOUSC); Professor Edward A. Hartnett, Reporter, Standing Committee; and Professor Stephen E. Sachs, Reporter, Advisory Committee on Appellate Rules.

Professor Catherine T. Struve, Consultant, Standing Committee; Professor Joseph Kimble, Style Consultant, Standing Committee; Shelly Cox, Management Analyst, RCS; and Rakita Johnson, Administrative Analyst, RCS, also attended via Microsoft Teams.

I. Introduction and Preliminary Matters

Judge Eid opened the meeting and welcomed the attendees, including those attending remotely. She thanked the U.S. District Court for the Western District of North Carolina, including Chief Judge Martin Reidinger and Clerk of Court Katie Simon, for hosting the meeting. She also congratulated Professor Sachs, the new Advisory Committee reporter, and Professor Hartnett, the new Standing Committee reporter; wished farewell to Judge Wesley, whose term on the Committee is coming to an end, and thanked him for his work on the Committee's projects; and introduced Judge Conrad.

Ms. Dubay directed attention to the rules tracking chart (Agenda Book 20). She noted that the amendments to Form 4, approved by the Supreme Court, had been transmitted to Congress.

Ms. Sraders referred to the pending legislation chart (Agenda Book 27).

Judge Eid noted the draft minutes of the Standing Committee (Agenda Book 41), including those portions regarding the work of the Advisory Committee on Appellate Rules (Agenda Book 46), as well as the portions of the Standing Committee's report to the Judicial Conference regarding the work of the Advisory Committee (Agenda Book 79).

II. Approval of the Minutes

A motion was made and seconded to approve the minutes of the Advisory Committee meeting of October 15, 2025 (Agenda Book 86). The minutes were approved without dissent.

III. Discussion of Joint Committee Matters

A. Electronic Filing and Service by Self-Represented Parties (21-AP-E)

Professor Struve provided a detailed report regarding an ongoing cross-committee project on electronic filing and service for self-represented parties (Agenda Book 103). She thanked the Advisory Committee and its reporters, Mr. Wolpert, the Rules Office, and the Federal Judicial Center for their assistance, and she noted the work of the other Advisory Committees.

As Professor Struve described the project, it has two goals: to expand access by self-represented litigants to the courts' electronic-filing systems, and to reduce the need for paper service on other litigants already receiving the filings electronically.

1. Electronic Filing

The current proposal would flip the default rule on electronic filing via Rule 25(a)(2)(C)(i), so that self-represented litigants would have presumptive access to the court's electronic system, unless prohibited by local rule or court order. Subdivision (ii) would then provide flexibility to courts, affirming that a court could set and enforce reasonable conditions and restrictions on that access—including by denying or revoking access for a particular party—but could not prohibit all self-represented parties from using the system without reasonable exceptions or other electronic means for submitting and receiving papers. (Professor Struve emphasized that this flipped presumption was only enjoyed by self-represented *parties*, rather than other persons who might be before the court; this was the approach pursued by the Civil Rules Committee, and was likely to be pursued by Criminal also, though Bankruptcy had chosen otherwise for bankruptcy-specific reasons.) An optional subdivision (iii), in an appeal from a district court, might extend a party's presumption to a nonparty who had already been permitted to file electronically in the district court, by analogy to Rule 24's treatment of *in forma pauperis* status.¹

Professor Struve also highlighted language in the draft committee note opining that reasonable exceptions under subdivision (ii) would include a local provision requiring self-represented

¹ Per Agenda Book 116, the text of this draft subdivision (iii) read as follows: "[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.]"

parties to obtain the court's permission in order to file electronically.² By comparison, while some district courts generally allow electronic filing by self-represented parties and others generally forbid it, there is also a middle camp that permits such filing only with the court's permission. The sentence might thus limit the scope of the change from present practice for the courts of appeals, but some might wish for a broader change, and others might be reluctant to place in a committee note an opinion as to the meaning and function of the rule's text (albeit a practice with some precedent). Two committees had already included such language, but over objections.

Professor Struve then halted her presentation of the report so that the Committee could discuss the issue of filing.

Professor Hartnett described the discussions of the other committees. He also noted that, if a committee note's interpretation of a rule is later thought to be incorrect, there is no mechanism by which the committee note could be amended without altering the text of the rule itself, which might need no change. He also questioned how often the issue arises of carrying over permission for self-represented nonparties from the district courts to the courts of appeals—other than (rare) amicus participation in district courts.

Professor Sachs noted certain other reasons why a self-represented nonparty might submit a filing in district court, such as to quash a subpoena or to unseal a document of public interest, and he asked what default rule should govern such cases.

Mr. Freeman asked whether a court of appeals would be aware of permission granted by the district court. (Mr. Wolpert confirmed that it would.) He also raised the issue of whether, given that e-filing decisions are not published, a pro se litigant—or even a represented party—would be able to determine whether the court's permission was being unreasonably withheld in practice, or to meet the applicable burden of proof.

A judge member asked how the practice of granting permission operates in practice. Professor Struve stated that the practice varies widely, often including training requirements. Mr. Reagan described the FJC's research and added that typically, before obtaining permission, a litigant must first complete a training module and pass a test.

A liaison member suggested that such a training process made the permission requirement roughly equivalent to the reasonable conditions courts might impose under subdivision (ii). Professor Struve agreed, but added that a permission requirement was broader and allowed for a less systematic approach.

² Per Agenda Book 116, the text of this draft subdivision (ii) read as follows: "(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."

Per Agenda Book 120, the relevant language in the draft committee note read as follows: "[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.]"

Mr. Wolpert favored striking the provision carrying over permission for nonparties from the district court, noting that many proceedings (such as sealing documents) involve different concerns at the trial or appellate level; that requiring a motion need not be onerous; and that the requirement gives a clerk's office an opportunity to express concerns regarding litigants with histories of vexatious filings. Judge Dever noted that the Bankruptcy and Civil clerk representatives had expressed similar concerns.

With regard to the bracketed committee note language on self-represented parties' obtaining permission before e-filing, Professor Sachs suggested that the rule language concerning reasonable conditions would provide sufficient protection, and that allowing courts to require permission might in practice restore the prior (unflipped) default. With regard to self-represented nonparties allowed to e-file in district court, he asked whether a motion requirement would be necessary if the motions were rarely denied.

Mr. Freeman noted that some courts of appeals use different e-filing software than the district courts in the same circuit, which might require additional training for the filer before any permission carried over. A liaison member seconded Mr. Freeman's concern. Professor Struve and Professor Sachs noted that the proposed carryover provision allowed for deviations by local rule.

A liaison member suggested that the bracketed committee note language would be very unclear if a permission requirement "could," rather than "would," be permissible. He also noted that the carryover provision meant that nonparties who had e-filed in the district court would enjoy a different status than other nonparties filing for the first time in the court of appeals.

Mr. Wolpert stated that, even if 90 percent of e-filing situations are easy and rule-compliant, the rule should be prepared for the 10 percent of more difficult situations that drain the court's resources. The bracketed committee note language was designed for these cases, and the carryover provision might cause problems in them.

A judicial member agreed with concerns that the permission requirement in the bracketed committee note language might produce ad hoc decisions, asking if it would be helpful to include an express reference to the enforcement of reasonable conditions and restrictions. Mr. Wolpert responded that it would be, but he noted that an undefined category of reasonable conditions might produce disputes with pro se litigants, whereas a permission requirement was very clear. He added that the clerk's offices generally favor e-filing to reduce expenses, but that the carryover provision might increase difficulties, and that the bracketed language would give clerks something to point to in explaining the rules.

A motion was made and seconded to strike the carryover provision. The motion was approved without dissent.

A motion was made to strike the bracketed committee note language, but not seconded.

A liaison member asked whether the bracketed committee note language might refer to the reasonable conditions discussed in the rule. Mr. Wolpert stated that some self-represented litigants occasionally challenge the authority of clerk's offices to apply the rules, and that while he

did not want the exception to swallow the rule, the bracketed committee note language would help clarify this authority.

A judicial member asked whether it would be possible to incorporate the idea of enforcement of reasonable conditions on access into the bracketed committee note language regarding permission, so that such permission could be granted or denied in accordance with those conditions. Professor Sachs suggested the following: “A local provision requiring unrepresented parties to obtain the court’s permission in order to use the court’s electronic filing system would count as including reasonable exceptions, so long as such permission is granted or withheld in accordance with the reasonable conditions and restrictions on access set by the court.”

A liaison member asked whether permission was generally required by the courts of appeals. Mr. Wolpert replied that it was, but that clerk’s offices were often authorized to grant such permission, and that they usually did so as a matter of course absent evident concerns. The liaison member endorsed the suggested language.

A motion was made and seconded to adopt the suggested language in place of the bracketed language in the committee note. The motion was adopted by a vote of 6 to 1.

(Responding to a query from Professor Sachs, Judge Eid confirmed that the Committee’s deletion of the carryover permission in subdivision (iii) extended to the deletion of the bracketed language in the committee note accompanying that subdivision.)

2. Manner of Service

Professor Struve then turned to the service provisions, as to which she thanked the style consultants for their assistance. She described the major achievement of the draft as dispensing with the requirement of paper service on litigants who would receive copies of paper filings electronically, through a “notice of case activity” (a category encompassing any notice of electronic filing) generated when the clerk’s office uploads the paper filing. The draft carried forward a provision that such service would not be effective if the filer learns that it did not reach the person to be served, as well as a provision that a court could retain paper service for certain categories of materials (*e.g.*, sealed papers or case-initiating filings).

Professor Struve also noted a new issue of timing that had arisen: when a delay intervenes between a paper filing’s presentation to the court and its uploading to an electronic filing system (thus triggering the notice of case activity), how should the court calculate deadlines relating to service? Language developed in connection with the Criminal Rules Committee’s *pro se* subcommittee—and favored by Civil and Bankruptcy—provided in substance as follows. Deadlines *on* service would be applied with regard to the date on which a paper is filed with the court (meaning that the filer had complied with the required deadline); deadlines running *from* service would be applied with regard to the date on which the electronic notice issues (preserving the full window

of time promised to its recipients). For clarity, particularly for self-represented litigants, a repeated reference to service “by a notice of case activity” had been suggested in brackets.³

Mr. Freeman asked how the proposed language would interact with the deadline calculation provisions of Rule 26(c), which extend deadlines in certain circumstances by three extra days. Professor Struve answered that there would be no interaction, as Rule 26(c)’s three-day rule excludes papers served electronically, as any papers served under the new language would be. As a policy matter, moreover, no extra time would be necessary for a deadline calculated from the date on which the electronic notice issued.

A liaison member asked whether a similar deadline-varying provision would be needed for service by other electronic means. Professor Struve stated that it would not. Only service by notice of case activity involved the potential delay of a paper-to-electronic conversion. Moreover, service by other electronic means would still be ineffective should the sender learn it did not reach the person to be served (e.g., in a PACER outage).

A motion was made and seconded to approve the bracketed language. The motion was approved without dissent.

A liaison member asked if the distinction between a self-represented *party* and a self-represented *person* (that is, including nonparties) were clear enough from the rule. Professor Struve suggested an addition to the committee note on Rule 25(a)(2)(C)(i), underlined here: “The reference to an unrepresented ‘party,’ rather than an unrepresented ‘person,’ excludes an unrepresented nonparty from its scope; the rule does not grant nonparty nonlawyers any right to use the court’s electronic-filing system.” No objections were raised.

A motion was made and seconded to approve the package of amendments to Rule 25, as amended, for publication. The motion was approved without dissent.

B. Privacy (22-AP-E; 24-AP-B; 24-AP-C; 25-AP-C)

Professor Sachs presented a report on a cross-committee project on privacy (Agenda Book 148), designed to shield information such as Social Security and tax ID numbers or the names of minors. In general, this Committee’s approach has been to allow the Bankruptcy, Civil, and Criminal Rules Committees to set their own privacy rules and to incorporate those rules by reference. At the October meeting, an amendment was discussed that would require full redaction of Social Security and tax ID numbers in unsealed appellate filings (even when, for example, the information was permitted to appear in a filing in the district court), on the argument that appellate filings would rarely need such information to appear, and could be sealed if they did. The requirement would not apply to a clerk or agency that merely passes on a record to the court.

He also noted two additional issues. First, at the January meeting of the Standing Committee, a question had arisen of whether similar protection, over and above the other committees’ rules,

³ Per Agenda Book 118, the relevant provision read: “(B) For Service by a Notice of Case Activity. 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.”

should be given for the names of minors in appellate filings. Second, among the matters discussed in a recent rules suggestion (26-AP-2), though submitted too recently to be included in the Agenda Book, was the question whether a district court's order providing for public access to certain materials should, by default, carry over to the court of appeals.

Mr. Freeman asked whether this proposal would reflect a new obligation to redact information in an appendix that gathers already-filed documents. He noted that it might be a significant burden, as appendices are often assembled at the last minute; that different parts of an agency record might be submitted, and in different forms (such as an excerpt of record); that courts vary significantly as to the materials that may or must be included in an appendix; and that attorneys would then bear the burden of ensuring on every single page that no prohibited information appears. Professor Sachs confirmed that this would be required by the proposal.

An attorney member noted that different courts redact minors' names differently (*e.g.*, by initials or by pseudonyms), and that requiring a single approach on appeal, including for material drawn from state-court records, could introduce complications. Professor Sachs noted that the other committees were moving toward pseudonyms, and that it might be possible for a previous method of redaction to carry over on appeal. The attorney member added that, when the caption of a case includes a minor's initials, it might be very labor-intensive to replace such references and would provide little privacy benefit, notwithstanding the importance of the issue.

A liaison member noted that minors' names are much more commonly found in appendices—for example, in IDEA or immigration cases—than are Social Security or tax ID numbers. Mr. Wolpert agreed.

A judicial member asked whether a problem had been identified of minors' names commonly appearing in appellate filings. Professor Sachs was uncertain, noting that the issue had been raised at the Standing Committee meeting and was now passed on to the Committee.

Professor Hartnett noted that, because the initial concern regarding Social Security numbers had been limited in scope, no subcommittee process had been undertaken.

Mr. Freeman stated that the Department of Justice often litigates Social Security cases in which a claimant's appeal might include such numbers, which are found throughout the agency record. While there may be a technological fix, the burden appeared substantial. He also noted that the Solicitor General had not attended the October meeting due to the lapse in funding, and that it might be necessary to undertake further review.

Mr. Reagan described an FJC study that found several thousand unredacted Social Security numbers in district-court filings, as well as a few hundred in appellate filings, all of them located in the record on appeal.

An attorney member suggested that different rules might be appropriate for appellate briefs, for appendices, and for excerpts of record, given the degree of preparation usually required for each.

Mr. Freeman noted that different courts have highly variable requirements with regard to appendices and excerpts of record. He also noted that it may be very difficult to identify which four-number sequences in an administrative record are the last four digits of Social Security numbers requiring redaction.

Professor Sachs asked whether it would pose any difficulties for the Committee to consider the matter at greater length before sending proposed language to the Standing Committee. While the Committee had thought the language acceptable at its last meeting, different rules for briefs or appendices might be necessary. Moreover, Judge Dever had pointed out that under the Civil Rules filers waive privacy protections by including their own information in unsealed filings, but the proposed language made no provision for such waiver.

Professor Hartnett stated that it would not cause a problem, as the Appellate Rule currently piggybacks on other rules, so retaining that current rule would not prevent other committees from revising their own. The Committee had previously delayed its own proposal to allow other committees to catch up and produce their own language, but it would now be holding back. While the Standing Committee tends to prefer to deal with related proposals together, his instinct was that it would prefer a proposal that was fully baked to one that was not.

Ms. Dubay noted that the proposal to use pseudonyms for minors' names had originally been made by the Department of Justice to the Criminal Rules Committee, and that Civil and Bankruptcy were in agreement on that approach. She agreed, however, that the current piggyback rule would not prevent those committees from going forward with their own amendments.

Mr. Freeman reiterated the potential burden of redaction, particularly with regard to Social Security cases, that the Department of Justice had been unable to raise at the October meeting.

Professor Hartnett noted that the Committee had chosen to proceed without a subcommittee, and he suggested that it try to avoid doing so in the future, even for matters that might appear uncontroversial.

Professor Sachs suggested the appointment of a subcommittee.

Judge Eid appointed a subcommittee on the issue, consisting of Mr. Adler, Ms. Coberly, and Mr. Freeman. No further action was taken.

IV. Discussion of Matters Published for Public Comment

A. Amicus Disclosures (21-AP-C)

Professor Sachs presented a report on the amicus disclosure amendments (Agenda Book 153). He identified two issues for the Committee to decide: which changes, if any, it would recommend to be made to the amendments as previously proposed, and whether additional public comment would be necessary on such changes.

The first possible change concerned organizational amici and the disclosure of new members. The argument in favor of disclosure was that a funder might disguise its involvement in an amicus brief by joining an existing group and then immediately helping it to fund and prepare the brief under the group's name. The argument against disclosure was that new and old members both enjoy privacy rights, and that, per concerns expressed in cases like *NAACP v. Alabama*, entities might be chilled from submitting amicus briefs if they were required to disclose their members (even only their new members). Some groups form specifically for the purpose of influencing public debate on an emergent issue, or in response to a pending case, and therefore many names might have to be disclosed. These considerations had been debated extensively, and possible language had been identified to implement them (Agenda Book 155–57).

A second possible change concerned a backup requirement for disclosure. Under the proposed Rule 29(b), an amicus that has a party or counsel help fund or author the brief would have to disclose that fact. The proposed Rule 29(c) requires naming the party and counsel, and the proposed Rule 29(d) requires that, if the amicus fails to make “the required disclosure,” the party or counsel must do so. However, “the required disclosure” might be read either to extend only to the participation disclosure under Rule 29(b), or also to the required Rule 29(e) disclosure of a relationship between the amicus and a nonparty. On the one hand, if a party knows that a relationship ought to have been disclosed and had not been, the court should find out. On the other hand, beyond generic duties of candor to the court, the Appellate Rules do not generally require a party or counsel to report on another's failure in its disclosure obligations (*e.g.*, an incomplete Rule 26.1 corporate disclosure statement). The committee note appears to presume that only the Rule 29(b) disclosure was intended.

The third issue was an unnecessary and mistaken cross-reference to Rule 29(a)(5) in the Appendix of Length Limits.

1. New Member Disclosures

Judge Eid began the discussion with the new member provision.

An attorney member asked if any more information were available on the concerns expressed about this provision by the Executive Committee of the Judicial Conference. Judge Eid confirmed that the available information had been put in her letter with Judge Dever to the Clerk of the Supreme Court (Agenda Book 166).

Judge Dever added that the Executive Committee was chaired by Chief Judge Sutton, who had chaired the Standing Committee, and included Chief Judge Chagares, who had chaired this Committee. He also noted the dueling concerns discussed in the report of evasion and of privacy, as reflected by cases such as *NAACP v. Alabama* and *Americans for Prosperity Foundation v. Bonta*.

Another attorney member, noting that a new rules suggestion by the U.S. Chamber of Commerce (26-AP-3) had commented on the report, asked if the report had become public through its inclusion in the Agenda Book. Professor Sachs confirmed that it had. The rules suggestion had

been submitted too recently to be included in the Agenda Book and so had been circulated to the Committee.

Ms. Dubay noted that these issues had been discussed at great length, and that the new element was the import of the Executive Committee's views. Judge Eid summarized the discussion in her letter with Judge Dever of the Executive Committee's objections to the new member proposal. Judge Dever added that, in light of these objections and the other concerns discussed in the Agenda Book, the Committee had attempted to follow the same procedure as in 2018, when a proposal already submitted to the Court was withdrawn, revised, and resubmitted to the Standing Committee.

Mr. Freeman asked if the Court had acted on the request to withdraw. Judge Eid and Judge Dever confirmed that it had, and that these amendments had not been in the package submitted to Congress.

A judicial member noted that the Committee had discussed the merits of the proposals a great deal. Given the very negative reaction to the proposal, and given the unclear extent of the problem it sought to fix, he was inclined to adopt the recommended edits. Mr. Freeman agreed.

A motion was made and seconded to adopt the recommended edits to the proposed Rule 29(e). The motion was adopted by a vote of five to one, with one abstention.

2. Backup Requirement for Disclosure

Judge Eid then turned the discussion to the backup requirements for disclosure in the proposed Rule 29(c)–(d).

Professor Sachs noted that the Committee had one substantive and one stylistic issue to consider. He began with the substantive issue: whether, under (d), a party or counsel should be obliged to inform the court only about an amicus's failure to make 29(b) disclosures regarding that party or counsel—as the committee note suggests—or whether it should have a broader obligation to inform the court if 29(e) disclosures are not made.

A judicial member agreed that it seemed to contemplate the 29(b) disclosure only. No objection was heard.

Professor Sachs then turned to the stylistic issue of how to refer to the Rule 29(b) disclosure. He presented a suggestion received from the style consultants to merge (b) and (c) and to renumber accordingly.⁴

⁴ The suggestion was as follows (with additions underlined and deleted text struck through), with appropriate renumbering elsewhere in the rule text and committee note:

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

(1) disclose whether:

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

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

~~(C)~~ (C) 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; and

Professor Kimble thanked the Committee for the opportunity to attend. He stated that unnecessary cross-references are disfavored as an inconvenience to readers; mentioning Rule 29(b) can make it more difficult for the reader to understand that the reference is to the immediately preceding provision. He suggested that “such” created no ambiguity because it could only refer backwards, to an antecedent. He also thought that merging (b) and (c) would also be an effective response to any ambiguity.

A judicial member, approving of the merger of (b) and (c), asked whether a similar cross-reference issue would arise in the next provision (originally (d)). Professor Kimble stated that it would.

An attorney member suggested “the above disclosure.” Professor Kimble demurred, stating that the full rule number was more specific, but that in his view it was unnecessary.

The attorney member asked whether the ambiguity concern had come from the Standing Committee. Professor Sachs stated that he had raised the issue with this Committee upon encountering the language for the first time, and that his only concern was that the reference be unambiguous.

An academic member recommended keeping the reference to “Rule 29(b)” in the original (d), as suggested in the memorandum. No objection was made.

A motion was made and seconded to adopt Rule 29 with the suggested amendments, including the merger of 29(b)–(c). The motion was adopted without dissent.

3. Appendix of Length Limits

Professor Hartnett noted that the ellipsis in the proposed amendment, after the heading and before the first sentence (Agenda Book 161, line 4), was unnecessary as nothing was omitted. Professor Sachs concurred.

A motion was made and seconded to eliminate the ellipsis. The motion was adopted without dissent.

4. Public Comment

Professor Sachs suggested that the change to the Appendix of Length Limits was a technical amendment not requiring recirculation for public comment. The same was likely true of the amendments regarding Rule 29(b) and the backup disclosure requirement, as the committee note already envisioned the same substantive scope for the requirement. The real question was whether public comment was necessary for the changes with regard to new members of organizational amici. He suggested that it was not, as the issues had been exhaustively discussed and were already the subject of many public comments.

(2) if so, name the party or counsel.
~~(c) Naming the Party or Counsel. Any such Rule 29(b) disclosure must name the party or counsel.~~

A judicial member agreed with the analysis in the memorandum. No objections were heard.

A motion was made and seconded to recommend the proposed amendments to Rule 29, Rule 32, and the Appendix of Length Limits, as revised, to the Standing Committee for adoption without republication. The motion was adopted without dissent.

B. Premature Petitions (24-AP-G)

Professor Huang presented a subcommittee report on the treatment of premature petitions (Agenda Book 208). The proposed amendment, following certain provisions of Rule 4, is designed to remove a trap for the unwary in filing an incurably premature petition for review or application to enforce an agency order.

Professor Huang reported that the public comments were few and positive, and that the subcommittee had suggested a simplified numbering of the amendment, adding it at the end of the existing Rule 15 as 15(f) rather than inserting it as 15(d) and renumbering the remaining subdivisions. The existing Rule 15(d), on intervention in agency review, is often cited and its numbering is familiar to litigants.

Mr. Freeman expressed the Department of Justice's support for the amendment in general. He raised a potential ambiguity concerning the phrase "its order." Some agencies have internal bureaus that enter provisional orders; such an order becomes final if not appealed within the agency, with a statutory exhaustion requirement requiring an internal appeal before judicial review. In such a case a petition for review in a court of appeals might be incurably premature, but in a different sense than the proposed amendment envisioned, because the order was not otherwise reviewable in the absence of a petition for rehearing.

Professor Sachs suggested a revision to the first sentence of the proposed amendment to address this concern, together with revised language for the committee note citing a case in which this concern had arisen.⁵ Mr. Freeman described the case as an effective illustration of this concern.

A motion was made and seconded to adopt the suggested revisions. The motion was adopted without dissent.

Professor Kimble raised the issue of renumbering subdivisions. He argued that the Committee should take a long view: while changing the numbering of existing subdivisions may be a temporary inconvenience, committing to preserving their numbering would tie the Committee's hands over time and prevent more logical and consistent ordering of the rules. He suggested that the

⁵ The suggested revision to the first sentence of the rule text was as follows (with additions underlined and deleted text struck through): "(f) Premature Petition or Application. This subdivision (f) applies if a party files a petition for review or an application to enforce after an agency announces or enters ~~its~~ an otherwise reviewable order—but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party."

The suggested addition to the committee note was as follows: "Nor does it encompass circumstances when an agency order may be nonreviewable, or a petition for review may be premature, for any reason other than the pendency of a petition for rehearing, reopening, or reconsideration—for example, when the agency's proceedings have not yet culminated in a judicially reviewable order. *See, e.g., Alabama Power Co. v. FCC*, 311 F.3d 1357, 1366 (11th Cir. 2002)."

Committee's focus should be on the rules as a whole, rather than on the individual subdivision being changed.

Professor Sachs noted that, in the restyling process, certain highly familiar rule numbers (*e.g.*, Civil Rule 12(b)(6)) were preserved. While Rule 15(d) was not on that level, it was already out of order with respect to the filing-fee provisions of Rule 15(e). Fifty appellate cases already discuss Rule 15(d), a high number for a relatively unknown subdivision, and it would take some time for litigants to realize that these discussions referred to something else. The considerations for a general restyling might be different than those applicable to an individual amendment.

Mr. Freeman recognized the benefit of logical consistency, but he argued that a saving provision for a small number of petitions would not be anomalous at the end of a rule. Moreover, the intervention project referred extensively to the existing Rule 15(d).

A liaison member seconded this concern. He added that identifying a renumbered section was a burden on courts, and that this burden did not diminish over time, because the existing precedents would retain their references to the old numbering.

An attorney member distinguished the considerations relevant to a wholesale reorganization from those relevant to an individual amendment.

A motion was made and seconded to forward the subcommittee's proposal, as revised, to the Standing Committee. The motion was adopted without dissent. Judge Eid thanked the subcommittee and Professor Kimble for their work.

V. Discussion of Matters Before Subcommittees

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

Judge Nichols presented a subcommittee report on reopening the time to appeal (Agenda Book 239). Another trap for the unwary can be presented when a litigant files a notice of appeal after the time for appeal expires, but before its motion to reopen is granted. A subcommittee had been formed to consider the issue. The Supreme Court then held in *Parrish v. United States* that such a notice may be timely, and also that a single document can serve both as the motion to reopen the time to appeal and as the notice of appeal for that reopened window. In response, the subcommittee suggested language at the October meeting to codify *Parrish*.

Since that meeting, the subcommittee had focused on three issues. First, it had chosen not to describe the substance of what makes a document an effective notice of appeal, leaving that question to be settled by Rule 3. Second, it had sought to avoid any impression that its proposal directly governed jurisdiction, rather than merely specifying the time at which a filed notice becomes effective. Third, it sought to accommodate a circumstance in which multiple parties might seek to appeal, clarifying that the timeliness rule applied only to the movant's notice.

Professor Sachs noted that the rule suggestion from Devin N. Wesenberg (26-AP-1), to be discussed later, supported such a proposal.

A liaison member asked about the structure of the proposal's main sentence, asking whether the parenthetical material between em-dashes—"even if that document also serves other purposes"—should instead be placed at the end of the sentence. Professor Sachs stated that one difficulty courts encounter is that the document that serves as a notice of appeal may not be captioned as such, and so it may be useful to signal that fact early on in the rule text.

A judicial member seconded the concern about the sentence's complexity and asked if it could be divided into two. A liaison member asked if the parenthetical phrase were necessary, or whether the point could be made in the committee note. Professor Sachs stated that the courts of appeals had disagreed on whether a document could be the notice of appeal and a motion to reopen at one and the same time; though *Parrish* answered in the affirmative, a codification might want to address the issue in the rule text.

Judge Nichols noted that the committee note did reiterate the point, and also that a two-sentence approach had been attempted previously.

Mr. Freeman asked whether the focus should be on a document that serves the purpose of a notice of appeal. Professor Sachs suggested that this might not communicate the affirmative codification of *Parrish*'s rule that documents could serve multiple purposes at once.

An academic member suggested that the matter be considered further, as *Parrish* had eliminated any time pressure; wording suggestions could be sent to the subcommittee. Professor Sachs agreed. At Judge Eid's suggestion, no further action was taken.

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

Professor Sachs presented a subcommittee report on intervention on appeal. As the Supreme Court had noted in *Cameron v. EMW Women's Surgical Center*, there is no general rule on intervention on appeal from a district court, and the courts of appeals have largely been proceeding by analogy to Rule 24 of the Civil Rules.

Subdivision (a) describes the scope of the rule, determining when intervention would be governed by this rule or by preexisting law. Civil cases are already governed by Rule 24 and should likely be covered. Criminal cases do not generally have intervention, but nonparties sometimes appear in various ways: victims with statutory rights, subpoena targets who move to quash, persons asking for documents of public interest to be unsealed, and so on. The current language would not apply to criminal cases, and there is some question of how to categorize cases under 28 U.S.C. §§ 2254 and 2255. (Agency review proceedings are already addressed in Rule 15(d).) Different sets of the Appellate Rules apply in bankruptcy and Tax Court appeals; intervention at the trial level is possible in each, and the proposal's application to each could be specified through its choice of rule number.

Subdivision (b) describes intervention as disfavored (in cases involving neither mandatory nor government intervention), placing the description early in the text to dissuade unmeritorious requests. Subdivision (c) requires intervention to be by motion, which must be filed early (given the circumstances facing the party), state the grounds for intervention (to avoid a negative inference

from Civil Rule 24), and describe intervention's effect on subject-matter jurisdiction, both as to the court and the district court (so as to place the question before the court, without attempting to answer it in advance—a putative intervenor might even wish to secure dismissal under Civil Rule 19(b)).

Subdivisions (d)–(e) set out grounds for intervention. Under subdivision (d), intervention would be permitted if a federal statute confers a right to intervene. (Statute-conferred discretion would be exercised on the other grounds supplied.) Subdivision (e)(1)–(3) address intervention by governments (which could also employ the general rules for intervention, discussed below). A U.S. or state government could intervene to defend the validity of a law or action that it or its agency or officer had taken; this is narrower than the equivalent Civil Rules provision, which applies in other cases construing a law or action. A legally authorized agency or officer could do the same, and the United States could intervene to defend its national security and foreign relations interests.

Subdivision (e)(4) sets out the generic rule for permissive intervention. It would require the movant to show a compelling reason why intervention was not sought previously (or how things had changed). It would also require the movant to have an interest—whether “legally protected” or “legally cognizable”—at stake. This interest must be distinct from the precedential effect of a decision (a topic for an amicus) and must satisfy the Civil Rule 24 categories of impairment, inadequate protection by existing parties, absence of prejudice, and so on.

Finally, subdivision (f) makes clear that a granted motion would ordinarily make the movant a party for all purposes, and that a denied motion doesn't preclude amicus participation, to nudge failed intervenors toward that course.

Mr. Freeman stated that the Department of Justice had been working on the issue for a long time. Its traditional concern was that a rule on intervention would only encourage more intervention. But the expansion of intervention practice in the courts had persuaded it that a rule was merited. While the government had never had difficulty intervening to defend the constitutionality of legislation, the courts' analogies to Civil Rule 24 (as described in *Cameron*) had produced widely varying rules in practice, and the Department thought it better at this point to adopt a rule that made clear that intervention on appeal was a different beast from intervention in a district court. With respect to the Tax Court in particular, his tax appellate colleagues could not remember a case involving intervention for the first time on appeal, but they thought the same rules should apply in Tax Court appeals as in tax controversies appealed from a district court or from the Court of Federal Claims. He therefore proposed denominating the proposal as Rule 12.2, so that it would apply as a matter of course (under Rule 14) to Tax Court appeals as well.

A liaison member agreed but asked whether the existence of a rule would indeed invite more motions to intervene—in consumer class action cases, commercial cases, and others. A client might wish to be involved in a case, though the party didn't appear in the district court, and they might not be dissuaded by the language of “disfavored.” (Mr. Freeman agreed that rehearing petitions are also disfavored, but everyone files them.) The liaison member added that resolving the motions to intervene might require fact development that could be addressed through discovery in district court but not easily on appeal. He worried that intervention would become a regular

practice, and that once an intervenor enters, a party might seek remand to assert additional claims or defenses, complicating matters further.

Mr. Freeman noted that he had shared such concerns, but that in his view, the real barriers to appellate intervention were not the language of disfavor but the timeliness constraint and the exclusion of precedential effect as an interest justifying intervention. He added that the end of nationwide injunctions in *Trump v. CASA* had reduced demand for appellate intervention: if an injunction in litigation between *A* and *B* might affect a nonparty, it would be more plausible that this party had a right to speak on appeal. He also reiterated that the existing practice, involving analogies to Rule 24, was worth fixing.

An attorney member asked whether the language requiring filing as soon as is practical could be replaced with a more rigid time constraint (*X* days after the notice, etc.), as those who really would have a legitimate interest in appellate intervention might be more likely to have their ducks in a row beforehand. He agreed with Mr. Freeman that all the circuits were currently saying different things.

Mr. Freeman appreciated the suggestion, but he noted that the legitimate basis for intervention might not appear until later in the case.

A liaison member asked whether the FJC had studied intervention on appeal. Mr. Reagan described its research (October 2025 Agenda Book 234). He noted that many attempts at intervention involved new officials who had recently taken office.

Professor Sachs noted that the committee had considered other ways to phrase the time requirement, such as “the earliest practicable time,” but did not want to suggest a single date for all parties. While perhaps it could be made party-relative (“the earliest practicable time for the movant”), sometimes a party who ought to have been notified in the district court, as under Civil Rule 12(b)(7), jumps in as soon as possible.

Mr. Freeman pointed out that parties may be able to learn of the case from outside sources, and that the rule requires a compelling reason why intervention was not sought earlier.

An attorney member asked why the nonparty “may,” rather than “must,” file a motion, and whether the new standards might have an impact on the practice of intervention in agency review under Rule 15(d).

Professor Sachs suggested that Rule 15(d) might be a good topic for future review. He added that subdivision (a) limited the proposal’s scope to appeals from district courts, and that Rule 15(d) needed a broader standard for intervention, as it may be the first time that parties on different sides of an agency’s decision would appear in an Article III court. He also stated that “may” clarified that nonparties were not required to file motions to intervene.

An attorney member suggested the phrase “a nonparty who wishes to intervene must file”; no objection was raised.

Mr. Freeman suggested adding language to subdivision (a) that intervention in agency review proceedings was governed by Rule 15(d). Professor Sachs seconded that suggestion.

A motion was made and seconded to redenominate the proposal as Rule 12.2. The motion was adopted without dissent.

An attorney member asked whether the rule would apply in cases arising under 28 U.S.C. § 2241. Mr. Freeman seconded that concern, which arises in immigration and national security habeas cases, and suggested that intervention in such cases would be unusual. Professor Hartnett added that the availability of class actions in habeas cases was also a live issue; Mr. Freeman agreed. Professor Hartnett stated that § 2241 cases typically did not involve a prior judgment, and might be more likely to involve multiple persons' interests. Mr. Freeman added that in at least two circuits, condition-of-confinement claims involving the Bureau of Prisons are litigated under § 2241. The attorney member noted that many good-time credit cases are litigated under that provision also (with which Mr. Freeman agreed), asking whether that fact counseled in favor of their inclusion or exclusion.

Professor Sachs described the issues concerning criminal cases as follows. On the one hand, to the extent that there is no general provision for intervention in a criminal case, it would be odd to provide one on appeal. On the other hand, there may be very few cases in which a criminal case would create a legally cognizable interest for a nonparty (*cf. Gilmore v. Utah*)—although, to avoid inviting such motions, perhaps such cases should be carved out of the rule entirely. He noted that the proposal as framed would not apply to § 2241 proceedings initiated in the court of appeals, but rather only those appealed from a district court.

Mr. Freeman described § 2255 cases as functionally criminal cases, involving collateral review of federal criminal convictions, but stated that § 2254 cases are litigated functionally as civil cases, potentially requiring a carveout that would not be needed for § 2255. Professor Sachs asked whether mentioning § 2254 only could create a negative inference; Mr. Freeman expressed ambivalence.

A liaison member stated that, if the rule does permit appellate intervention, it should be tight enough to ensure that intervention occurs only in a limited category of cases. Some cases are easy to adjudicate, either one way or the other (federal requests to defend the constitutionality of a law, random filings by uninvolved litigants). But a middle group of cases, involving sophisticated parties in commercial, bankruptcy, or class action cases, among others, might argue that their interests “may” be affected. An attorney may advise a client that it has the option to file such a motion and might wish to do so as a protective matter. The liaison member worried that it may become a regular part of appellate practice for sophisticated parties who will want to say that they tried, even if the motion failed. Professor Sachs suggested that “may” reflected uncertainty: a litigant's interest might be affected only by an adverse ruling from the court, not by a favorable one; the liaison member suggested that appellate intervention was sufficiently extraordinary that a stronger statement was necessary.

Another liaison member suggested that becoming a party for all purposes would be sufficient to dissuade a sophisticated private party from wishing to intervene, and that only a party with a

real interest in the case would do so. He also suggested that the rule might require that, if the court decides in a particular manner, it will affect the party's interest.

An attorney member agreed with the latter point, adding that, if an intervenor becomes a party for all purposes, it would be bound by the judgment, and if it wishes to reserve the right not to be bound it should participate as an amicus.

Professor Sachs suggested that the subcommittee work on language to implement this suggestion, as well as to note the exclusion of cases governed by Rule 15(d).

Mr. Freeman asked whether the phrase "mandatory" was appropriate, suggesting that the subcommittee revisit it.

A liaison member asked whether, if intervention had been sought "previously," that could only have occurred in the district court, from which an unsuccessful intervenor could have appealed. Professor Hartnett noted that a new reason for intervention could have arisen since.

An academic member asked about the choice between "legally protected" and "legally cognizable," and whether the intent was to import the standing caselaw surrounding those phrases. (Professor Sachs suggested that this was the intent; an intervenor ought to have the sort of interest that would support its own presence as a party.) The academic member asked whether that was sufficiently clear from the committee note, but was indifferent as to the choice between the terms.

Professor Sachs noted that "protected" often suggests victory on the merits, whereas "cognizable" allows for uncertainty on that point.

Mr. Freeman noted that some cases distinguish "cognizable" from "protected" based on the litigant's presence within the zone of interest protected by a statute: a nanny whose employer was unlawfully fired, and thus loses employment too, has an interest supporting Article III standing but is not within the zone of interest.

An academic member noted that *Cameron* uses the word "protect," drawn from Civil Rule 24, and "legally cognizable" in a different context.

Professor Sachs noted that the subcommittee's difficulty with the "protected"/"cognizable" choice had been the lack of any strong preference one way or the other. Judge Eid suggested that the Committee lacked any strong preference also.

Mr. Freeman suggested that the committee note might wish not to cross-reference Civil Rule 24 as prominently, so as to avoid any inference of importing its substantive standards. An academic member agreed that unnecessary parallelism should be avoided.

A liaison member asked whether parties had a statutory right to intervene in a court of appeals, and whether they should be subject to timeliness requirements. Mr. Freeman suggested that the current draft would so subject them (and Professor Sachs agreed, based on the requirements imposed on a motion), but added that the subcommittee should consider how to make that requirement more clear.

Another liaison member noted that, however the rules are drafted, it would be necessary to allow for proper examination of the intervenor's legal interest.

Mr. Freeman added that recent litigation in the Supreme Court had focused on disputed questions of timeliness. He also suggested that the committee note clarify the relevance of *Cameron* to the subjects addressed by subdivision (e)(2). No further action was taken.

C. Administrative Stays (24-AP-L)

Professor Sachs presented a report on administrative stays (Agenda Book 237). The subcommittee appointed on the issue had not been asked to meet, awaiting the FJC's research on the question, which continues apace.

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

Professor Huang presented a subcommittee report on the treatment of Indian tribes (Agenda Book 244). The issue had been considered extensively fifteen years earlier, but it had been put on hold in 2012 and revisited but not revived in 2017.

He emphasized two questions: whether the rules should be amended to specifically address the status of tribes, and, if so, which Indian tribes should be included. As he described, some provisions in the rules refer to the federal and state governments. As domestic non-state sovereigns, tribes might be treated analogously to state sovereigns; or they might be analogous to foreign sovereigns. (He noted that Alaska Native Corporations are not sovereign but might raise similar issues of self-determination.)

In addition, he raised the question whether the matter should be addressed on a cross-committee basis, as well as whether tribes should be included wholesale within the definition of "states" or on a more specific basis within appropriate rules.

Mr. Freeman asked why the question had been tabled earlier. Professor Huang stated that the answer was not clear, but that there had been no agreement on the proper treatment. Judge Eid agreed that there had been no consensus, with both strong support and strong opposition.

A liaison member asked whether the prior discussion had centered on the all-or-nothing approach or the provision-by-provision approach. Judge Eid answered that it had been all-or-nothing.

An attorney member suggested that the all-or-nothing approach raised philosophical and political questions that a provision-by-provision approach avoided. (Professor Sachs noted that Judge Wesley, who could not attend, had expressed his view in favor of the latter; some rule provisions regarding states, such as those concerning habeas, might not fit the legal circumstances of tribes.)

Judge Dever noted that the Department of Justice had supported a change to Evidence Rule 902(1) to include tribal documents within the category of domestic public documents, although

opposition had been expressed in the criminal defense community, and that the issue had been extensively discussed. No further action was taken.

VI. Discussion of Other Rules Suggestions

A. Uniform Bar Admission (25-AP-B)

Professor Sachs presented a report on uniform bar admission (Agenda Book 248), responding to a suggestion from the National Women's Law Center to standardize bar admission across the courts of appeals. The suggestion had been discussed at the October meeting, but no action had been taken, and it had been retained on the agenda.

He suggested that further research might be helpful on the various courts' current practices regarding admission, listing of names on a filing, pro hac vice admission, participation in oral argument, and so on. This research might be an appropriate task for the Rules Law Clerk, once that position were no longer vacant. (Ms. Dubay stated that a law clerk and a general counsel intern might soon be hired.)

Judge Eid agreed that it would be helpful to see how diverse the rules currently are. An attorney member seconded that view.

Professor Hartnett noted that the cross-committee project with regard to the district courts had chosen to take no action on the matter.

Mr. Freeman noted that the Department of Justice had frequently encountered variation among courts of appeals on a number of questions, including whether attorneys appearing ex officio (such as the Attorney General) must file personal appearances. He offered to provide already-compiled information to the researchers.

An attorney member stated that in the Seventh Circuit, multiple separate corporate disclosure statements were required from everyone appearing on the brief.

No further action was taken.

B. Double-Sided Printing (25-AP-E)

Professor Sachs presented a report (Agenda Book 250) on a rules suggestion from Paula Anthony concerning the current requirements of single-sided printing (Agenda Book 252). Single-sided printing doubles the amount of paper used and increases costs for litigants; moreover, many judges read documents electronically. However, printing on both sides of the page might create bleed or raise other issues; in the Supreme Court, where double-sided printing is permitted, the paper must be of sufficiently high weight to make bleed unlikely.

An attorney member argued that, while he had initially considered the issue a minor one, he now saw considerable merit in the proposal, to reduce the cost of printing and the size of briefs.

Mr. Wolpert stated that, while his office would welcome a fifty percent reduction in the volume of paper, he worried that individual courts and chambers preferences might produce too much variation. He added that the issue of bleed was not from the printer, but from the pens used to comment on filings.

Mr. Freeman stated that the issue was bound up with the larger question of whether courts might use entirely electronic filings. Some circuits vary in this, as well as on whether appendices or briefs might be double-sided. He thought that any rule would be a transitional one, as all-electronic filing would soon be in place.

Mr. Wolpert noted that the Tenth Circuit rarely orders paper copies of records or appendices, but it frequently orders paper copies of briefs.

Professor Sachs noted that the suggestion could be set aside and then returned to after a set period of time. He also noted that there was little argument for single-sided printing of appendices, and a change could save money for litigants and shelf space for clerk's offices.

An attorney member expressed surprise that appendices might be required to be printed single-sided. (Another attorney member concurred.)

A liaison member suggested that it might be worthwhile to informally focus-group the question with judges. A judicial member agreed and expressed comfort with double-sided briefs. Another liaison member described a wide range of practice, with some judges operating entirely with electronic copies.

Professor Sachs conveyed Professor Hartnett's interpretation that Rule 32(b) incorporated for appendices Rule 32(a)(1)(A)'s requirement for briefs of single-sided printing.

Judge Thomas stated that the problem was with pro se materials, which were harder to scan if double-sided.

Judge Eid asked if it were possible to survey judges informally. Professor Sachs suggested that a subcommittee could help in directing inquiries. Judge Eid appointed a subcommittee on the topic, consisting of Mr. Hicks, Mr. Freeman, and Mr. Wolpert. No further action was taken.

C. Introductions to Briefs (25-AP-F)

Professor Sachs presented a report (Agenda Book 255) on a rules suggestion from Judges Newsom and Pryor concerning introductions to briefs (Agenda Book 259). Under Rule 28(a), an appellant's brief must contain, under appropriate headings and in the order indicated, certain elements that do *not* include an introduction. Litigants often do include introductions nonetheless, which Judges Newsom and Pryor described as a helpful practice; but some litigants may be scared off by the absence of a provision in the rule permitting introductions. Professor Sachs noted various ways of addressing this, whether by adding a separate Rule 28(d) on introductions (as proposed by Judges Newsom and Pryor) or by adding an additional but optional element to the

list. He suggested appointing a subcommittee to discuss the local rules on the question and the proper response.

A liaison member noted that he typically includes an introduction and had never seen a brief bounced for that reason. He did not consider it a major issue, but thought that, if introductions were included, they should be placed before the jurisdictional statement.

An attorney member identified as a passionate supporter of introductions and agreed that inexperienced advocates might hesitate to include them, given their absence from the rule. At least one circuit requires a one-page summary of the case that functions as an introduction.

Mr. Freeman agreed that the Department of Justice included introductions in almost every brief and had never experienced any difficulty. He agreed that it should not come after the jurisdictional statement.

Judge Eid appointed a subcommittee on the topic, consisting of Mr. Adler, Ms. Coberly, and Mr. Pincus. No further action was taken.

D. Reopening Time to Appeal Suggestion (26-AP-1)

Professor Sachs presented a report (Agenda Book 262) on a rules suggestion from Devin N. Wesenberg on reopening the time to appeal (Agenda Book 264). As mentioned above, this suggestion was in the nature of a comment on the Committee's efforts on an earlier agenda item (24-AP-M), and he proposed consolidating this agenda item with that. Judge Eid consolidated the agenda items.

VII. New Business

Mr. Freeman identified an item of new business. In discussing intervention with his Tax Division colleagues, he had learned that certain problems of incurably premature notices of appeal, corrected for appeals from district courts by existing provisions of Rule 4, are not corrected in Tax Court appeals under Rule 13. He stated that this presents a practical problem for the Tax Court, which will often announce a decision before it enters a final opinion, unwittingly creating a trap for the unwary when litigants file the notice of appeal in between.

Professor Sachs suggested appointing a subcommittee on the topic.

Judge Eid appointed a subcommittee on the topic, consisting of Professor Huang, Mr. Freeman, and Mr. Pincus. No further action was taken.

Judge Eid disbanded the Amicus, Bankruptcy Appeals, Costs on Appeal, and IFP Form 4 subcommittees, all currently listed as inactive (Agenda Book 9). She thanked the participants and announced that the next meeting of the Committee would take place in Washington, D.C., on October 6, 2026.

The meeting was adjourned at 2:37 p.m.

TAB 4

TAB 4A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: August 31, 2026
RE: **Electronic Filing by Pro Se Litigants
(21-AP-E; 20-AP-C)**

Amendments to Rule 25 on electronic filing by self-represented litigants were approved for publication at the Standing Committee's June meeting and were sent out for public comment in August.

One comment from Evelin Cartagena was received before the end of August. It was strongly supportive, but it recommended that the committee note's discussion of Rule 25(a)(2)(C)(ii) clarify the scope of "reasonable exceptions" to a bar on unrepresented parties using the electronic-filing system—for example, by recommending "a clear, public procedure for pro se litigants to request CM/ECF access, with a decision on a defined timeline."

The comment period closes on February 15, 2027. A summary of the comments will be provided in the agenda book for the April 2027 meeting.

TAB 5

TAB 5A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Privacy Subcommittee
DATE: September 16, 2026
RE: **Privacy (22-AP-E)**

This subcommittee (Mr. Adler, Ms. Coberly, and Mr. Freeman) was formed at the April 2026 meeting to discuss additional privacy protections for filings in the courts of appeals. The Appellate Rules currently borrow the privacy rules imposed by the Bankruptcy, Civil, or Criminal Rules. Those advisory committees have now proposed additional protections for public comment, and any amendments made to those rules would apply automatically in appellate cases as well.

Because certain items of personal information are rarely needed in an appellate brief, there is an argument that the Appellate Rules should impose tighter requirements still. A draft amendment was accordingly considered at the October 2025 and April 2026 meetings. It has been discussed by the subcommittee without resolution. In framing the proper approach for the Appellate Rules to follow, the subcommittee hopes to benefit from the public comment process on the published amendments to the other rules, and it would appreciate guidance from the full committee on certain key questions.

Rule 25(a)(5) currently provides as follows:

Rule 25. Filing and Service

(a) Filing.

* * *

(5) *Privacy Protection.* An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

In other words, a case on appeal is usually governed by the privacy rules that applied in the prior tribunal. In a case of original Article III jurisdiction in a court of appeals (such as on a petition for review of agency action), a particular rule is chosen (such as Civil Rule 5.2).

Responding to a number of suggestions—including Senator Wyden’s suggestion to redact social-security numbers (22-AP-E); the Department of Justice’s suggestion to use pseudonyms rather than initials for minors (24-AP-B); and the American Association for Justice’s endorsement of social-security redaction and its suggestion that minors’ pseudonyms be gender-neutral (24-AP-C; 25-AP-C)—the other advisory committees have discussed potential amendments to their privacy rules. For example, the Civil Rules amendments that have been approved for public comment would require complete redaction of Social Security numbers and other tax identification numbers, as well as the use of pseudonyms for minors’ names:

Rule 5.2. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, ~~in an electronic or paper filing with the court that contains an individual’s social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number,~~ a party or nonparty making ~~the filing~~ may include only: an electronic or paper filing with the court, including any exhibit or attachment, must:

- (1) ~~the last four digits of the~~ omit or completely redact all social-security ~~number and~~ or other taxpayer-identification numbers, including employer-identification numbers; and
- (2) if any of the following types of information appear in the filing, include only:
 - (A) the year of an ~~the~~ individual’s birth;
 - ~~(3)(B) the minor’s initials~~ a pseudonym in place of the name of an individual known to be a minor; and
 - ~~(4)(C) the last four digits of the~~ a financial-account number.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;

- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 5.2(c) or (d); and
- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

- (1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;
- (2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:
 - (A) the docket maintained by the court; and
 - (B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any

reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

Committee Note

In contrast to the current rule, which allows public filings to contain the last four digits of social-security and taxpayer-identification numbers, the amendment requires the omission or redaction of all digits of social-security and taxpayer-identification numbers in public filings. Recent federal policy guidance recommends avoiding the unnecessary display of any part of these numbers on forms, reports, and computers. The Committee concluded that even partial numbers are useful to identity thieves, and that the omission of these numbers from public filings will impose no hardship on either litigants or the courts. In cases in which this information is pertinent, Rule 5.2(f) allows a party to file an unredacted copy of a filing under seal.

Taxpayer-identification numbers (TINs) are identification numbers used in the administration of tax laws. In addition to Social Security numbers, TINs include individual taxpayer-identification numbers (ITINs), taxpayer-identification numbers for pending U.S. Adoptions (ATINs), and employer-identification numbers (EINs).

The amendment's protection for "taxpayer-identification numbers" includes employer-identification numbers as well as individual taxpayer-identification numbers and adoption-identification numbers. Although employer-identification numbers for some corporations may be publicly available, smaller businesses and individuals who employ others have a privacy interest in these numbers, and there is also a potential for their misuse.

To enhance the protection of minors' privacy and safety, the amendment also requires the substitution of a pseudonym, rather than initials, in place of a minor's name in public filings. When it is feasible to do so, the use of gender-neutral pseudonyms is preferable. The use of gendered pseudonyms or pronouns, combined with other information contained in public pleadings, may make it easier to uncover the identity of a minor.

The requirement for omission or redaction applies to exhibits or attachments. Parties and nonparties who include exhibits or

attachments in public filings are required to review them to ensure that they do not contain information protected by the rule. But the exemptions in subsection (b) still apply to exhibits and attachments (though a protective order under subsection (e) may require additional omission or redaction).

If adopted, these new requirements would (as noted above) automatically apply in appellate cases by operation of Rule 25(a)(5). However, the proposed amendments still retain various categories of exemptions that may be significant on appeal. These exemptions include an agency record, the record of a state-court proceeding, the record of a court or tribunal not subject to the redaction requirement when originally filed, and any information as to which a litigant has waived privacy protections.

At the April 2026 meeting, the advisory committee considered a draft amendment that would have gone further than simply incorporating these new protections by reference. It would have required full redaction of tax identification numbers from appellate filings, even if an exemption to the ordinary privacy rules applied:

Rule 25. Filing and Service

(a) Filing.

* * *

(5) *Privacy Protection.*

(A) In General. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(B) In a Petition Involving the Railroad Retirement Act. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(C) Redacting Social-Security Numbers and Taxpayer-Identification Numbers. Unless the court orders filing under seal, a party or nonparty must fully redact social-security numbers or other taxpayer-identification numbers,

22 including employer-identification numbers, from any filing
23 it makes, despite what Rule 25(a)(5)(A) allows. But this re-
24 quirement does not apply to a clerk who forwards or makes
25 the record available under Rule 6(b)(2)(C), Rule 6(c)(2), or
26 Rule 11 or to an agency that files the record under Rule 17.

Suggestions were also made at the April meeting that the same approach might be applied to require pseudonyms for the names of minors mentioned in appellate filings.

By definition, however, stronger protections in an Appellate Rule would require parties to redact information that would have been exempt from protection under the otherwise-applicable rule of procedure. The concern was thus raised in April that any additional protections on appeal might impose an undue burden on litigants obliged to scour a voluminous appellate record. This subcommittee was appointed to discuss the matter.

The subcommittee believes that there are some circumstances in which stricter privacy protections on appeal may be appropriate. But it also recognizes that stricter appellate protections impose greater burdens on litigants, and in many cases these burdens may outweigh the advantages of further privacy protections. Moreover, the exemptions to privacy protections in the Bankruptcy, Civil, and Criminal Rules are crucial to maintaining the balance of burden and benefit under those rules of procedure. Any new set of protections at the appellate level might have to contain its own exemptions, and crafting these exemptions will require further thought.

The most important consideration in favor of a stricter rule is the fact that appellate filings often attract substantial public interest, especially as compared to materials included in an administrative record or listed on the docket of a district court. As a result, the harm from exposing a Social Security number or a minor's name in an appellate filing may be substantial as well. This remains true even if the same private information has already been mentioned in a publicly available filing on a district court's docket, which few members of the public will read. And only in the rare case would a party have any reason to mention in its appellate brief the last few digits of a tax identification number. (The same is presumably true of other attorney-written documents, such as motions or petitions for rehearing.) In these cases, the benefit of additional privacy may outweigh the costs—though the number of such cases may be small as well.

The benefit-burden calculus is very different, however, when an appellate filing includes materials generated by a prior proceeding or tribunal. While the draft amendment discussed in April exempts from its scope the record forwarded by a clerk or filed by an administrative agency, it does not exempt record materials filed by litigants as part of a joint appendix or an excerpt of record. These filings are often assembled quickly and may be quite extensive; a multivolume appendix is not unheard of. They may well contain private information, not necessarily because of any choice made by the parties (for example, when an administrative record includes an employment file that happens to show a partially redacted Social Security number, or when public commenters in an administrative proceeding happen to discuss a proposed rule's effects on their minor children by name). And they may have been originally compiled without regard to the same privacy protections; the state privacy rules governing a state-court record need not resemble those adopted by the Federal Rules, and the same goes for any administrative privacy rules governing administrative records. (When a court of appeals engages in direct review of agency action, for example, it applies Civil Rule 5.2's redaction rules to the filed materials for the first time—and even if the case had first been heard in a district court and then appealed, the administrative record would have been exempt from redaction under Civil Rule 5.2(b)(2).)

Requiring litigants compiling a joint appendix to examine every relevant document originally generated by a state court or administrative agency, to see if it mentions a name that belongs to a minor or a four-digit sequence that has been taken from a Social Security number, is a rather heavy burden—notably, a burden that no other advisory committee has yet thought it appropriate to impose. See Bankruptcy Rule 9037(b)(2)–(4); Civil Rule 5.2(b)(2)–(4); Criminal Rule 49.1(b)(2)–(4). At the same time, this burden is weighed against a comparatively smaller privacy benefit, as including already-available information in a joint appendix does not have the same impact on privacy as including it in an appellate brief. (Members of the public sometimes read briefs, but they rarely seek out the joint appendix.)

Even within a brief, moreover, an exemption may be necessary for the quotation of materials produced in another tribunal or proceeding. For example, the caption of a prior proceeding might include a minor's initials (say, "*In re S.K. & G.K.*"), or a judicial opinion under discussion might quote from materials that do. Obliging

litigants to alter case names or to revise quotations in the interest of privacy might go too far.

In sum: the current approach of borrowing privacy rules from other rules of procedure borrows the exemptions to such rules too, and any new protections added on appeal would also have to include new and appropriate exemptions. In determining both new protections and new exemptions, the subcommittee hopes to benefit from the full committee's advice, as well as from the process of public comment on the Bankruptcy, Civil, and Criminal Rules amendments. (Such comments will be due in February 2027.)

Other approaches might be considered as well. For example, a purely hortatory rule amendment might caution litigants against unnecessarily including information that would nonetheless be exempted from redaction under the applicable rule of procedure.

TAB 5B

MEMORANDUM

TO: Appellate Rules Advisory Committee
FROM: Intervention on Appeal Subcommittee
DATE: September 16, 2026
RE: **Intervention on Appeal**

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 at the April meeting (see Agenda Book 219–35 (Apr. 2026)) and the Standing Committee’s June meeting, as well as style consultations, it now presents an updated version of that amendment.

Discussions of the comments at those meetings follow, along with proposed revisions to the draft amendment and committee note. A clean copy of the draft amendment and committee note, with all revisions incorporated, is reproduced at the end.

After many rounds of review, the subcommittee recommends that—if it meets with the committee’s approval, and subject to one uncertainty concerning the project on tribal issues—the draft amendment and committee note, as revised, be forwarded to the Standing Committee for publication and comment.

In general. Throughout this process, the subcommittee has tried to balance the concern that the lack of any rule will lead to inconsistent and unfair intervention practice with the concern that the mere existence of a rule will invite unmeritorious motions to intervene. The various revisions proposed here are designed with that balance in mind, beginning with the opening of the committee note. (For clarity, draft rule text and draft committee note text are presented on different shades of gray background.)

Rule 12.2. Intervention on Appeal from a District Court

* * * * *

Committee Note

While Rule 15(d) governs intervention in agency review or enforcement proceedings, no Appellate Rule currently governs intervention on appeal from a district court. See *Cameron v. EMW Women’s Surgical Ctr.*, P.S.C., 142 S. Ct. 1002, 1010 (2022). This new rule provides standards to governing intervention in an appeal from a district court in a civil case. It is intended to permit intervention for the first time on appeal in the extraordinary case in which it may be appropriate, not as a matter of course.

Subdivision (a). At the April meeting, the sentiment was expressed that bankruptcy appeals and Tax Court appeals were properly included within the rule’s scope. At the Standing meeting, it was pointed out that an even more generous standard applies under Bankruptcy Rule 8013(g) to intervention in appeals from a bankruptcy court to a district court or to a bankruptcy appellate panel. (The text of Bankruptcy Rule 8013(g) is reproduced in the margin; the subcommittee considered its approach and concluded that a less generous standard is appropriate for intervention for the first time in a court of appeals.¹)

The prior draft would have been limited to civil cases, and it included optional exceptions for habeas cases or collateral-review proceedings under 28 U.S.C. §§ 2254 and 2255. At the Standing meeting, it was noted that some habeas cases are brought under

¹ See below:

Bankr. R. 8013. Motions; Interventions

(g) Motion for Leave to Intervene.

(1) *Time to File.* Unless a statute provides otherwise, an entity seeking to intervene in an appeal in the district court or BAP must move for leave to intervene and serve a copy of the motion on all parties to the appeal. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the appeal is docketed.

(2) *Content.* The motion must concisely state:

- (A) the movant’s interest;
 - (B) the grounds for intervention;
 - (C) whether intervention was sought in the bankruptcy court;
 - (D) why intervention is being sought at this stage of the proceedings;
- and
- (E) why participating as an amicus curiae—rather than intervening—would not be adequate.

§ 2241 as well. As the Tribal Issues subcommittee has discussed, 25 U.S.C. § 1303 governs federal habeas involving persons detained by order of an Indian tribe; it seems appropriate that the same exception to the intervention rule apply in these cases as in cases involving state prisoners.

Another suggestion at the April meeting was to clarify the rule's nonapplication to the agency review cases already governed by Rule 15(d). In addition to making style corrections, the draft committee note now reemphasizes the rule's nonapplication to nonparty motion practice.

(a) Scope. This rule applies to an appeal from a district court in a civil case. ~~It does not apply to an appeal in a case under 25 U.S.C. § 1303 or under 28 U.S.C. §§ 2241, § 2254, or § 2255, or to any proceeding governed by Rule 15(d).~~

* * * * *

Committee Note

* * * * *

Subdivision (a). Subdivision (a) identifies the rule's scope. The rule applies to an appeal from a district court in a civil case, ~~except any case under 28 U.S.C. § 2254 or § 2255. It applies to an appeal in a bankruptcy case by operation of Rule 6(a), (b)(1), and (c)(1), as well as to an appeal from the United States Tax Court by operation of Rule 14.~~

Because intervention ~~at the~~ in a district court ~~level~~ is not as generally available in a criminal case as it is in a civil one, *see* Fed. R. Civ. P. 24, this rule does not apply to a criminal appeal. ~~Nor does it apply to an appeal in certain (A habeas or collateral-review ~~corpus~~ proceedings, that is, to any appeal in a case under 25 U.S.C. § 1303 or 28 U.S.C. §§ 2241, § 2254, or § 2255. While such a proceeding may be is governed in partly by the Federal Rules of Civil Procedure, but intervention in such a proceeding raises a different set of concerns; indeed, there is no provision for intervention in the Rules Governing Section 2254 and Section 2255 Proceedings, and such a proceeding is accordingly excluded from the rule's scope.)~~ The rule does apply to an appeal in a bankruptcy case, by operation

~~of Rule 6(a), (b)(1), and (e)(1), [and] [but not] to an appeal from the United States Tax Court, per Rule 14.~~

In any case to which the rule does not apply under this subdivision, ~~the rule~~ it neither forbids nor permits intervention. Rather, it leaves all questions of intervention in such a case to be governed by preexisting law. Nor does the rule govern any circumstances in which a court might permit a nonparty to file a motion without intervening; nonparty motion practice lies outside its scope.

Subdivision (b). This subdivision describes intervention as disfavored and as reserved for exceptional cases. Exhortations such as these are not always effective in dissuading unmeritorious motions (consider Rule 40(a)’s statement that “rehearing en banc is not favored”). However, it may be worth including in any case; the April version is preserved here with stylistic edits.

(b) Intervention Disfavored. The preferred method for a nonparty to be heard is by participating as an amicus curiae under Rule 29. Except as provided in (d)~~and (e)~~(1)–(3), intervention under this rule is disfavored and is reserved for exceptional cases.

* * * * *

Committee Note

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

Subdivision (b) also makes clear, however, that this disfavor is limited to intervention under this rule—as opposed to intervention in an agency case under Rule 15(d)—and moreover that it does not extend to statutory intervention as of right under subdivision (d)~~(1)~~

or to intervention by certain governments, agencies, or officers under subdivisions ~~(e)(1)(d)(2)~~–(3).

Subdivision (c). The wording of the timely-motion requirement has gone through many revisions—in part because the application of any timeliness standard will have to be highly fact-intensive. On the one hand, there is a danger that movants will be excessively dilatory in filing (and that courts will let them); on the other, there is the concern that no single one-size-fits-all deadline will be appropriate in every case.

In the end, rather than attempt to describe a new standard that courts would have to interpret anew, the subcommittee chose to rely on the extensive caselaw that has been developed for timeliness under Civil Rule 24, some of which is cited in the revised committee note. However, this standard would be applied to the circumstances of the appeal, as in the Supreme Court’s decision in *Cameron*. (In most cases, as noted below, the movant will also have to show a compelling reason why it did not intervene at an earlier stage of the proceedings.)

Many attempts at intervention on appeal follow a rotation in office that alters a government’s litigation position, with the new officeholder wishing to intervene for the first time. It is not obvious how to word a standard that will be appropriate for each such intervention motion. (If the movant is the state, the office, etc., then the motion might in theory have been filed long ago; if it is the new officeholder, then a quick motion to intervene would still show diligence.) Indeed, *Cameron* did not squarely answer whether a rapid change in litigation position following a rotation in office would itself make intervention timely; the Court rested its decision on the ground that the circumstances facing Kentucky’s attorney general had changed in other ways. See *Cameron*, 142 S. Ct. at 1012 n.5. Rather than address this situation in the rule text, the subcommittee has added quotations from *Cameron* to the committee note, to communicate that the rule is understood to be consistent with, rather than contrary to, the Court’s analysis in that case.

(c) Motion to Intervene. A nonparty who wishes to intervene must file a motion to intervene in accordance with Rule 27. The motion must:

(1) be timely filed, under the circumstances of the appeal ~~be filed as soon as is practical after the appeal is docketed;~~

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

(3) state the grounds for intervening.

* * * * *

Committee Note

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Subdivision (c). Intervention under this rule must be sought by motion under Rule 27. Subdivision (c) imposes three additional requirements for such a motion, regardless of the grounds on which intervention is sought.

First, the motion to intervene must be timely filed, under the circumstances of the appeal ~~filed as soon as is practical after the appeal is docketed~~. Under the similar requirement of Civil Rule 24, ~~h~~How soon is timely practical might ~~of course~~ depend in a given case on the circumstances of the movant, what it knew (or should have known) when, whether it exercised due diligence, and so on. Cf. Fed. R. Civ. P. 24(a), (b)(1), (2) (requiring a “timely motion”); Cameron, 142 S. Ct. at 1012 (finding “the most important circumstance relating to timeliness” to be “that the [movant] sought to intervene ‘as soon as it became clear’ that the [relevant] interests ‘would no longer be protected’ by the parties in the case” (quoting *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977)); *id.* (“The [movant’s] need to seek intervention did not arise until [a later point in the litigation], and the timeliness of his motion should be assessed in relation to that point in time.”).

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

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

Subdivisions (d)–(d)(1). Some comments at the Standing Committee’s June meeting suggested uniting all of what was then

subdivisions (d) and (e)(1)–(3) under a single heading of “Grounds.” While these grounds could be further subdivided into “must permit” and “may permit” categories, both the subcommittee and the full committee have been averse to any category labeled “Permissive Intervention” or the like, as it might suggest an analogy to the looser permissive-intervention standards of Fed. R. Civ. P. 24(b). The revised proposal adopts the single heading of “Grounds,” but it then separates the various grounds by topic, as they had been separated before an earlier round of revisions. (Adding yet another subcategorization for “must permit” and “may permit” might also require the addition of subitems—“(I),” “(II),” “(III),” etc.—which it is not the practice of the Appellate Rules to use.)

The prior version of the rule also involved a minor awkwardness in reconciling the unconditional statutory right to intervene (“must”) with the superaddition of timing requirements, as some meeting participants noted. The new language in the rule and committee note regarding the need to satisfy Rule 12.2(c) makes clear that even a statutory right to intervene may not be asserted out of time.

(d) Grounds for ~~Mandatory~~ Intervention. The court may permit intervention only on a motion satisfying Rule 12.2(c) and on one of the following grounds.

(1) *By Statutory Right.* The court must permit intervention by a movant who is given a right to intervene by a federal statute.

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Committee Note

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Subdivision (d). Intervention on appeal is available on various grounds. Whatever ground applies, however, the court may permit intervention only on a motion satisfying the requirements of subdivision (c), including its requirement of timeliness. Cf. Fed. R. Civ. P. 24(a)(1) (similarly requiring a timely motion for intervention as of right).

Subdivision (d)(1). If a federal statute confers a right on a nonparty to intervene in a proceeding in a court of appeals,

subdivision (d)(1) preserves ~~such a~~ that right ~~unimpaired, subject to the motion requirements of subdivision (b).~~ *See, e.g.,* 28 U.S.C. § 2403(a), (b) (providing certain rights to intervene in a “court of the United States”); 28 U.S.C. § 451 (defining “court of the United States” to include the “courts of appeals”); ~~cf.~~ Fed. R. Civ. P. 24(a)(1) ~~(similarly requiring a timely motion for intervention as of right).~~ If ~~a~~ what the federal statute confers, ~~is~~ is not a right to intervene, but an opportunity to intervene at the discretion of the court, that discretion ~~may~~ must be exercised in accordance with subdivisions ~~(e)(d)(2)–(4).~~

Subdivisions (d)(2)–(3). These subdivisions concern a special route to appellate intervention for governments and their agencies or officers.

This version of the rule text and committee note features a bracketed suggestion for including Indian tribes among the governments that may intervene via these provisions. This matter is under discussion in the Tribal Issues subcommittee—which presents a question of timing. If the committee is ready at this October meeting to recommend amendments addressing tribal issues to the Standing Committee for publication and comment, then it could also choose to include the bracketed language here (with any necessary revisions). If it is not ready to recommend amendments on that topic at this October meeting, it might choose to omit the bracketed language for the present, recommending it (if at all) only after reaching a decision regarding tribal issues.

The committee note is also amended in three respects. *First*, the comparison to intervention under Civil Rule 24(b)(2) is removed, not because it is necessarily inaccurate, but to avoid the committee’s taking an official position on the scope of another committee’s rule. *Second*, the committee note makes clear that this ground for intervention is not available for every conceivable defense of the lawfulness of official conduct but only those involving the defense of the legal validity of a law or action. (For example, suppose a state had not sought to intervene in a private plaintiff’s § 1983 action against its officer for personal injuries. As this action concerns the lawfulness of the officer’s conduct, but not the *validity* of any law or official action, a new attempt to intervene on appeal should instead be processed under the proposed subdivision (d)(4), which requires a compelling reason why the state did not seek to intervene at an earlier stage of the proceedings.) *Third*, the committee note adds a

citation to *Cameron*'s discussion of the possibility that multiple state officers may be authorized to intervene.

~~(c) Other Grounds for Intervention.~~

~~(2) To Defend a Law or Action.~~ The court may permit intervention:

~~(1)(A)~~ by the United States, or by a state [or Indian tribe], to defend the validity of its law or of an action that it or its agency or officer has taken; or

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

(3) For Reasons of National Security or Foreign Relations. The court may permit intervention by the United States, to defend its national-security or foreign-relations interests; or.

* * * * *

Committee Note

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~~Subdivision (c). This subdivision identifies other grounds for permitting intervention when it is not mandatory.~~

Subdivisions ~~(c)(1)(d)(2)~~–(3). These subdivisions identify limited but nonexclusive grounds for intervention by certain governments, agencies, and officers. (Such intervention is subject to the court's discretion ~~under subdivision (c)~~, but a motion on such grounds is not disfavored under subdivision (b).)

Subdivision ~~(c)(1)(d)(2)(A)~~ identifies a ground for intervention by the United States, or by a state [or Indian tribe], to defend the validity of its law or of an action that it or its agency or officer has taken. (Rule 1(b) [1] defines “state” to include the District of Columbia and any United States commonwealth or territory [, and Rule 1(b)(2) defines “Indian tribe” to mean an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 5131].)

~~This ground for intervention is narrower than the equivalent ground identified by Fed. R. Civ. P. 24(b)(2) in a district court, which extends to a range of cases in which a statute, regulation, or other government action may be the basis for a nongovernmental~~

~~party's claim or defense. By contrast, t~~This subdivision ~~only ad-~~
~~dresses~~ creates a narrow ground of intervention to defend the va-
lidity ~~against legal challenge~~ of a law or official action against legal
challenge of the government seeking to intervene. For example, in
a diversity suit between two contracting parties, a question might
arise of the validity of a state regulation that purports to void the
contract. The state might invoke this subdivision in moving to in-
tervene to defend the validity of its regulation. *Cf.* 28 U.S.C. §
2403(a)–(b) (providing a limited statutory right to intervene in a
constitutional challenge to a federal or state statute). This subdivi-
sion does not extend to every conceivable defense of the lawfulness
of official conduct. It concerns only the defense of the legal validity
of a law or action.

Subdivision ~~(e)(2)(d)(2)(B)~~ identifies a similar ground for inter-
vention by an agency or officer of the government identified in sub-
division ~~(e)(1)(d)(2)(A)~~, rather than by the United States or the state
[or Indian tribe] itself. Such an agency or officer must be legally
authorized to defend the law or action that its government might
have defended under ~~(e)(1)(d)(2)(A)~~, and its intervention must be
sought for this purpose. *Cf. Cameron*, 142 S. Ct. at 1011 (“Respect
for state sovereignty must also take into account the authority of a
State to structure its executive branch in a way that empowers mul-
multiple officials to defend its sovereign interests in federal court.”).

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

The grounds for intervention by these parties that are identified
by subdivisions ~~(e)(1)(d)(2)~~–(3) are not exclusive. The United States,
a state [or Indian tribe], or an agency or officer thereof might also
move to intervene in other cases under subdivisions (d)(1) or ~~(e)~~(4).

Subdivision (d)(4). This subdivision is perhaps the most con-
tested part of the rule, and a number of comments at the meetings
focused on it.

First, some questioned why a movant who already tried and
failed to intervene in the proceedings should enjoy a second bite at
the apple. The language of subparagraph (A) and the accompanying
commentary in the committee note are reworded to clarify the lim-
ited nature of the circumstances in which intervention is permitted
after a previous effort to intervene failed. (In particular, a denial of

intervention in the district court might under certain circumstances be challenged by appealing the denial. If the denial was proper—or must be assumed to have been proper—only changed circumstances could justify intervention now.)

Second, some comments noted that the inquiry into whether the movant has a compelling reason for not seeking to intervene at an earlier stage of the proceedings—like the inquiry into timeliness generally—may be fact-intensive. The subcommittee considered whether any language would be appropriate on the possibility of a limited remand to the district court for factfinding, by analogy to the provisions on remand after an indicative ruling under Rule 12.1. In the end such language was not included, on the argument that the courts of appeals are already capable of ordering limited remands when they consider it appropriate; explicit rule text on the subject might encourage unmeritorious efforts to secure such a remand, some of which might have the sole aim of delaying the proceedings.

Third, in describing the nature of the necessary interest, neither the committee nor the Standing Committee had any strong preference as between “legally protected” and “legally cognizable.” On the one hand, legally “cognizable” might seem too weak, allowing (say) an unsecured creditor to claim a cognizable interest in any proceeding that might extract money from its shaky debtor and increase the risk of bankruptcy, or an employee to claim a cognizable interest in any proceeding in which a costly loss might induce her employer to conduct layoffs. On the other hand, legally “protected” may seem too strong, as it might require a court of appeals to decide the intervenor’s merits arguments at the motion panel stage, before deciding whether to grant intervention in the first place. At the risk of complicating an unresolved choice between two options by adding yet a third option, the revised version uses “legally protectable,” adding an explanation and illustrations in the committee note, along with quotations relating to the Fifth Circuit’s use of that term in a 1984 case. (The Fifth Circuit’s opinion incorporates the “zone of interests” point that Mr. Freeman raised in April. It was also cited amid relevant discussion in Caleb Nelson, *Intervention*, 106 Va. L. Rev. 271, 295–97 (2020), an article discussed at earlier stages of this process, see Appellate Minutes 12 (Apr. 2024).) The intent is that, in disposing of a motion to intervene, a court ought to determine whether the movant *would*—were the case to go the wrong way—experience the impairment of an interest that substantive

law protects. If it can conclude that the substantive law gives the movant no rights *regardless* of what happens in the case, then intervention ought to be denied.

Fourth, some objected to the vagueness of the idea that the movant’s interest “may be affected.” As it is impossible to know at the outset of the appeal whether an interest *will* be affected—it depends on how the court resolves the case—the treatment of this issue has been moved from (4)(B) into (4)(B)(i), which then discusses what *would* happen if the appeal were adjudicated adversely to the movant’s interest. The language distinguishing the effect of a judgment among the existing parties from any precedential effect of the court’s decision is moved to (4)(B)(i) as well.

Fifth, language regarding an intervenor’s right to object to a stipulated dismissal is added to the committee note’s discussion of (4)(B)(i), to make more vivid to courts and movants the distinction between granting leave to intervene and granting leave to file an amicus brief. If the existing parties can make the case go away, someone whose interest really stems from the decision and its precedential effect will not be harmed (and should have no right to get in the way). By the same token, someone who has a real and legally protectable interest in the appeal ought to have the right to object before a court lets the existing parties resolve it on unfavorable terms.

Sixth, “insufficiently protect” in (4)(B)(iii) is changed to “not adequately protect,” as in (4)(B)(ii), to avoid any suggestion that different standards apply across the two.

(4) On Other Grounds. The court may permit intervention by ~~any~~ movant who shows that:

(A) it has a compelling reason ~~why intervention was not sought previously for not seeking to intervene at an earlier stage of the proceedings~~ or, if ~~it was sought previously its intervention was denied~~, a compelling explanation of how circumstances have since changed;

(B) it has a ~~legally protectable~~ ~~ed~~ ~~legally cognizable~~ interest ~~that may be affected~~ in the appeal, ~~apart from the precedential effect of a decision~~, so such that:

(i) adjudicating the appeal may, as a practical matter, a judgment among the existing parties that is adverse to its interest would—apart from any precedential

effect of the decision—impair or impede the movant’s ability to protect ~~that the~~ interest as a practical matter;

(ii) ~~the~~ existing parties do not adequately protect the interest; and

(iii) participating as an amicus would not adequately ~~insufficiently~~ protect the interest; and

(C) ~~that the~~ existing parties will not be unfairly prejudiced.

* * * * *

Committee Note

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

First, the subdivision requires the movant to show that it has a compelling reason ~~why intervention was not sought previously for not seeking to intervene at an earlier stage of the proceedings~~ or, if it ~~was sought previously~~ did seek to intervene and its intervention was denied, a compelling explanation of how circumstances have since changed. As a ~~A~~ movant seeking to intervene ~~on in an~~ appeal from a district court would ordinarily have had a prior opportunity to intervene in the district court. As a result, its showing of proper due diligence ~~or of changed circumstances~~ must be that much more persuasive. Moreover, if the movant’s prior effort to intervene was erroneously denied, it could under certain circumstances have appealed that denial. See *Marino v. Ortiz*, 484 U.S. 301, 304 (1988); *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 524–25 (1947). A movant whose attempt to intervene at an earlier stage of the proceedings was properly denied should not be allowed to intervene on appeal unless it has a compelling explanation of how circumstances have since changed.

Second, the subdivision requires the movant to show ~~an a~~ legally protectable 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~~ the litigation might properly assert. Cf. *New*

Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 464–65 (5th Cir. 1984) (requiring the assertion of an interest “which the substantive law recognizes as belonging to or being owned by the applicant” (emphasis omitted), one falling “within the zone of interests” that the law protects); *id.* at 470 (distinguishing such an interest from a customer’s unprotected economic interest in a supplier’s remaining in business). [*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,

Third, the movant must show the need for intervention to protect this interest: more specifically, that ~~adjudicating the appeal may, as a practical matter, a judgment among the existing parties~~ that is adverse to its interest would—apart from any precedential effect of the decision—impair or impede the movant’s ability to protect the interest as a practical matter (see Fed. R. Civ. P. 24(a)(2)). A nonparty concerned by the possible precedential effect of a decision should seek to participate as an amicus. By contrast, a movant who wishes to intervene on appeal must show that its interest would be adversely affected by a judgment binding on the existing parties to the appeal. (One means of distinguishing the precedential effect of a decision from the effect of the judgment itself is to consider what would happen if the judgment issued without any precedential decision. For example, one significant difference between an intervenor and an amicus is that the consent of the former, but not the latter, is necessary to a stipulated dismissal or to a dismissal on agreed terms. See Rule 42(b)(1)–(2); *Warren v. Comm’r*, 302 F.3d 1012, 1014 (9th Cir. 2002). If a movant cannot show that its consent should be required before the existing parties are allowed in its absence to stipulate to dismissal of the appeal or otherwise to settle or compromise the case without a precedential decision, that consideration weighs in favor of its participating only as an amicus.)

Fourth, the movant must show; that the existing parties do not adequately protect the interest. ~~(see *id.*);~~ See Fed. R. Civ. P. 24(a)(2).

Fifth, and relatedly, the movant must show ~~and~~ that participating as an amicus would ~~insufficiently~~ not adequately protect the interest.

~~Third~~ Sixth and finally, 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).

Subdivision (e). No changes were needed here beyond renumbering.

(f)(e) Effect of Deciding the Motion. If the court grants the motion, the movant becomes a party to the action for all purposes, unless the court orders otherwise. If the court denies the motion, the movant is not precluded from seeking to participate as an amicus under Rule 29.

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Committee Note

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Subdivision (f)(e). This subdivision describes the effect of a disposition of the motion. By default, and unless the court orders otherwise, a nonparty whose motion to intervene is granted becomes a party to the action for all purposes. A nonparty whose motion is denied is not precluded, on the basis of that denial, from seeking to participate as an amicus under Rule 29.

A complete, clean copy of the revised rule text and committee note follows.

* * *

Rule 12.2. Intervention on Appeal from a District Court

(a) Scope. This rule applies to an appeal from a district court in a civil case. It does not apply to an appeal in a case under 25 U.S.C. § 1303 or under 28 U.S.C. §§ 2241, 2254, or 2255, or to any proceeding governed by Rule 15(d).

(b) Intervention Disfavored. The preferred method for a nonparty to be heard is by participating as an amicus curiae under Rule 29. Except as provided in (d)(1)–(3), intervention under this rule is disfavored and is reserved for exceptional cases.

(c) Motion to Intervene. A nonparty who wishes to intervene must file a motion to intervene in accordance with Rule 27. The motion must:

- (1) be timely filed, under the circumstances of the appeal;
- (2) state whether intervention would affect the subject-matter jurisdiction of the court of appeals or of the district court; and
- (3) state the grounds for intervening.

(d) Grounds for Intervention. The court may permit intervention only on a motion satisfying Rule 12.2(c) and on one of the following grounds.

(1) *By Statutory Right.* The court must permit intervention by a movant who is given a right to intervene by a federal statute.

(2) *To Defend a Law or Action.* The court may permit intervention:

(A) by the United States, or by a state [or Indian tribe], to defend the validity of its law or of an action that it or its agency or officer has taken; or

(B) by one of its agencies or officers, if legally authorized to defend such law or action and intervention is sought for this purpose.

(3) *For Reasons of National Security or Foreign Relations.* The court may permit intervention by the United States to defend its national-security or foreign-relations interests.

(4) *On Other Grounds.* The court may permit intervention by a movant who shows that:

(A) it has a compelling reason for not seeking to intervene at an earlier stage of the proceedings or, if its intervention was denied, a compelling explanation of how circumstances have since changed;

(B) it has a legally protectable interest in the appeal, such that:

(i) a judgment among the existing parties that is adverse to its interest would—apart from any precedential effect of the decision—impair or impede the movant’s ability to protect the interest as a practical matter;

(ii) the existing parties do not adequately protect the interest; and

(iii) participating as an amicus would not adequately protect the interest; and

(C) the existing parties will not be unfairly prejudiced.

(e) Effect of Deciding the Motion. If the court grants the motion, the movant becomes a party to the action for all purposes, unless the court orders otherwise. If the court denies the motion, the movant is not precluded from seeking to participate as an amicus under Rule 29.

Committee Note

While Rule 15(d) governs intervention in agency review or enforcement proceedings, no Appellate Rule currently governs intervention on appeal from a district court. *See Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010 (2022). This new rule provides standards to govern intervention in an appeal from a district court in a civil case. It is intended to permit intervention for the first time on appeal in the extraordinary case in which it may be appropriate, not as a matter of course.

Subdivision (a). Subdivision (a) identifies the rule’s scope. The rule applies to an appeal from a district court in a civil case. It applies to an appeal in a bankruptcy case by operation of Rule 6(a), (b)(1), and (c)(1), as well as to an appeal from the United States Tax Court by operation of Rule 14.

Because intervention in a district court is not as generally available in a criminal case as it is in a civil one, *see* Fed. R. Civ. P. 24, this rule does not apply to a criminal appeal. Nor does it apply to an appeal in certain habeas or collateral-review proceedings, that is, to any appeal in a case under 25 U.S.C. § 1303 or 28 U.S.C. §§ 2241, 2254, or 2255. While such a proceeding may be governed in part by the Federal Rules of Civil Procedure, intervention in such a proceeding raises a different set of concerns; indeed, there is no

81 provision for intervention in the Rules Governing Section 2254 and
82 Section 2255 Proceedings.

83 In any case to which the rule does not apply under this subdivi-
84 sion, it neither forbids nor permits intervention. Rather, it leaves
85 all questions of intervention in such a case to be governed by preex-
86 isting law. Nor does the rule govern any circumstances in which a
87 court might permit a nonparty to file a motion without intervening;
88 nonparty motion practice lies outside its scope.

89 **Subdivision (b).** Subdivision (b) makes clear that appellate in-
90 tervention under this rule is disfavored and is reserved for excep-
91 tional cases—both because intervention at such a late stage may
92 pose a heightened risk of prejudice to existing parties, and because
93 it would be rare for a diligent nonparty to show a compelling reason
94 why it had not sought to intervene previously, such as in the district
95 court. Intervention renders the movant a party to the proceeding
96 (ordinarily, a party for all purposes, per subdivision (e)); it is not for
97 use by officious intermeddlers, and it should not be regarded as an
98 alternative to Rule 29 as a means of amicus participation.

99 Subdivision (b) also makes clear, however, that this disfavor is
100 limited to intervention under this rule—as opposed to intervention
101 in an agency case under Rule 15(d)—and moreover that it does not
102 extend to statutory intervention as of right under subdivision (d)(1)
103 or to intervention by certain governments, agencies, or officers un-
104 der subdivisions (d)(2)–(3).

105 **Subdivision (c).** Intervention under this rule must be sought
106 by motion under Rule 27. Subdivision (c) imposes three additional
107 requirements for such a motion, regardless of the grounds on which
108 intervention is sought.

109 First, the motion to intervene must be timely filed, under the
110 circumstances of the appeal. Under the similar requirement of Civil
111 Rule 24, how soon is timely might depend in a given case on the
112 circumstances of the movant, what it knew (or should have known)
113 when, whether it exercised due diligence, and so on. *Cf.* Fed. R. Civ.
114 P. 24(a), (b)(1), (2) (requiring a “timely motion”); *Cameron*, 142
115 S. Ct. at 1012 (finding “the most important circumstance relating
116 to timeliness” to be “that the [movant] sought to intervene ‘as soon
117 as it became clear’ that the [relevant] interests ‘would no longer be
118 protected’ by the parties in the case” (quoting *United Airlines, Inc.*
119 *v. McDonald*, 432 U.S. 385, 394 (1977)); *id.* (“The [movant’s] need
120 to seek intervention did not arise until [a later point in the

litigation], and the timeliness of his motion should be assessed in relation to that point in time.”).

Second, the motion must state whether intervention would affect the subject-matter jurisdiction of the court of appeals or of the district court. For example, a movant’s intervention in a case as a plaintiff or defendant might affect a party-based ground of subject-matter jurisdiction, such as diversity. The jurisdictional statement assists the court in considering any such effect.

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

Subdivision (d). Intervention on appeal is available on various grounds. Whatever ground applies, however, the court may permit intervention only on a motion satisfying the requirements of subdivision (c), including its requirement of timeliness. *Cf.* Fed. R. Civ. P. 24(a)(1) (similarly requiring a timely motion for intervention as of right).

Subdivision (d)(1). If a federal statute confers a right on a nonparty to intervene in a proceeding in a court of appeals, subdivision (d)(1) preserves that right. *See, e.g.,* 28 U.S.C. § 2403(a), (b) (providing certain rights to intervene in a “court of the United States”); 28 U.S.C. § 451 (defining “court of the United States” to include the “courts of appeals”); Fed. R. Civ. P. 24(a)(1). If what the federal statute confers is not a right to intervene but an opportunity to intervene at the discretion of the court, that discretion must be exercised in accordance with subdivisions (d)(2)–(4).

Subdivisions (d)(2)–(3). These subdivisions identify limited but nonexclusive grounds for intervention by certain governments, agencies, and officers. (Such intervention is subject to the court’s discretion, but a motion on such grounds is not disfavored under subdivision (b).)

Subdivision (d)(2)(A) identifies a ground for intervention by the United States, or by a state [or Indian tribe], to defend the validity of its law or of an action that it or its agency or officer has taken. (Rule 1(b)[(1)] defines “state” to include the District of Columbia and any United States commonwealth or territory [, and Rule 1(b)(2) defines “Indian tribe” to mean an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 5131].)

This subdivision creates a narrow ground of intervention to defend the validity of a law or official action against legal challenge. For example, in a diversity suit between two contracting parties, a

question might arise of the validity of a state regulation that purports to void the contract. The state might invoke this subdivision in moving to intervene to defend the validity of its regulation. *Cf.* 28 U.S.C. § 2403(a)–(b) (providing a limited statutory right to intervene in a constitutional challenge to a federal or state statute). This subdivision does not extend to every conceivable defense of the lawfulness of official conduct. It concerns only the defense of the legal *validity* of a law or action.

Subdivision (d)(2)(B) identifies a similar ground for intervention by an agency or officer of the government identified in subdivision (d)(2)(A), rather than by the United States or the state [or Indian tribe] itself. Such an agency or officer must be legally authorized to defend the law or action that its government might have defended under (d)(2)(A), and its intervention must be sought for this purpose. *Cf. Cameron*, 142 S. Ct. at 1011 (“Respect for state sovereignty must also take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court.”).

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

The grounds for intervention by these parties that are identified by subdivisions (d)(2)–(3) are not exclusive. The United States, a state [or Indian tribe], or an agency or officer thereof might also move to intervene in other cases under subdivisions (d)(1) or (4).

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

First, the subdivision requires the movant to show that it has a compelling reason for not seeking to intervene at an earlier stage of the proceedings or, if it did seek to intervene and its intervention was denied, a compelling explanation of how circumstances have since changed. A movant seeking to intervene in an appeal from a district court would ordinarily have had a prior opportunity to intervene in the district court. As a result, its showing of due diligence must be that much more persuasive. Moreover, if the movant’s prior effort to intervene was erroneously denied, it could under certain circumstances have appealed that denial. *See Marino v. Ortiz*, 484 U.S. 301, 304 (1988); *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 524–25 (1947). A movant whose attempt to

203 intervene at an earlier stage of the proceedings was *properly* denied
204 should not be allowed to intervene on appeal unless it has a com-
205 pelling explanation of how circumstances have since changed.

206 Second, the subdivision requires the movant to show a legally
207 protectable interest in the appeal, of the kind that a party to the
208 litigation might properly assert. *Cf. New Orleans Pub. Serv., Inc. v.*
209 *United Gas Pipe Line Co.*, 732 F.2d 452, 464–65 (5th Cir. 1984) (re-
210 quiring the assertion of an interest “which the substantive law rec-
211 ognizes as belonging to or being owned by the applicant” (emphasis
212 omitted), one falling “within the zone of interests” that the law pro-
213 tects); *id.* at 470 (distinguishing such an interest from a customer’s
214 unprotected economic interest in a supplier’s remaining in busi-
215 ness).

216 Third, the movant must show the need for intervention to pro-
217 tect this interest: more specifically, that a judgment among the ex-
218 isting parties that is adverse to its interest would—apart from any
219 precedential effect of the decision—impair or impede the movant’s
220 ability to protect the interest as a practical matter (*see* Fed. R. Civ.
221 P. 24(a)(2)). A nonparty concerned by the possible precedential ef-
222 fect of a decision should seek to participate as an amicus. By con-
223 trast, a movant who wishes to intervene on appeal must show that
224 its interest would be adversely affected by a judgment binding on
225 the existing parties to the appeal. (One means of distinguishing the
226 precedential effect of a decision from the effect of the judgment it-
227 self is to consider what would happen if the judgment issued with-
228 out any precedential decision. For example, one significant differ-
229 ence between an intervenor and an amicus is that the consent of
230 the former, but not the latter, is necessary to a stipulated dismissal
231 or to a dismissal on agreed terms. *See* Rule 42(b)(1)–(2); *Warren v.*
232 *Comm’r*, 302 F.3d 1012, 1014 (9th Cir. 2002). If a movant cannot
233 show that its consent should be required before the existing parties
234 are allowed in its absence to stipulate to dismissal of the appeal or
235 otherwise to settle or compromise the case without a precedential
236 decision, that consideration weighs in favor of its participating only
237 as an amicus.)

238 Fourth, the movant must show that the existing parties do not
239 adequately protect the interest. *See* Fed. R. Civ. P. 24(a)(2).

240 Fifth, and relatedly, the movant must show that participating
241 as an amicus would not adequately protect the interest.

242 Sixth and finally, the subdivision requires the movant to show
243 that existing parties will not be unfairly prejudiced by the interven-
244 tion. *Accord* Fed. R. Civ. P. 24(b)(3).

245 **Subdivision (e).** This subdivision describes the effect of a dis-
246 position of the motion. By default, and unless the court orders oth-
247 erwise, a nonparty whose motion to intervene is granted becomes a
248 party to the action for all purposes. A nonparty whose motion is
249 denied is not precluded, on the basis of that denial, from seeking to
250 participate as an amicus under Rule 29.

TAB 5C

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Administrative Stays Subcommittee
DATE: September 11, 2026
RE: **Administrative Stays (24-AP-L)**

The Committee continues to consider a 2024 rulemaking suggestion to regulate the practice of granting administrative stays, which are not governed by any specific provision of Rule 8.

This subcommittee (Mr. Freeman, Prof. Huang, and 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 underway at Judge Eid’s request, and it continues apace.

Administrative stay practice continues to generate controversy. See, *e.g.*, *Rojas-Espinoza v. Blanche*, 177 F.4th 1270 (CA9 2026) (en banc). The subcommittee met over the summer but decided for the moment not to take any action without the benefit of the FJC’s conclusions.

TAB 5D

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Reopening Time to Appeal Subcommittee
DATE: September 15, 2026
RE: **Reopening Time to Appeal Amendments
(24-AP-M)**

This subcommittee (Judge Nichols (chair), Mr. Hicks, and Mr. Wolpert) has been considering a proposal to codify the result in *Parrish v. United States*, 145 S. Ct. 1664 (2025), on reopening the time to appeal. Having received suggestions for redrafting at the April 2026 meeting, it now presents a slightly revised version of the proposed amendment and recommends that it be forwarded to the Standing Committee for publication and comment.

If a litigant misses the deadline to appeal in a civil case, it 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). Prior to *Parrish*, some courts had disagreed on what should happen when the litigant files a notice of appeal after the time for appeal expires, but before its motion to reopen is granted. (That is, when the notice comes too late for the first window, but too early for the second.) A separate confusion arose over whether a court could construe a single ambiguous document to serve both as the notice of appeal and as a motion to reopen the time for appeal. Requiring a second notice once the motion has been granted 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 in *Parrish* that no second notice of appeal is necessary, treating the late-and-early notice as relating forward to the reopened window. 145 S. Ct. at 1671–72. The Court also reaffirmed 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).

At the April 2026 meeting, the draft language under consideration read as follows:

If the movant has filed a notice of appeal—even if that document also serves other purposes—after the time otherwise allowed by these rules but before the court grants the motion to reopen, the notice becomes effective when the motion to reopen is granted and need not be refiled.

The sense of the committee at the April meeting was that the parenthetical em-dashed phrase rendered the structure of this sentence overly complex. With the benefit of suggestions from the style consultants, the subcommittee has rephrased the sentence and now suggests the following amendment and committee note.

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * * * *

(6) Reopening the Time to File an Appeal.

(A) Grounds. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if ~~all the following~~ these conditions are satisfied:

~~(A)(i)~~ (i) the court finds that the ~~moving party~~ movant did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

~~(B)(ii)~~ (ii) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the ~~moving party~~ movant receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

~~(C)(iii)~~ (iii) the court finds that no party would be prejudiced.

(B) Effect on a Party Who Has Filed a Notice. If the movant has filed a notice of appeal after the time otherwise allowed by these rules but before the court grants the motion to reopen, the notice becomes effective when the motion to reopen is granted and need not be refiled. This applies even if the document serving as the notice of appeal is also construed to serve other purposes.

* * * * *

Committee Note

Subdivision (a)(6). Rule 4(a)(6) is amended to clarify two issues.

First, if the court grants a motion to reopen the time to appeal, and if the movant has already filed a notice of appeal that is otherwise adequate, it need not file a new notice of appeal. Rather, as under Rule 4(a)(4)(B)(i), its prior notice of appeal becomes effective at a later date, namely when the motion to reopen is granted. If the only problem with the prior notice of appeal was that it was late, and the court has reopened the time to appeal, no purpose is served by requiring a duplicative notice of appeal. *See Parrish v. United States*, 145 S. Ct. 1664 (2025).

Second, this rule applies even if the document serving as the notice of appeal is also construed by the court to serve other purposes, such as serving as a motion to reopen the time to appeal, a brief, or a request for a certificate of appealability. *See Parrish*, 145 S. Ct. at 1673. A document serves as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court. *See Becker v. Montgomery*, 532 U.S. 757, 767 (2001); Fed. R. App. P. 3(c)(1), (7).

TAB 5E

MEMORANDUM

TO: Appellate Rules Advisory Committee
FROM: Tribal Issues Subcommittee
DATE: September 16, 2026
RE: **Tribal Issues**

This subcommittee (Prof. Huang (chair), Justice Kruger, Judge Thomas) was formed at the October 2025 meeting to consider potential amendments to the Appellate Rules to give appropriate recognition to the status of Indian tribes.

The discussion at the April meeting focused on four questions: whether the rules should be amended to specifically address the status of tribes; if so, which Indian tribes should be included; whether the matter should be addressed on a cross-committee basis; and whether tribes should be included “wholesale” (that is, in every provision referencing state governments) or “retail” (that is, in some provisions but not others).

No formal action was taken at the meeting. But the dominant view appeared to favor amending the rules in some manner to account for the status of sovereign Indian tribes, without waiting for any cross-committee process and instead proceeding on a provision-by-provision basis.

This memorandum discusses (1) the current treatment of Indian tribes under federal rules of procedure; (2) provisions of the Appellate Rules to which the subcommittee recommends amendments; (3) provisions whose amendment the subcommittee is uncertain whether to recommend; and (4) provisions the subcommittee would leave intact.

The subcommittee also believes that, at this point, comment from the public would be helpful to the development of these draft rules. It therefore recommends that any amendments meeting with the committee’s approval be forwarded to the Standing Committee for publication and comment.

1. Current treatment

A number of current procedural rules address the status of Indian tribes. The Supreme Court Rules provide for special rights to file amicus briefs without disclosure of third-party contributions (relevant provisions in italics):

Sup. Ct. R. 37. Brief for an *Amicus Curiae*

* * *

6. A brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution. * * * This disclosure requirement does not apply to a brief presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of an Indian Tribe, city, county, town, or similar entity when submitted by its authorized law officer.

* * *

The Criminal Rules permit disclosure of certain grand-jury information to tribal law-enforcement personnel:

Crim. R. 6. The Grand Jury

* * *

(e) Recording and Disclosing the Proceedings.

* * *

(3) *Exceptions.*

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

(i) an attorney for the government for use in performing that attorney's duty;

(ii) any government personnel—including those of a state, state subdivision, *Indian tribe*, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or

(iii) a person authorized by 18 U.S.C. § 3322.

* * *

(D) * * * An attorney for the government may also disclose any grand-jury matter involving, within the United

States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, *Indian tribal*, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, *Indian tribal*, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

* * *

(E) The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:

* * *

(iv) at the request of the government if it shows that the matter may disclose a violation of State, *Indian tribal*, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, *Indian tribal*, or foreign government official for the purpose of enforcing that law; * * *

(i) **“Indian Tribe” Defined.** *“Indian tribe” means 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.*^[FN1]

[FN1. Now editorially reclassified 25 U.S.C. 5131.]

A proposed amendment to the Evidence Rules, approved by the Standing Committee for public comment this June, makes certain tribal documents self-authenticating:

Rule 902. Evidence That Is Self-Authenticating

* * *

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; a federally recognized Indian Tribe or Nation; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

* * *

Committee Note

The rule has been amended to provide that a sealed and signed document from a federally recognized Indian Tribe or Nation is entitled to the same presumption of authenticity as a comparable document from the government entities currently listed in Rule 902(1)(A). The amendment thus recognizes the sovereignty of Indian Tribes and Nations. Furthermore, self-authentication of the public documents of Indian Tribes and Nations will allow for more efficient proof of tribal records in federal court and will conserve the valuable resources of tribal officials who often had to appear in court to authenticate documents prior to the amendment.

Under the Federally Recognized Indian Tribe List Act of 1994 (P.L. 103-454), the Secretary of the Interior publishes a list of all federally recognized Indian tribes in the Federal Register, through which courts may identify covered Tribes and Nations. The amendment permits self-authentication of the qualifying sealed and signed documents of any Indian Tribe or Nation that is federally recognized as of the date that the document is offered into evidence.

The amendment concerns authenticity only; other evidentiary requirements continue to apply. As with other 902(1) documents, parties may still challenge the authenticity of the covered public documents at trial.

2. Recommended Amendments

The subcommittee recommends amendments to Rule 1 (on definitions), the draft Rule 12.2 (on intervention on appeal), and Rule 29 (on amicus briefs).

a. Rule 1

Rule 1 currently defines a “state” to “include[] the District of Columbia and any United States commonwealth or territory.” As noted below, including tribes within the definition of “states”—what has been called the wholesale approach—might go further than is appropriate, as it could disrupt the structure of certain rules.

If, however, multiple rules are amended to include references to Indian tribes, it may be useful to include in Rule 1 a single definition of such tribes, which could then be used in several different Rules at once.

Existing definitions include the following:

- the Supreme Court Rules speak generally of “an Indian Tribe”;
- the Criminal Rules refer 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” (since editorially reclassified as 25 U.S.C. § 5131); and
- the published proposal for the Evidence Rules would reference “a federally recognized Indian Tribe or Nation.”

The formulation in the Supreme Court Rules seems inadvisable because it does not include any explicit requirement that a tribe be federally recognized. As the Court has explained,

A federally recognized tribe is one that has entered into “a government-to-government relationship [with] the United States.” 1 F. Cohen, *Handbook of Federal Indian Law* §3.02[3] (N. Newton ed. 2012). This recognition can come in a number of ways: “from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity.” W. Canby, *American Indian Law in a Nutshell* 4 (7th ed. 2020).

Yellen v. Confed. Tribes of the Chehalis Rsrv., 141 S. Ct. 2434, 2440 (2021). Federal recognition is thus a recognition of a tribe’s sovereignty and of its government-to-government relations with the United States (and, after the Indian Citizenship Act of 1924, of its sovereign power over certain U.S. citizens). This seems necessary to state-like treatment under the Appellate Rules. An unrecognized tribe, by contrast, has not been acknowledged by the United States

to possess the sovereign rights that might make it analogous to a sovereign state and thus appropriate for state-like treatment.

Defining “Indian tribe” to require federal recognition would have the effect of excluding entities such as the Alaska Native Corporations defined by 43 U.S.C. § 1602(m). This treatment seems appropriate. While these corporations play a significant role in the lives of many Alaska Natives, and while the corporations are sometimes classified alongside sovereign tribes for various legal purposes, “[a]s private companies incorporated under state law, [Alaska Native Corporations] have never been ‘recognized’ by the United States in this sovereign political sense.” *Chehalis*, 141 S. Ct. at 2440. Moreover, most cases involving Alaska Native Corporations presumably arise in the Ninth Circuit; to the extent that special treatment for these corporations is appropriate, it could be achieved by local rule.

As between the phrasing of the recognition requirement found in Criminal Rule 6(i) and that found in the proposed Evidence Rule 902(1)(A), the subcommittee proposes to adopt the Criminal Rule 6(i) formulation—but it would welcome the committee’s thoughts on this choice.

Under the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (the “List Act”), the Secretary of the Interior is obliged to publish in the Federal Register a list of all federally recognized Indian tribes. See List Act § 103(6), 108 Stat. at 4792 (codified at 25 U.S.C. § 5130 note) (finding that “the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes”); *id.* § 104(a) (codified at 25 U.S.C. § 5131(a)) (“The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”); *Chehalis*, 141 S. Ct. at 2446 (describing the list as “a list of federally recognized tribes”).

Criminal Rule 6(i) makes inclusion on this list determinative of federal recognition for purposes of the Rule, avoiding disputes over recognition and largely tracking the definition of “Indian tribe” used throughout Title 25. *Cf.* 25 U.S.C. § 5130(2) (limiting the term “Indian tribe,” for purposes of Title 25, to an entity “that the Secretary of the Interior acknowledges to exist as an Indian tribe”). By contrast, while the proposed committee note to Evidence Rule 902 mentions the Secretary’s list as important evidence of recognition,

the proposed rule text refers only to recognition itself, and it might conceivably admit of other means of recognizing tribes—such as by specific statute, by treaty (should the United States ever resume the process of treaty-making with Indian tribes), or by course of dealing.

While the Evidence Rules’ definition guarantees the inclusion of every tribe with which the United States has government-to-government relations, it may be more complex to apply in practice than the Criminal Rules’ direct reference to a published list. Unlike the standard for admissibility of documents at trial proposed in Evidence Rule 902, an Appellate Rule defining tribal status might have to be applied in the first instance by a clerk’s office: for example, in deciding whether to docket an amicus brief on behalf of a tribe. This fact strengthens the argument for avoiding tribal-status disputes through a precise and straightforward test. Given that Title 25 attaches various other legal consequences to the Secretary’s list, moreover, it seems unlikely that any tribe that the Secretary had inadvertently or improperly failed to list would choose to litigate its recognition status by seeking state-like treatment under the Appellate Rules rather than by pursuing legal or administrative efforts directly involving the Secretary.

Specific references to the Secretary’s list and to the relevant section of the List Act might require updates to the rule’s text if the statutory section were recodified—as has come to pass for the Criminal Rule, which still includes an obsolete reference to “25 U.S.C. § 479a–1.” Crim. R. 6(i); *cf.* Memorandum from Daniel J. Capra to Advisory Committee on Evidence Rules 4 (Sept. 15, 2013), *in* Evidence Agenda Book 406, 409 (Nov. 2024) (“[T]he Standing Committee has in the past frowned upon including references to specific statutes in the text of a rule—the rationale being that if the statute is ever amended, the rule would have to be amended as well.”). That said, the costs of occasional updating may also be outweighed by the benefits of straightforward application.

The draft rule presented below therefore copies the definition found in Criminal Rule 6(i), with the statutory reference updated.

An amendment to Rule 1 could also correct its single quotation marks to double quotation marks, currently the subject of a “So in original” footnote in official publications of the Rules.

Rule 1. Scope of Rules; Definition; Title

* * *

(b) Definition. In these rules:

(1) “state” includes the District of Columbia and any United States commonwealth or territory; and

(2) “Indian tribe” means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 5131.

* * *

Committee Note

The Rule is amended to provide a common definition of an Indian tribe for use in other provisions of the Appellate Rules. These provisions recognize the sovereignty of a federally recognized Indian tribe. Under the Federally Recognized Indian Tribe List Act of 1994 (P.L. 103-454), the Secretary of the Interior publishes a list of all federally recognized Indian tribes in the Federal Register, through which courts may identify covered tribes.

b. Rule 12.2

As discussed in the memorandum from the Intervention on Appeal subcommittee, the draft Rule 12.2 provides for intervention by the United States or by a state, or by an agency or officer thereof, to defend the validity of its law or of an action that the government, agency, or officer has taken. The government of a sovereign Indian tribe could have a similar need to intervene to defend the validity of its law or action in a case to which it is not yet a party. (Potential language is presented in brackets in that memorandum.)

c. Rule 29

Amendments to Rule 29 on amicus disclosure were reapproved by the Standing Committee in June 2026. As amended, the Rule continues to give a special status to amicus briefs filed by state governments. The subcommittee believes it appropriate to give a similar status to amicus briefs filed by sovereign tribal governments.

As amended, Rule 29 mentions state governments in two contexts. First, Rule 29(a)(2) and (e)(2) concern the right to file. As under the current Rule 29(a)(2) and (b)(2), they permit a state to file an amicus brief without the parties’ consent or leave of court. Given

an Indian tribe's status as a domestic sovereign over certain U.S. citizens, it seems entitled to the same treatment.

Second, Rule 29(a)(4)(B) concerns disclosure requirements. As proposed to be amended, it exempts a state government from the obligation to inform the court whether a party or its counsel has authored part of an amicus brief or contributed to its submission, or whether any other person has contributed more than \$100 to that effort. While it might seem important for the court to know if any of these things had occurred with respect to a tribal government's brief, it would be just as important to know if a state government's brief had been authored by a party's counsel or funded by some interested third party. The current rule presumably exempts states from the disclosure requirements on the theory that a state government receives enough public scrutiny that it would never allow such practices—and that it might offend the dignity of the state even to ask. The latter consideration is equally applicable to an Indian tribe, and while there are many more federally recognized Indian tribes than states, the former may be as well. Additionally, the dangers posed by manipulated amicus briefs seem much greater in the Supreme Court than in the courts of appeals, and Supreme Court Rule 37.6 exempts the amicus brief of an Indian tribe from such disclosure requirements. The subcommittee recommends adopting the Supreme Court's approach for the courts of appeals.

(A note on timing. Should the currently proposed Rule 29 amendments be approved by the Supreme Court no later than May 1, 2027, they would take effect no earlier than December 1, 2027. As it is not possible for any amendments addressing Indian tribes to reach the Court in time for spring 2027 approval, there is no danger of overlap in the amendment process.)

Rule 29. Brief of an Amicus Curiae [as approved by the Standing Committee in June 2026]

(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,

or an Indian tribe 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 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.

* * *

(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:

* * *

(B) unless the amicus is the United States, its officer or agency, ~~or~~ a state, or an Indian tribe, the disclosure statement required by Rules 29(b) and (d);

* * *

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

(1) disclose whether:

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

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

(C) 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; and
(2) if so, name the party or counsel.

* * *

(d) 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 name each such person. But disclosure is not required if the person is:

- the amicus;
- its counsel; or
- a member of the amicus.

(e) During Consideration of Whether to Grant Rehearing.

* * *

(2) *When Permitted.* The United States, its officer or agency, ~~or~~ a state, or an Indian tribe 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).

* * *

Committee Note

Rule 29 exempts state governments from certain requirements pertaining to amicus briefs. In recognition of the sovereign status of Indian tribes, the Rule is amended to extend the same exemptions to tribal governments.

Under Rule 29(a)(2) and (e)(2), the United States, its officer or agency, or a state may file an amicus brief without obtaining the consent of the parties or leave of court during the court's initial consideration of a case on the merits or during its consideration of whether to grant rehearing. Under Rule 29(a)(4)(B), the United States, its officer or agency, or a state may file an amicus brief without the disclosure statement required by Rules 29(b) and (d). The Rule is amended to provide the same treatment to an Indian tribe, as defined under Rule 1(b). *Accord* Sup. Ct. R. 37.6.

3. Areas of Uncertainty

a. Rule 44

Rule 44 is designed to implement the requirements of 28 U.S.C. § 2403. Under § 2403, a court must notify the United States or a state of a pending constitutional challenge to its statute in a case to which that government or its agency, officer, or employee is not already a party, so that the relevant government may intervene to defend its statute if necessary. (For example, a court of appeals might hear an appeal in a diversity case among private litigants in which one party claims the benefit of a state statute and in which an opposing party contends that the statute is unconstitutional.) Section 2403 provides as follows:

28 U.S.C. § 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Rule 44 helps a court of appeals fulfill this duty by requiring the party questioning the statute's constitutionality to so inform the circuit clerk.

Neither Rule 44 nor § 2403 speaks to constitutional questions involving the laws of Indian tribes. Indeed, tribal statutes cannot violate the Constitution directly: the tribes neither ratified the Constitution nor were admitted under it, so they are not directly bound thereby. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). That said, 25 U.S.C. § 1302 requires tribal governments to respect certain familiar individual rights that the Constitution protects (religion, speech, press, takings, etc.).

Without any change to § 2403, it would be possible to impose a similar requirement of notice to tribal governments whose statutes are questioned under § 1302 in an appellate case in which the tribe or its agency, officer, or employee is not a party in an official capacity. It seems appropriate for a court of appeals to extend to a tribal

government the same opportunity to defend its statute before rendering a precedential ruling. A notice requirement would be particularly useful if the draft Rule 12.2 is amended to afford a tribe the opportunity to intervene to defend the validity of its law or action: that opportunity might turn out to be empty if the suit proceeds without the tribe finding out.

Because § 2403 does not currently extend to Indian tribes, however—and because the issue is not likely to arise very often—the subcommittee is uncertain whether to wait for Congress to act before the Appellate Rules impose such a notice requirement on their own. Possible language for such a requirement is provided below, but in brackets, to indicate this uncertainty. (Corrections to the existing language proposed by the style consultants are included as well.)

Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State [or Indian Tribe] is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State [or Tribal] Statute. If a party questions the constitutionality of a state statute ~~of a State~~ [, or the validity under 25 U.S.C. § 1302 of an Indian-tribe statute,] in a proceeding in which that State [or Indian tribe] or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the state's attorney general ~~of the State~~ [or to the Indian tribe's authorized law officer].

[Committee Note

Rule 44(b) is designed to implement the notice requirement of 28 U.S.C. § 2403(b). It requires that a party questioning the constitutionality of a state statute so inform the circuit clerk if the state or its agency, officer, or employee is absent from the proceeding in an official capacity. The clerk must then certify that fact to the state's attorney general.

Section 2403(b) does not extend to tribal statutes. In recognition of the sovereign status of Indian tribes, however, the Rule is amended to impose a similar requirement of written notice in a proceeding from which the tribe or its agency, officer, or employee is absent in an official capacity. This requirement applies to a party questioning the validity of an Indian-tribe statute (as defined in Rule 1(b)) under 25 U.S.C. § 1302, which codifies certain constitutional rights as against Indian tribes. The clerk must then certify that fact to the Indian tribe's authorized law officer. *See* Sup. Ct. R. 37.6.]

Addressing this issue with respect to tribes, the subcommittee also noticed a broader question that may be worth separate consideration. An Indian tribe might also benefit from notice of *any* federal-law challenge to its statutes—*e.g.*, under the Indian Child Welfare Act—regardless of whether such challenges involve the rights codified in § 1302. In some sense, all such challenges are ultimately challenges based on the federal powers conferred by the Constitution, just as any challenge to a state law as preempted by federal statute is in some sense a constitutional challenge based on the Supremacy Clause.

There is currently a split of authority on whether an ordinary preemption challenge to a state law qualifies as a constitutional challenge and triggers a notice obligation under § 2403(b) or under Civil Rule 5.1 (the Civil Rules equivalent to our Rule 44(b), also incorporated by reference in Bankruptcy Rule 9005.1). *See Taylor v. JBS Foods USA*, No. 3:23-CV-03031-ECS, 2024 WL 3424732, at *2 & n.1 (DSD July 16, 2024) (collecting cases, including *United States v. Zadeh*, 820 F.3d 746, 753–55 (CA5 2016)). The committee need not wait for courts to resolve the split; if the broader notice requirement is better, Rule 44(b) could easily be amended to adopt it. Cf. *Zadeh*, 820 F.3d at 755 (reading § 2403(b) not to require

notice in a preemption case, but cautioning that “providing notice is the better practice”).

While Civil Rule 5.1 might be amended as well, the scope of the notice provision is particularly salient to the Appellate Rules: appellate decisions can set circuit precedent, while district court or bankruptcy court decisions do not. Additionally, a state or tribal government is much more likely to overlook an exchange of briefs in a court of appeals than to miss a grant of certiorari by the Supreme Court.

However, the subcommittee was of the view that any broader reform lay outside its tribal-issues remit, and it does not include any such suggestion among its recommendations. Were the committee interested in pursuing the broader path, a different subcommittee might be appointed to consider it, along with the proper approach toward tribal statutes.¹

4. Provisions To Be Left Intact

a. Rule 22

Rule 22 concerns habeas corpus proceedings, including those in which the detention complained of arises from process issued by a state court. The statutory regime governing an appeal in such a proceeding under 28 U.S.C. § 2253(c) is distinct from the regime governing an appeal from a proceeding under 25 U.S.C. § 1303 involving a person detained by order of an Indian tribe. Including Indian tribes along with states in Rule 22 would undermine this statutory distinction, and the subcommittee therefore recommends against changing this rule.

Rule 22. Habeas Corpus and Section 2255 Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C.

¹ For example, a revised Rule 44(b) might begin:

“(b) ~~Constitutional~~ **Federal** Challenge to State or Tribal Statute. If a party questions the ~~constitutionality~~ validity under federal law of a statute of a State or of an Indian tribe * * * .”

§ 2253, appeal to the court of appeals from the district court’s order denying the application.

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

b. Rule 26

State holidays are sometimes excluded from time computations under Rule 26 if they are declared by the state in which the district court or the circuit clerk’s principal office is located. The subcommittee was not certain whether any district courts or circuit clerk’s offices are located within the territorial jurisdiction of a federally recognized Indian tribe, but some may be (*e.g.*, in Oklahoma after *McGirt v. Oklahoma*, 591 U.S. 894 (2020)).

In any case, the subcommittee recommends against an amendment here, at least until a cross-committee decision is made to revise the time calculations across the board. The Bankruptcy, Civil, and Criminal Rules all use federal, state, and territorial law to define legal holidays, but not tribal law. See Bankr. R. 9006(a)(6)(C); Civ. R. 6(a)(6)(C), 81(d)(2); Crim. R. 1(b)(9), 45(a)(6)(C).

Rule 26(a)(3) also contains separate provisions for days when the clerk’s office is inaccessible, which could address problems

created by any day on which another kind of legal holiday is celebrated. Any court- or case-specific issues could be addressed by local rule or by orders in a particular case.

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

* * *

(6) “Legal Holiday” Defined. “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk’s principal office.

* * *

c. Rule 26.1

Rule 26.1 imposes a disclosure obligation on nongovernmental corporations. It would be possible to amend it to excuse Alaska Native Corporations, in recognition of their special status, from the obligation to identify any parent corporations.

However, the subcommittee recommends against amendment here, both for the local-rule reasons discussed above and because it appears to be possible for the alienability restrictions on such corporations’ stock to be terminated under 43 U.S.C. § 1629c.

Rule 26.1. Disclosure Statement

(a) Nongovernmental Corporations. Any nongovernmental corporation that is a party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states

that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

* * *

d. Rule 46

An attorney admitted to practice before a state’s highest court is eligible under Rule 46 for admission to the bar of a court of appeals. The Rule makes no provision for an attorney admitted to practice before a tribe’s highest court.

While this discrepancy may at first seem inconsistent with the sovereign status of Indian tribes, the subcommittee recommends against changing this rule. The courts of an Indian tribe are not part of the U.S. legal system in the same manner as are state courts subject to the Supreme Court’s certiorari jurisdiction under 28 U.S.C. § 1257, and admission to practice usually does not cross legal-system lines. Additionally, as separate sovereigns, Indian tribes may have distinct traditions of legal practice, which need not be closely analogous to the practice in any state court; indeed, some federally recognized tribes have extremely small populations.

Supreme Court Rule 6.2 allows for *pro hac vice* argument by “[a]n attorney qualified to practice in the courts of a foreign state.” To the extent a similar rule is appropriate in the courts of appeals, whether for foreign states or for Indian tribes, the issue could be taken up under the agenda item on uniform bar admissions.

Rule 46. Attorneys

(a) Admission to the Bar.

(1) *Eligibility.* An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

* * *

* * *

Below may be found a complete copy of the recommended amendments to Rules 1 and 29, and of the potential amendments

to Rule 44, together with draft committee notes. Recommended amendments to the draft Rule 12.2 may be found in the separate memorandum on that Rule.

Rule 1. Scope of Rules; Definition; Title

* * * * *

(b) Definition. In these rules:

(1) “state” includes the District of Columbia and any United States commonwealth or territory; and

(2) “Indian tribe” means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 5131.

* * * * *

Committee Note

The Rule is amended to provide a common definition of an Indian tribe for use in other provisions of the Appellate Rules. These provisions recognize the sovereignty of a federally recognized Indian tribe. Under the Federally Recognized Indian Tribe List Act of 1994 (P.L. 103-454), the Secretary of the Interior publishes a list of all federally recognized Indian tribes in the Federal Register, through which courts may identify covered tribes.

* * *

Rule 29. Brief of an Amicus Curiae [as approved by the Standing Committee in June 2026]

(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, or an Indian tribe 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 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.

* * * * *

(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:

* * * * *

(B) unless the amicus is the United States, its officer or agency, ~~or~~ a state, or an Indian tribe, the disclosure statement required by Rules 29(b) and (d);

* * * * *

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

(1) disclose whether:

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

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

(C) 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; and

(2) if so, name the party or counsel.

* * * * *

(d) 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 name each such person. But disclosure is not required if the person is:

- the amicus;
- its counsel; or
- a member of the amicus.

(e) During Consideration of Whether to Grant Rehearing.

* * * * *

(2) *When Permitted.* The United States, its officer or agency, ~~or~~ a state, or an Indian tribe 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).

* * * * *

Committee Note

Rule 29 exempts state governments from certain requirements pertaining to amicus briefs. In recognition of the sovereign status of Indian tribes, the Rule is amended to extend the same exemptions to tribal governments.

Under Rule 29(a)(2) and (e)(2), the United States, its officer or agency, or a state may file an amicus brief without obtaining the consent of the parties or leave of court during the court's initial consideration of a case on the merits or during its consideration of whether to grant rehearing. Under Rule 29(a)(4)(B), the United States, its officer or agency, or a state may file an amicus brief without the disclosure statement required by Rules 29(b) and (d). The Rule is amended to provide the same treatment to an Indian tribe, as defined under Rule 1(b). *Accord* Sup. Ct. R. 37.6.

* * *

Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State [or Indian Tribe] is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State [or Tribal] Statute. If a party questions the constitutionality of a state statute ~~of a State~~ [, or the validity under 25 U.S.C. § 1302 of an Indian-tribe statute,] in a proceeding in which that State [or Indian tribe] or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that

fact to the state's attorney general ~~of the State~~ [or to the Indian tribe's authorized law officer].

[Committee Note

Rule 44(b) is designed to implement the notice requirement of 28 U.S.C. § 2403(b). It requires that a party questioning the constitutionality of a state statute so inform the circuit clerk if the state or its agency, officer, or employee is absent from the proceeding in an official capacity. The clerk must then certify that fact to the state's attorney general.

Section 2403(b) does not extend to tribal statutes. In recognition of the sovereign status of Indian tribes, however, the Rule is amended to impose a similar requirement of written notice in a proceeding from which the tribe or its agency, officer, or employee is absent in an official capacity. This requirement applies to a party questioning the validity of an Indian-tribe statute (as defined in Rule 1(b)) under 25 U.S.C. § 1302, which codifies certain constitutional rights as against Indian tribes. The clerk must then certify that fact to the Indian tribe's authorized law officer. *See* Sup. Ct. R. 37.6.]

TAB 5F

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Double-Sided Printing Subcommittee
DATE: September 14, 2026
RE: **Double-Sided Printing (25-AP-E)**

The Appellate Rules provide that “[o]nly one side of the paper may be used” when printing briefs, appendices, motions, petitions, and other papers. See Rules 27(d)(1)(A), 32(a)(1)(A), (b), (c)(2). In 2025, Paula Anthony submitted a rules suggestion to permit double-sided printing of briefs. This subcommittee (Mr. Freeman, Mr. Hicks, and Mr. Wolpert) was created in April 2026 to consider it.

Many circuits have local rules concerning double-sided printing. In seven circuits, the appendix or excerpts of record may be printed on both sides of the page:

- CA1 R. 30.0(b) (“The appendix should be printed on both sides of each page.”)
- CA2 R. 32.1(b)(3) (“The pages of an appendix must contain sequential numbering. * * * The pages of an appendix may be printed on both sides.”)
- CA3 Chart of Requirements for Appendix (“Double-sided copies are acceptable[.]”)
- CA4 R. 32(a) (“Double-sided copying of appendices is preferred in all cases.”)
- CA9 R. 30-1.5(e) (“The paper copies of each volume, including the Index Volume and any separate reporter’s transcript volumes, shall be bound securely on the left. * * * Paper copies of any excerpts may be printed on both sides of the paper, but only if the method of binding allows each volume to lie completely flat when open, such as comb, spiral, coil, or wire binding, and the weight of the paper is sufficient to prevent bleeding through when marked on one side in ink or highlighter.”)
- CADC R. 30(a) (“The appendix must be reproduced on light paper by any duplicating or copying process capable of producing a clear black image; such duplication may be made on both sides of each page.”); CADC Handbook IX.B.4 (“Unlike the brief, the appendix may be duplicated on both sides of each page.”)

- CAFed R. 30(c)(3) (“The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.”); CAFC R. 32(d) (same).

In two circuits, written requirements reaffirm the need for single-sided printing:

- CA10 Quick Reference—Appendix 3 (“Must be single-sided and reproduced on 8 ½ x 11 paper, unless another size is needed to facilitate inclusion of odd-sized documents (such as technical drawings).”)
- CA11 Instructions for Preparing an Appendix 6 (“No more than 250 single-sided sheets of paper in each volume”); *id.* at 7 (same); *id.* at 8 (same).

On information and belief, in the remaining four circuits, no exception to the default rule of single-sided printing has been made.

The argument for allowing double-sided printing is strongest with respect to the appendix, which is often quite voluminous and may take up a good deal of shelf space. Reducing the volume of each appendix by half could represent substantial savings for both courts and litigants. Often appendices are used primarily for reference purposes rather than close reading, so any inconvenience to the reader is less significant. The subcommittee believes the best approach is therefore to permit double-sided printing of appendices.

To ensure readability and ease of use, however, double-sided printing of appendices should be permitted only under certain additional conditions. (Because references to paper copies are scattered throughout the Rules, it is simpler to place all of these requirements in Rule 32, which is the subject of numerous existing cross-references. Pursuant to Rule 32(e), a court of appeals could also relax any of these additional requirements by local rule, should it so choose.)

First, the Ninth Circuit’s requirement of flat-compatible binding seems entirely appropriate. Such a requirement should not, however, extend to those odd-sized documents already exempt from the lie-reasonably-flat requirement under Rule 32(b)(3).

Second, the Ninth Circuit’s requirement of bleed-resistant paper weight seems appropriate as well. To avoid any risk of confusion

by unsophisticated litigants, however, a safe harbor should make clear that standard-weight 20-lb office paper is acceptable.

Third, when a handwritten or other non-computer-generated document is filed nonelectronically, it will often be the task of a clerk's office to scan and upload it. That task will be much harder if the filer uses both sides of the paper. Double-sided printing should therefore be limited to the paper copies of documents that are also being filed electronically, under what is now Rule 25(a)(2)(B). (Under the proposed SRL amendments now published for public comment, electronic filing is addressed under Rule 25(a)(2)(B)–(C). The latter is therefore included as an option in brackets, to be adjusted depending on what happens to Rule 25.)

The argument for double-sided printing is somewhat less clear with respect to briefs, which are read more closely by judges. While some judges prefer to read the briefs in electronic form, others may prefer paper copies for ease of annotating or highlighting, and some may have a strong preference for single-sided printing. The same may also be true of motions, rehearing petitions, responses and replies, and so on. As a result, while the subcommittee believes double-sided printing of briefs ought to be permitted by default, subject to the same conditions as in the case of appendices, it also believes that this permission should be subject to variation by local rule. The same regime could then be applied to motions, responses, and replies, and it would apply to rehearing petitions and to other papers via an existing cross-reference in the Rules—to the extent that paper copies of any of these materials are still required. (Indeed, the subcommittee expects that a number of courts *will* require single-sided printing of briefs by local rule, but it considers changing the default rule to be worthwhile nonetheless.)

The subcommittee recommends that the following draft amendments and committee notes—if they meet with the committee's approval—be forwarded to the Standing Committee for publication and comment.

Rule 27. Motions

* * * * *

(d) Form of Papers; Length Limits; Number of Copies.

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed.

~~Only one side~~ Unless a local rule provides otherwise, both sides of the paper may be used if the conditions in Rule 32(b)(4) are met.

* * * * *

(C) *Binding*. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

* * * * *

Committee Note

Double-sided printing of a motion, response, or reply may provide additional convenience and may reduce costs for litigants and courts. The rule is amended to permit double-sided printing by default, but only if the conditions in Rule 32(b)(4) are met. If a court prefers the single-sided printing of such materials, it may provide otherwise by local rule.

* * * * *

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

(a) Form of a Brief.

(1) *Reproduction*.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. ~~Only one side~~ Unless a local rule provides otherwise, both sides of the paper may be used if the conditions in Rule 32(b)(4) are met.

* * * * *

(3) *Binding*. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

* * * * *

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1) ~~—, (2), (3), and (4)~~, with the following exceptions:

(1) Cover. The cover of a separately bound appendix must be white.

(2) Photocopies. An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) Odd-Sized Documents. When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(4) Double-Sided Printing. Both sides of the paper may be used if:

(A) except as provided in Rule 32(b)(3), the method of binding—such as comb, spiral, coil, or wire binding—allows each volume to lie completely flat when open;

(B) the paper's weight equals or exceeds that of standard (20-lb) office paper or is otherwise sufficient to prevent bleeding through when marked on one side in ink or high-lighter; and

(C) the filing is also made electronically under Rule 25(a)(2)(B) [–(C)].

(c) Form of Other Papers.

(1) *Motion.* The form of a motion is governed by Rule 27(d).

(2) *Other Papers.* Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

* * * * *

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

* * * * *

Committee Note

Double-sided printing of briefs, appendices, and other papers may provide additional convenience and may reduce costs for litigants and courts. The rule is amended to permit double-sided printing if certain conditions are met.

Subdivision (a). The rule is amended to permit double-sided printing of a brief by default, but only if the conditions in Rule 32(b)(4) are met. If a court prefers the single-sided printing of such materials, it may provide otherwise by local rule. Under Rule 32(c)(2), the same provisions apply to certain other papers,

90 including a petition for panel rehearing and a petition for hearing
91 or rehearing en banc, and any response to such a petition.

92 **Subdivision (b).** As an exception to the requirement of compli-
93 ance with Rule 32(a)(1), double-sided printing of an appendix is per-
94 mitted without regard to local rules if the conditions in Rule 32(b)(4)
95 are met.

96 The first condition concerns binding. Ordinarily, a document to
97 which Rule 32(a)(3) applies may be bound in any manner that is
98 secure, does not obscure the text, and permits the document to lie
99 reasonably flat when open. If both sides of the paper are to be used,
100 however, the document must be bound using a method such as
101 comb, spiral, coil, or wire binding that allows each volume to lie
102 completely flat when open. (Odd-sized documents included in an
103 appendix under Rule 32(b)(3) need not lie completely flat, as pro-
104 vided in that Rule.)

105 The second condition concerns the weight or thickness of the
106 paper. Because double-sided documents pose a greater danger of
107 bleed-through, both sides of the paper may be used only if the pa-
108 per's weight equals or exceeds that of standard (20-lb) office paper,
109 or if it is otherwise sufficient to prevent bleeding through when
110 marked on one side in ink or highlighter.

111 The third condition concerns electronic filing. Handwritten or
112 other non-computer-generated documents may pose special difficul-
113 ties if both sides of the paper are used. Double-sided printing is
114 therefore permitted under this rule only for the paper copies of fil-
115 ings also made electronically under Rule 25(a)(2)(B)[–(C)].

TAB 5G

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Introductions in Briefs Subcommittee
DATE: September 14, 2026
RE: **Introductions in Briefs (25-AP-F)**

Many litigants routinely include introductions in their briefs. But Rule 28(a) does not list an introduction among the elements that “[t]he appellant’s brief must contain, under appropriate headings and in the order indicated.” The rule’s reference to a mandatory order may suggest that its list is an exclusive one and that introductions are forbidden.

In 2025, Judges Newsom and Pryor submitted a rules suggestion (25-AP-F) to permit introductions, portraying a brief “elevator pitch” introduction as highly useful to the court in framing the issues. This subcommittee (Mr. Adler, Ms. Coberly, and Mr. Pincus) was formed at the April 2026 meeting to consider it.

The subcommittee focused its deliberations on three questions:

1. *Should introductions be added to Rule 28(a)?* The subcommittee believes that they should. Introductions are helpful to counsel in presenting the issues and to courts in understanding them. While many litigants have not been dissuaded from including an introduction by the current text of Rule 28, some may have been, and the rules should be the same for everyone.
2. *Should introductions be optional or mandatory?* While introductions may be useful in all or almost all cases, the subcommittee believes (with Judges Newsom and Pryor) that including them should not be made mandatory, at least not at this point. Adding an introduction to Rule 28(a) would represent a change to current practice for at least some litigants, and they are the ones best placed to decide whether an introduction will assist their presentation of the issues.
3. *Where should an introduction be placed in a brief?* Having discussed various options, the subcommittee believes that an introduction should precede (rather than follow) the jurisdictional statement. True, in some cases the jurisdictional statement is largely boilerplate, and the introduction might be more effective afterward. In other cases, however, jurisdiction is complex or hotly disputed; an introduction

that precedes the jurisdictional statement can help present the full range of relevant issues to the court. If, as Magna Carta required of the Court of Common Pleas, the introduction should be located “in some fixed place,” it likely should be before the jurisdictional statement rather than after.

The subcommittee therefore proposes the following amendments to Rule 28, adapted from the language suggested by Judges Newsom and Pryor, together with conforming changes to relevant cross-references found in Rule 28.1, and recommends that they be forwarded to the Standing Committee for publication and comment.

Rule 28. Briefs

(a) Appellant’s Brief. The appellant’s brief must contain, under appropriate headings and in the order indicated:

- (1) a disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) an (optional) introduction that briefly frames the appeal, identifies the key legal issues it presents, and explains how to resolve them;

~~(4)~~(5) a jurisdictional statement, including:

(A) the basis for the district court’s or agency’s subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals’ jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties’ claims, or information establishing the court of appeals’ jurisdiction on some other basis;

~~(5)~~(6) a statement of the issues presented for review;

~~(6)~~(7) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented

for review, with appropriate references to the record (see Rule 28(e));

~~(7)~~(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

~~(8)~~(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

~~(9)~~(10) a short conclusion stating the precise relief sought; and

~~(10)~~(11) the certificate of compliance, if required by Rule 32(g)(1).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)–~~(8)~~(9) and ~~(10)~~(11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

* * * * *

Committee Note

Subdivision (a). Subdivision (a)(4) is new. It permits an appellant to include in its brief an introduction before the jurisdictional statement.

A brief “elevator pitch” introduction may assist the court by briefly framing the appeal, identifying the key legal issues it

presents, and explaining how to resolve them. An introduction should not merely replicate the renumbered Rule 28(a)(6)'s statement of the issues, which is more list-like. Nor should it merely replicate the renumbered Rule 28(a)(8)'s summary of the argument, which follows the statement of the case and may assume familiarity with the described facts and proceedings.

As the rule makes plain, the introduction is optional. A litigant may choose whether or not to include it as a service to the busy or unfamiliar reader. Many litigants already include introductions, and this amendment conforms the rule to that current practice. As an introduction is not specifically excluded under Rule 32(f), it is counted toward any applicable length limit.

Subsequent paragraphs are renumbered.

Subdivision (b). Subdivision (b) is updated to reflect the renumbering of subdivision (a). Because this subdivision incorporates much of Rule 28(a) by reference, it permits an optional introduction in an appellee's brief as well. (No amendment is necessary to subdivision (c), as that provision does not limit the contents of a reply brief.)

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)–(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

111 **(3) Appellant’s Response and Reply Brief.** The appel-
112 lant must file a brief that responds to the principal brief in the
113 cross-appeal and may, in the same brief, reply to the response
114 in the appeal. That brief must comply with Rule 28(a)(2)–(8)(9)
115 and ~~(10)~~(11), except that none of the following need appear un-
116 less the appellant is dissatisfied with the appellee’s statement
117 in the cross-appeal:

- 118 (A) the jurisdictional statement;
119 (B) the statement of the issues;
120 (C) the statement of the case; and
121 (D) the statement of the standard of review.

122 **(4) Appellee’s Reply Brief.** The appellee may file a brief
123 in reply to the response in the cross-appeal. That brief must
124 comply with Rule 28(a)(2)–(3) and ~~(10)~~(11) and must be limited
125 to the issues presented by the cross-appeal.

126 **(5) No Further Briefs.** Unless the court permits, no fur-
127 ther briefs may be filed in a case involving a cross-appeal.

128 * * * * *

129
130 **Committee Note**

131
132 **Subdivision (c).** Subdivision (c) is updated to reflect the re-
133 numbering of Rule 28(a).

TAB 5H

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Rule 13 Subcommittee
DATE: September 16, 2026
RE: **Tax Court Premature Appeals**

This subcommittee (Mr. Freeman, Prof. Huang, and Mr. Pincus) was formed at the April 2026 meeting to consider potential problems caused by premature notices of appeal from decisions of the Tax Court.

Because the committee rarely addresses issues involving the Tax Court, some additional background is required.

The Appellate Rules often remove traps for the unwary litigant by rescuing a notice of appeal that designates the wrong document or that might be premature and ineffective. For example, Rule 4(a)(2) delays the effective date of a notice filed after the announcement but before the entry of a judgment or order; Rule 4(a)(4)(B)(i) does the same for a notice filed before the disposition of certain posttrial motions; and Rule 3(c)(5)(B) ensures that a notice designating an order disposing of such a posttrial motion (or any of a number of other orders) will encompass the final judgment as well:

Rule 3. Appeal as of Right—How Taken

* * *

(c) Contents of the Notice of Appeal.

* * *

(4) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) An order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

(6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal

is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * *

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

* * *

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

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

* * *

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

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

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

At the April 2026 meeting, Mark Freeman noted that similar issues can arise involving premature appeals from the Tax Court. Like a district court, the Tax Court may sometimes announce a decision or dispositive order before entering it. And, like a district court, it may also entertain a posttrial motion that tolls the time for appealing the decision otherwise set by 26 U.S.C. § 7483 and the Tax Court Rules. See, for example:

Tax Ct. R. 155. Computation by Parties for Entry of Decision

(a) Agreed Computations: Where the Court has filed or stated its opinion or issued a dispositive order determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court’s determination of the issues, showing the correct amount to be included in the decision. * * *

Tax Ct. R. 162. Motion to Vacate or Revise Decision

Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

Tax Ct. R. 190. How Appeal Taken

(a) General: Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal and the required filing fee with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, then any other party may take an appeal by filing a notice of appeal within 120 days after the Court’s decision is entered. Code sec. 7483.¹ * * *

(b) Dispositive Orders:

(1) *Entry and Appeal:* A dispositive order, including: (A) An order granting or denying a motion to restrain assessment or collection, made pursuant to Code section 6213(a), and (B) an order granting or denying a motion for review of a proposed sale of seized property, made pursuant to Code section 6863(b)(3)(C), shall be entered upon the record of the Court and served

¹ 26 U.S.C. § 7483 provides: “Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.”

forthwith by the Clerk. Such an order shall be treated as a decision of the Court for purposes of appeal.

* * *

Under 26 U.S.C. § 7482(c)(2), the Supreme Court may prescribe “[r]ules for review of decisions of the Tax Court” via the standard Rules Enabling Act process. The Appellate Rules address Tax Court appeals in Rules 13 and 14. While Rule 13 already provides for tolling the time for appeal after a postdecision motion to vacate or revise, it makes no provision for a premature notice of appeal:

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

(1) How Obtained; Time for Filing a Notice of Appeal.

(A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

* * *

Moreover, the various correctives found in Rule 4 do not apply to Tax Court appeals, by operation of Rule 14:

Rule 14. Applicability of Other Rules to Appeals from the Tax Court

All provisions of these rules, except Rules 4, 6-9, 15-20, and 22-23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

This means that the traps for the unwary closed by Rule 4 remain open under Rule 13. Because the window for as-of-right

appeal under Rule 13(a)(1)(A) opens only “after the entry of the Tax Court’s decision” (or after the order disposing of the timely motion to vacate or revise, and so on), a premature but otherwise adequate notice of appeal may thus be ineffective—and the litigant who fails to file a second notice in time might find its appeal dismissed. This is particularly likely to happen when, under Rule 155, the Tax Court has filed an opinion or issued a dispositive order that has determined the issues in a case, leaving nothing to be done but the computation of liability on the theory adopted by the court; an unsophisticated taxpayer who thinks that the case is over may file a notice of appeal that is premature and ineffective.

Several courts have noted the absence of any Rule-4(a)(2)–equivalent for a premature notice of appeal from a Tax Court decision, as well as the potentially jurisdictional consequences of its absence (though they sometimes also suggest that they possess a discretionary power to overlook it). *See, e.g., Feistman v. Comm’r*, 587 F.2d 941, 942–43 (CA9 1978); *Duma v. Comm’r*, 534 F. App’x 4, 5 (CA10 2013); *Davison v. Comm’r*, No. 20-9002, 2022 WL 2196884, at *3–4 (CA10 June 17, 2022).

At first glance, there is no apparent reason why a premature notice of appeal from a Tax Court decision should be any less effective than a similarly premature notice of appeal from a district court judgment. Moreover, both taxpayer litigants and the Department of Justice may welcome a change to eliminate this discrepancy in as-of-right appeals. (Permissive appeals from interlocutory Tax Court orders are allowed under 26 U.S.C. § 7482(a)(2) and Tax Court Rule 193; per Rules 13(b) and 14, such appeals are governed by Rule 5 just like all other permissive appeals, and they are unaffected by these issues.)

The subcommittee proposes four substantive changes.

1. The subcommittee proposes a Tax Court analogue to Rule 4(a)(2):

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * *

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

* * *

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

(1) *How Obtained; Time for Filing a Notice of Appeal.*

(A) *In General.*

(i) Commencing the Appeal. An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(ii) Multiple Appeals. If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(iii) Filing Before Entry of Decision. A notice of appeal filed after the Tax Court has, under Tax Court Rule 155, filed or stated its opinion or issued a dispositive order determining the issues in a case—but before the entry of its decision—is treated as filed on the date of and after the entry.

* * *

Committee Note

Rule 4 contains several provisions to cure what would otherwise be a premature and ineffective notice of appeal from a district court, delaying its effective date until the time for appeal has begun. A notice of appeal from the Tax Court may suffer from similar prematurity. Under Rule 14, however, Rule 4's corrective provisions do not apply to such a notice. These amendments to Rule 13 follow Rule 4's approach in delaying the effective date of certain premature notices of appeal.

Subdivision (a)(1)(A). This subparagraph is divided into clauses. Clause (iii) is new. It applies when, under Tax Court Rule 155, the Tax Court has withheld entry of its decision after filing or stating its opinion or issuing a dispositive order determining the issues in a case. A notice of appeal filed at this time may be premature and ineffective, dooming the appeal of the litigant who fails to

file a second notice after the decision is entered. See, e.g., *Duma v. Comm’r*, 534 F. App’x 4, 5 (D.C. Cir. 2013). Instead, by analogy to Rule 4(a)(2), a notice of appeal filed after this opinion or order but before the entry of decision is given a delayed effective date, being treated as filed on the date of and after the entry and thus within the window for appeal.

Rule 13(a)(1)(A)(iii) is somewhat more expansive than Rule 4(a)(2), in that it delays the effective date of a notice of appeal even when the amount to be included in the decision has not yet been computed. See *Duma*, 534 F. App’x at 5. However, this difference is appropriate in light of the different consequences of an opinion or dispositive order under Tax Court Rule 155 and an interlocutory order in a district court. Compare Tax Ct. R. 155(c) (“confin[ing] strictly” all further argument to “the correct computation of the amount,” and forbidding the consideration or reconsideration of other issues), with Civil Rule 54(b) (providing that any interlocutory order “that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties * * * may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities”).

Because the amendment delays the effective date of the notice until after the decision is entered, it will avoid the need for a party to file a second notice of appeal to contest the computation. Under Rule 3(c)(6)–(7), a notice filed (or treated as filed) after the entry of decision and designating an opinion or dispositive order under Tax Court Rule 155 would encompass the decision as a whole, unless the appellant “expressly stat[es] that the notice of appeal is so limited.”

At the same time, the amendment is not infinitely permissive. It does not address a notice of appeal from an earlier interlocutory order—that is, one made prior to the Tax Court’s determining the issues in the case by opinion or dispositive order under Rule 155. See Tax Ct. R. 193; Rule 13(b).

If the Tax Court has finished with the issues in a case under Tax Court Rule 155, and a litigant files a notice of appeal before the computation of liability is complete, the effective date of the notice should be delayed until after the computation is finished and the decision entered. In that case the notice would not be premature, and no second notice would be necessary.

The proposal focuses on Tax Court Rule 155 opinions or dispositive orders for three reasons. First, while Rule 4(a)(2) kicks in after a district court “announces a decision or order,” the subcommittee is informed that such language is less applicable to Tax Court practice. The proposed Rule 13(a)(1)(A)(iii) is thus more expansive than Rule 4(a)(2), in that it delays the effective date of a notice of appeal even when the amount to be included in the decision has not yet been computed (whereas Rule 4(a)(2) would not apply if, say, the amount of damages is yet to be determined). But, like the announcement of a decision, a Tax Court Rule 155 opinion or dispositive order largely ends the case: under Tax Court Rule 155(c), no further argument may be heard on any issue other than computation. The situation is thus very different from that of a civil case in district court, in which Civil Rule 54(b) provides that any interlocutory order “may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.”

Second, any notice of appeal filed *before* the Tax Court has determined the issues in a case—when there is more still to be done than mere computation—would be truly interlocutory; it should be permitted, if at all, under Rule 5 and Tax Court Rule 193.

Third, because Rule 3 (unlike Rule 4) does apply to Tax Court appeals, a notice filed after the opinion or dispositive order would be effective to bring up on appeal any objections the litigant has to the computation as well, reinforcing the lack of need for any second notice. While the subcommittee considered including explicit rule text to this effect, it was thought unnecessary in light of the existing provisions of Rule 3, as the draft Committee Note points out. (Under Rule 3(c)(6), a specific designation of the Tax Court Rule 155 opinion or dispositive order “do[es] not limit the scope of the notice of appeal” without “an express statement” that “the notice of appeal is so limited.” Under Rule 3(c)(7), moreover, the appeal must not be dismissed “for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment”—as it is deemed to be here—and designates an order that merged into that judgment—as the Tax Court Rule 155 opinion or order would.)

2. The subcommittee proposes a Tax Court analogue to Rule 4(a)(4)(B)(i):

[4(a)(4)](B) (i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice

becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

[13(a)(1)](B) *Effect of a Motion on a Notice of Appeal.*

(i) Time to File a Notice. If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(ii) Filing Before Disposition of Motion. If a party files a notice of appeal after the Tax Court enters a decision—but before it disposes of a timely motion to vacate or revise the decision—the notice becomes effective to appeal the decision, in whole or in part, when the event occurs from which the time to file a notice of appeal runs.

* * *

Committee Note

Subdivision (a)(1)(B). This subparagraph is divided into clauses. No substantive change is made to Rule 13(a)(1)(B)(i), which delays the opening of the appeal window when a timely motion is filed to vacate or revise the decision under Tax Court Rule 162, until the Tax Court disposes of the motion or enters a new decision, whichever is later.

Clause (ii) is new. It addresses circumstances in which a notice of appeal is filed (or treated as filed) after the entry of decision but before the window for appeal opens under Rule 13(a)(1)(B)(i). By analogy to Rule 4(a)(4)(B)(i), the effective date of the notice is delayed until the window for appeal opens, so that the notice will not be premature. If either the new decision or the subsequent order disposing of the motion relevantly alters the decision under review, the premature notice of appeal is still operative, in whole or in part, as to whatever portion of the original decision remains. *See* Rule 4(a)(4) (1993 advisory committee note).

If the opening of the appeal window is delayed by a postdecision motion (that is, a timely motion to vacate or revise under Tax Court Rule 162), then the effective date of the notice ought also to be delayed until the window opens (that is, in the Rule 13 context, when the Tax Court disposes of the motion or enters a new decision, whichever is later). There is no need to copy the “announces or enters” language, both because “announces” may be inappropriate in the Tax Court context, and also because the proposed Rule 13(a)(1)(A)(iii) would delay the effective date of a premature notice until after the entry of decision. And the “in whole or in part” language addresses circumstances in which the order disposing of the motion may have altered the decision under review: the premature notice of appeal is still operative as to whatever portion remains. See Rule 4(a)(4) (1993 advisory committee note).

3. The subcommittee proposes Tax Court analogues to Rule 4(a)(4)(B)(ii)–(iii):

[4(a)(4)(B)](ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment’s alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

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

[13(a)(1)(B)](iii) *Additional or Amended Notice.* A party intending to challenge an order disposing of a timely motion to vacate or revise the decision, or a decision’s alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time allowed under Rule 13(a)(1)(B)(i). No additional fee is required to file an amended notice.

* * *

Committee Note

Subdivision (a)(1)(B). * * * Clause (iii) is also new. By analogy to Rule 4(a)(4)(B)(ii), it clarifies that a litigant wishing to

contest the order disposing of the postdecision motion or the decision's alteration or amendment upon such a motion must file a new or amended notice of appeal within the time allowed. *See* Rule 4(a)(4)(B)(ii) (2009 advisory committee note). By analogy to Rule 4(a)(4)(B)(iii), it also provides that no additional fee is required for an amended notice under these circumstances.

As under Rule 4, some provision is necessary to clarify the effect of the old notice of appeal after the Tax Court disposes of a postdecision motion. Under the previous provision, the earlier notice is still operative as to whatever portion of the earlier decision still remains. However, as under Rule 4, a new notice (or an amended notice) is required to challenge anything new, such as an order disposing of the postdecision motion or a change to the prior decision. Again, no additional fee is required to file an amended notice under these circumstances.² The only significant difference in wording is the reference to “the time allowed under Rule 13(a)(1)(B)(i),” as that rule refers to two possible events that might open the window for appeal.

4. The subcommittee proposes a Tax Court-specific provision in Rule 3(c)(5)(B):

Rule 3. Appeal as of Right—How Taken

* * *

(c) Contents of the Notice of Appeal.

* * *

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

- (A) An order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or
- (B) an order described in Rule 4(a)(4)(A) or 13(a)(1)(B)(i).

* * * * *

² The current fee appears to be \$600, as provided by the Court of Appeals Miscellaneous Fee Schedule. See <https://www.ustaxcourt.gov/court-fees/> and <https://www.uscourts.gov/court-programs/fees/court-appeals-miscellaneous-fee-schedule>.

Committee Note

This amendment reconciles the treatment of certain postdecision motions in the Tax Court with that of certain posttrial motions in a district court. Either type of motion might delay the time to file a notice of appeal, whether under Rule 4(a)(4)(A) or Rule 13(a)(1)(B)(i). In either case, that notice of appeal might erroneously designate only the order disposing of the motion, even if the filer wishes to appeal the outcome of the proceeding as a whole. And, in either case, such a notice ought to bring the entire decision before the court of appeals for review. *See* Rule 3 (2021 advisory committee note).

As the 2021 committee note to Rule 3 explains,

Frequently, a party who is aggrieved by a final judgment will make a motion in the district court instead of filing a notice of appeal. Rule 4(a)(4) permits a party who makes certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that designates only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the court of appeals for review. * * * To reduce the unintended loss of appellate rights in this situation, a new provision is added to Rule 3(c) * * * [.]

The same rule ought to apply to timely postdecision motions to vacate or revise that would delay the time for appeal under Rule 13(a)(1)(B)(i). Even if an unsophisticated taxpayer's notice designates only the denial of its motion to vacate, that notice ought to be read to encompass the entire decision.

A complete copy of the proposed amendments and draft committee notes follows.

Rule 3. Appeal as of Right—How Taken

* * *

(c) Contents of the Notice of Appeal.

* * *

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate

document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) An order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A) or 13(a)(1)(B)(i).

* * * * *

Committee Note

This amendment reconciles the treatment of certain postdecision motions in the Tax Court with that of certain posttrial motions in a district court. Either type of motion might delay the time to file a notice of appeal, whether under Rule 4(a)(4)(A) or Rule 13(a)(1)(B)(i). In either case, that notice of appeal might erroneously designate only the order disposing of the motion, even if the filer wishes to appeal the outcome of the proceeding as a whole. And, in either case, such a notice ought to bring the entire decision before the court of appeals for review. *See* Rule 3 (2021 advisory committee note).

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

(1) *How Obtained; Time for Filing a Notice of Appeal.*

(A) *In General.*

(i) Commencing the Appeal. An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(ii) Multiple Appeals. If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(iii) Filing Before Entry of Decision. A notice of appeal filed after the Tax Court has, under Tax Court Rule 155, filed or stated its opinion or issued a dispositive order determining the issues in a case—but before the entry of its decision—is treated as filed on the date of and after the entry.

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

48 (i) Time to File a Notice. If, under Tax Court rules, a
49 party makes a timely motion to vacate or revise the Tax
50 Court's decision, the time to file a notice of appeal runs
51 from the entry of the order disposing of the motion or
52 from the entry of a new decision, whichever is later.

53 (ii) Filing Before Disposition of Motion. If a party
54 files a notice of appeal after the Tax Court enters a de-
55 cision—but before it disposes of a timely motion to va-
56 cate or revise the decision—the notice becomes effective
57 to appeal the decision, in whole or in part, when the
58 event occurs from which the time to file a notice of ap-
59 peal runs.

60 (iii) Additional or Amended Notice. A party intend-
61 ing to challenge an order disposing of a timely motion to
62 vacate or revise the decision, or a decision's alteration or
63 amendment upon such a motion, must file a notice of ap-
64 peal, or an amended notice of appeal—in compliance
65 with Rule 3(c)—within the time allowed under Rule
66 13(a)(1)(B)(i). No additional fee is required to file an
67 amended notice.

68 * * * * *

69 **Committee Note**

70 Rule 4 contains several provisions to cure what would otherwise
71 be a premature and ineffective notice of appeal from a district court,
72 delaying its effective date until the time for appeal has begun. A
73 notice of appeal from the Tax Court may suffer from similar prem-
74 aturity. Under Rule 14, however, Rule 4's corrective provisions do
75 not apply to such a notice. These amendments to Rule 13 follow
76 Rule 4's approach in delaying the effective date of certain prema-
77 ture notices of appeal.

78 **Subdivision (a)(1)(A).** This subparagraph is divided into
79 clauses. Clause (iii) is new. It applies when, under Tax Court Rule
80 155, the Tax Court has withheld entry of its decision after filing or
81 stating its opinion or issuing a dispositive order determining the
82 issues in a case. A notice of appeal filed at this time may be prema-
83 ture and ineffective, dooming the appeal of the litigant who fails to
84 file a second notice after the decision is entered. *See, e.g., Duma v.*
85 *Comm'r*, 534 F. App'x 4, 5 (D.C. Cir. 2013). Instead, by analogy to
86 Rule 4(a)(2), a notice of appeal filed after this opinion or order but
87 before the entry of decision is given a delayed effective date, being

88 treated as filed on the date of and after the entry and thus within
89 the window for appeal.

90 Rule 13(a)(1)(A)(iii) is somewhat more expansive than Rule
91 4(a)(2), in that it delays the effective date of a notice of appeal even
92 when the amount to be included in the decision has not yet been
93 computed. See *Duma*, 534 F. App’x at 5. However, this difference is
94 appropriate in light of the different consequences of an opinion or
95 dispositive order under Tax Court Rule 155 and an interlocutory
96 order in a district court. Compare Tax Ct. R. 155(c) (“confin[ing]
97 strictly” all further argument to “the correct computation of the
98 amount,” and forbidding the consideration or reconsideration of
99 other issues), with Civil Rule 54(b) (providing that any interlocu-
100 tory order “that adjudicates fewer than all the claims or the rights
101 and liabilities of fewer than all the parties * * * may be revised at
102 any time before the entry of a judgment adjudicating all the claims
103 and all the parties’ rights and liabilities”).

104 Because the amendment delays the effective date of the notice
105 until after the decision is entered, it will avoid the need for a party
106 to file a second notice of appeal to contest the computation. Under
107 Rule 3(c)(6)–(7), a notice filed (or treated as filed) after the entry of
108 decision and designating an opinion or dispositive order under Tax
109 Court Rule 155 would encompass the decision as a whole, unless
110 the appellant “expressly stat[es] that the notice of appeal is so lim-
111 ited.”

112 At the same time, the amendment is not infinitely permissive.
113 It does not address a notice of appeal from an earlier interlocutory
114 order—that is, one made prior to the Tax Court’s determining the
115 issues in the case by opinion or dispositive order under Rule 155.
116 See Tax Ct. R. 193; Rule 13(b).

117 **Subdivision (a)(1)(B).** This subparagraph is divided into
118 clauses. No substantive change is made to Rule 13(a)(1)(B)(i), which
119 delays the opening of the appeal window when a timely motion is
120 filed to vacate or revise the decision under Tax Court Rule 162, until
121 the Tax Court disposes of the motion or enters a new decision,
122 whichever is later.

123 Clause (ii) is new. It addresses circumstances in which a notice
124 of appeal is filed (or treated as filed) after the entry of decision but
125 before the window for appeal opens under Rule 13(a)(1)(B)(i). By
126 analogy to Rule 4(a)(4)(B)(i), the effective date of the notice is de-
127 layed until the window for appeal opens, so that the notice will not
128 be premature. If either the new decision or the subsequent order

129 disposing of the motion relevantly alters the decision under review,
130 the premature notice of appeal is still operative, in whole or in part,
131 as to whatever portion of the original decision remains. *See* Rule
132 4(a)(4) (1993 advisory committee note).

133 Clause (iii) is also new. By analogy to Rule 4(a)(4)(B)(ii), it clar-
134 ifies that a litigant wishing to contest the order disposing of the
135 postdecision motion or the decision's alteration or amendment upon
136 such a motion must file a new or amended notice of appeal within
137 the time allowed. *See* Rule 4(a)(4)(B)(ii) (2009 advisory committee
138 note). By analogy to Rule 4(a)(4)(B)(iii), it also provides that no ad-
139 ditional fee is required for an amended notice under these circum-
140 stances.

TAB 6

TAB 6A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: August 31, 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 for a new uniform rule on bar admission across the courts of appeals. A cross-committee project on a similar proposal for the district courts (23-CV-E) was concluded by vote of the Standing Committee at its June meeting; however, the relevant issues may differ on appeal.

At the April 2026 meeting, further research was suggested on the degree and significance of any variation across local rules. Initial research helpfully conducted by Sarah Sraders, Counsel to the Rules Committees, suggests that there are varying requirements among the courts of appeals concerning *pro hac vice* admissions, which attorneys on a brief must be admitted to the court’s bar, and so on. (See the attachments following this memorandum.) Even if the courts of appeals prefer to maintain separate and distinct bar admissions, it may be helpful to standardize some of the rules on topics like these.

Should the Committee wish to pursue this project further, I recommend that it convene a subcommittee to conduct further research and to consider potential amendments.

Bar admission required to...	
Practice before the court (or other broad description)	3d Circuit. “[P]ractice before the court is limited to the members of the bar of this court.” L.A.R. 46.1(a). 4th Circuit. “Only attorneys admitted to the bar of this Court may practice before the Court.” Loc. R. 46(b). 5th Circuit. “Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in FED. R. APP. P.46(a)(1) to be admitted and continue to practice before this court.” 5th Cir. R. 46.1. 7th Circuit. “Upon filing an appeal, if the lead attorney for a party is not admitted to the bar of this court, then the lead attorney must apply for admission.” Cir. R. 46(a). 11th Circuit. “Only attorneys admitted to the bar of this court may practice before this court[.]” 11th Cir. R. 46-1.
Appear on behalf of a party	2d Circuit. “[A]n attorney who appears on behalf of a party or an amicus curiae in any capacity must be admitted to practice before this court . . .” L.R. 46.1(a). 3d Circuit. “[A]n attorney must apply for admission to the bar of this court when the attorney enters an appearance . . .” L.A.R. 46.1(b). 9th Circuit. “Any attorney who causes a case to be docketed in this Court or who enters an appearance in this Court, and who is not already admitted to the Bar of the Court, shall simultaneously apply for admission.” 9th Circuit Rule 46-1.2. 10th Circuit. “Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission.” 10th Cir. R. 46.2(A).
File documents with the court	1st Circuit. “In order to file motions, pleadings or briefs on behalf of a party . . . attorneys must be admitted to the bar of this court and file an appearance form.” L.R. 46.0(a)(2). 3d Circuit. “[A]n attorney must apply for admission to the bar of this court . . . at such time as a motion, brief, or other document is filed in this court.” L.A.R. 46.1(b). 6th Circuit. “[A]n attorney must be admitted to the bar of this court . . . to file documents . . .” 6 Cir. R. 46(a)(1)(A). 8th Circuit – admission not necessary. “An attorney who is not a member may file briefs, motions, and pleadings.” 8th Cir. I.O.P. II.A.

Sign a brief	10th Circuit. “Every brief, motion, or other paper must be signed by at least one attorney of record[.]” 10th Cir. R. 46.5(A). Admission to the 10th Circuit is required to enter an appearance. 10th Cir. R. 46.2(A). D.C. Circuit. “[T]he docketing statement and all papers filed thereafter in this court must be signed by at least one member of the bar of this court.” D.C. Cir. R. 46(a).
Appear on a brief	3d Circuit – admission not necessary. “The initial brief filed by each party with the court must contain a certification that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to this rule.” L.A.R. 46.1(e); <i>see also</i> L.A.R. 28.3(d). 4th Circuit – admission not necessary. “An attorney may be named on a brief filed in this Court without being admitted to the bar of the Fourth Circuit, provided that at least one lawyer admitted to practice in this Court also appears on the brief.” Loc. R. 46(b). 10th Circuit – admission probably necessary. “[A]ttorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements.” 10th Cir. R. 46.1(A). Admission to the 10th Circuit is required to enter an appearance. 10th Cir. R. 46.2(A).
Participate in oral argument	1st Circuit. “In order to . . . participate in oral argument, attorneys must be admitted to the bar of this court and file an appearance form.” L.R. 46.0(a)(2). 3d Circuit. “An attorney who will argue the appeal, if not previously admitted to the bar of this court, may apply for admission on or before the date of oral argument.” L.A.R. 46.1(b). 6th Circuit. “[A]n attorney must be admitted to the bar of this court . . . to . . . participate in oral argument.” 6 Cir. R. 46(a)(1)(A). 8th Circuit. “An attorney must be a member of the Eighth Circuit bar before appearing for oral argument unless the attorney is representing the federal government or has been appointed to represent a party proceeding in forma pauperis.” 8th Cir. I.O.P. II.A. D.C. Circuit. “[O]nly members of the bar of this court may present oral argument. However, on motion for good cause shown, the court may allow argument to be presented in a case by an attorney who is not a member of the bar of this court.” D.C. Cir. R. 46(a).

Other admission provisions	
Government and court-appointed attorneys	1st Circuit. “Upon being admitted to practice, an attorney other than government counsel, and court-appointed counsel, must pay a local admission fee of \$50.00 to the clerk.” L.R. 46.0(a)(1). 2d Circuit. An attorney in good standing of a state or District of Columbia bar may appear pro hac vice if they are “a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken under 18 U.S.C. § 3006A” or “acting for a party proceeding in forma pauperis[.]” L.R. 46.1(d)(1)-(2). 4th Circuit. “[A]ttorneys appointed by the Court to represent a party in forma pauperis, counsel for the United States and any agency thereof who has a case pending before this Court . . . shall be admitted to the bar of this Court without the payment of an admission fee.” Loc. R. 46(b). 5th Circuit. “No fee will be required of an attorney who otherwise has all qualifications for admission and is: appointed to represent an appellant in forma pauperis; appearing on behalf of the United States; . . .” 5th Cir. R. 46.1. 6th Circuit. “An attorney representing the United States or its officer or agency may participate in the case without being admitted to the bar of this court.” 6 Cir. R. 46(a)(1)(B). “Attorneys employed by the Federal Public Defenders Office may participate in the case without being admitted to the bar of this court.” 6 Cir. R. 46(a)(1)(C). “An attorney for an amicus curiae may participate in the case without being admitted to the bar of this court.” 6 Cir. R. 46(a)(1)(D). 7th Circuit. “Attorneys from any federal government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.” Cir. R. 46(a). “Attorneys appointed to represent a party on appeal pursuant to the Criminal Justice Act under 18 U.S.C. § 3006A and attorneys employed by the United States or its executive and legislative agencies are exempt from the admission fees.” Cir. R. 46(a)(3). 8th Circuit. “Attorneys representing the federal government, attorneys appointed under the Criminal Justice Act, and attorneys appointed to represent a party proceeding in forma pauperis are exempt from the

	requirement that they be admitted to the Eighth Circuit bar before appearing for oral argument.” 8th Cir. I.O.P. II.A. 9th Circuit. “Federal government attorneys representing the U.S. or its agencies must apply for admission. Admission fee is waived while you work for the government.” Admission Information, https://www.ca9.uscourts.gov/attorneys/bar-admission/. 10th Circuit. “The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal.” 10th Cir. R. 46.2(B). 11th Circuit. “The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application or payment of the admission fee: an attorney appearing on behalf of the United States, a federal public defender, an attorney appointed by a federal court under the Criminal Justice Act, and any attorney appointed by this court.” 11th Cir. R. 46-3. Fed. Circuit. “An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney’s official duties without formal admission to the bar of the court.” Fed. Cir. R. 46(d).
Law student practice	1st Circuit. L.R. 46.0(f). 2d Circuit. L.R. 46.1(e). 3d Circuit. L.A.R. 46.3. 4th Circuit. Loc. R. 46(a). 6th Circuit. 6 Cir. R. 46(d). 8th Circuit. 8th Cir. R. 46B. 9th Circuit. 9th Circuit Rule 46-4. 10th Circuit. 10th Cir. R. 46.7. 11th Circuit. 11th Cir. R. 46-11. D.C. Circuit. D.C. Cir. R. 46(g). Fed. Circuit. Fed. Cir. R. 46(g).
Pro hac vice admission	1st Circuit. “Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the

	attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.” Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit, Rule VIII. 2d Circuit. “An attorney may be admitted <i>pro hac vice</i> to appear in a particular proceeding without formally applying for admission or paying the admission fee.” L.R. 46.1(d). 11th Circuit. “A non-appointed attorney who is representing a client on a <i>pro bono</i> basis, is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules, and also meets the requirements of 11th Cir. R. 46-7, may apply to appear <i>pro hac vice</i> in a particular proceeding.” 11th Cir. R. 46-4. D.C. Circuit. “A motion for leave to argue <i>pro hac vice</i> must be filed at least 7 days before the date of oral argument by a sponsoring attorney who is a member of the bar of this Court. Counsel may not make repeated appearances <i>pro hac vice</i>, but must apply for admission to the bar of the Court instead. Similarly, counsel may not seek to appear <i>pro hac vice</i> in order to file pleadings; rather, counsel must apply for admission to the bar of the Court. Counsel who are not members of the bar of the Court or who have not been granted leave to appear <i>pro hac vice</i> will not appear on the opinion heading.” Handbook of Practice and Internal Procedures, II.A.1.
Disclosure requirements¹	7th Circuit. “Each attorney for a non-governmental party or amicus curiae, and each private attorney representing a governmental party, must file a separate statement under this rule. A party or amicus required to file a corporate disclosure statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the statement required by the national rule. A disclosure statement constitutes an attorney’s appearance. An attorney filing a disclosure statement need not file a representation statement under Fed. R. App. P. 12(b).” Cir. R. 26.1(a). 10th Circuit. “Each entry of appearance must be accompanied by a certificate listing the names of all interested parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal. The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers,

¹ Since the Federal Rules already require parties to file disclosure statements, this chart only identifies disclosures that must be made in connection with an attorney’s appearance. Federal Circuit Rule 47.4, for example, requires a party, intervenor, amicus curiae, or movant to file a certificate of interest “contemporaneously with the first-filed entry of appearance,” but since it is not required for every attorney’s appearance, it seems more related to the timing of disclosure rather than an attorney admission requirement.

	affiliates, and other legal entities that are financially interested in the outcome of the litigation.” 10th Cir. R. 46.1(D)(1)-(2).
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FIRST CIRCUIT

<https://www.ca1.uscourts.gov/rules-procedures>

Local Rule 46.0. Attorneys

(a) Admission.

- (1) **Admission Fee.** Upon being admitted to practice, an attorney other than government counsel, and court-appointed counsel, must pay a local admission fee of \$50.00 to the clerk. The clerk must maintain the proceeds as a court's discretionary fund for the reimbursement of expenses of noncompensable court-appointed counsel and such other purposes as the court may order. This fee is in addition to the national admission fee imposed by the Court of Appeals Miscellaneous Fee Schedule, promulgated under 28 U. S. C. § 1913. Absent a waiver, the admission fee must be paid electronically using the court's Case Management/Electronic Case Files ("CM/ECF") system. Attorneys may be admitted in open court on motion or otherwise as the court shall determine.
- (2) **Admission as a Prerequisite to Practice.** In order to file motions, pleadings or briefs on behalf of a party or participate in oral argument, attorneys must be admitted to the bar of this court and file an appearance form. The appearance of a member of the bar of any court designated in Fed. R. App. P. 46(a) will be entered subject to filing an application and subsequent admission to practice in this court. Forms for admission and entry of appearance will be provided by the clerk.
- (3) **Parties.** A party desiring to appear without counsel shall notify the clerk in writing by completing and filing an entry of appearance on a form approved by the court.

(b) Temporary Suspension of Attorneys. When it is shown to the Court of Appeals that any member of its bar has been suspended or disbarred from practice by a final decision issued by any other court of record, or has been found guilty of conduct unbecoming of a member of the bar of this court, the member may be temporarily suspended from representing parties before this court pending the completion of proceedings initiated under Fed. R. App. P. 46 and the Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit.

(c) Disciplinary Rules. The Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit are on file in the clerk's office. A copy may be obtained upon request addressed to the clerk of this court.

(d) Library Access. The law library of this court shall be open to members of the Bar, to the United States Attorney of the Circuit and their assistants, to other law officers of the government, and persons having a case in this court, but books may be removed only by government employees, who shall sign therefor.

(e) Staff Attorneys and Law Clerks. No one serving as a staff attorney to the court or as a law clerk to a member of this court or employed in any such capacity by this court shall engage in the practice of law while continuing in such position. Nor shall a staff attorney or law clerk after separating from that position practice as an attorney in connection with any case pending in this

court during the term of service, or appear at the counsel table or on brief in connection with any case heard during a period of one year following separation from service with the court.

(f) Standing Rule Governing Appearance and Argument by Eligible Law Students

(1) Scope of Legal Assistance.

- (A) An eligible law student with the written consent of an indigent and the indigent's attorney of record may appear in this court on behalf of that indigent in any case. The attorney of record, for purposes of this paragraph, must be a member of the bar of this court and either appointed as counsel on appeal for the indigent or represent the indigent on a pro bono basis. The written consent must be filed with the clerk.

An eligible law student may also appear in this court on behalf of the United States or a State, or agency thereof, provided that the governmental entity on whose behalf the student appears has consented thereto in writing, and that the attorney of record has also indicated in writing approval of that appearance. The attorney of record must be a member of the bar of this court, and the written consent must be filed with the clerk.

- (B) An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be signed by the attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs. The law student may also participate in oral argument with leave of the court, but only in the presence of the attorney of record. The attorney of record must assume personal professional responsibility for the law student's work and for supervising the quality of the law student's work. The attorney of record should be familiar with the case and prepared to supplement or correct any written or oral statements made by the student.

(2) Student Eligibility Requirements. In order to appear, the student must:

- (A) Be enrolled in a law school approved by the American Bar Association, or be a recent graduate of such a school, awaiting the first bar examination after the student's graduation or the result of that examination;
- (B) Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;
- (C) Be taking, or have taken, a course in appellate advocacy or a course in a supervised clinical program for academic credit;
- (D) Be certified by the dean of the student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

- (E) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student;
- (F) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court.

(3) Standards of Supervision. The supervising attorney of record must:

- (A) File with this court the attorney's written consent to supervise the student;
- (B) Assume personal professional responsibility for the student's work;
- (C) Assist the student to the extent necessary;
- (D) Appear with the student in all proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

(4) Forms Required by Rule.

(A) Form to be completed by the party for whom the law student is rendering services:

I authorize _____, a [law student] or [recent law school graduate awaiting the first bar examination after the student's graduation or the results of that examination], to appear in court or at other proceedings on my behalf, and to prepare documents on my behalf.

(Date)

(Signature of Client)

(If more than one client is involved, approvals from each shall be attached. If services are rendered for the United States or agency thereof, the form should be completed by the United States Attorney or authorized representative. If services are rendered for a State or agency thereof, the form should be completed by the State Attorney General or authorized representative.)

(B) Form to be completed by the law student's supervising attorney:

I certify that this student [has completed at least 4 semesters of law school work] or [is a recent law school graduate awaiting the first bar examination or the results of that examination], and is, to the best of my knowledge, of good character and competent legal ability. I will carefully supervise all of this student's work. I authorize this student to appear in court or at other proceedings, and to prepare

documents. I will accompany the student at such appearances, sign all documents prepared by the student, assume personal responsibility for the student's work, and be prepared to supplement, if necessary, any statements made by the student to the court or to opposing counsel.

(Name of Student)

(Signature of Supervising Attorney)

(Address & Phone of Above)

(Address & Phone of Above)

Name of Law School _____

(C) Form to be completed by law student:

I certify that I [have completed at least 4 semesters of law school work] or [am a recent law school graduate awaiting the first bar examination or the results of that examination]; that I am taking, or have taken, a course in appellate advocacy or a course in a supervised clinical program for academic credit; that I am familiar and will comply with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the Rules of this Court; and that I am receiving no compensation from the party on whose behalf I am rendering services (not including any compensation from an attorney, legal aid bureau, law school, public defender agency, a State, or the United States).

(Date)

(Signature of Student)

(D) Form to be completed by Dean:

I certify that this student [has completed at least 4 semesters of law school work] or [is a recent law school graduate awaiting the first bar examination or the results of that examination]; is taking, or has taken, a course in appellate advocacy or a course in a supervised clinical program for academic credit; and is qualified to fulfill the responsibilities required by First Circuit Rule 46.0(f).

(Name of Student)

(Signature of Dean)

(Address & Phone of Above)

Name of Law School _____

(5) **Exceptions.** The court retains authority to establish exceptions to these requirements in any individual case.

Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit

RULE VIII

Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

SECOND CIRCUIT

https://www.ca2.uscourts.gov/clerk/case_filing/rules/rules_home.html

Local Rule 46.1 Attorney Admission

(a) Admission Requirements; Procedures. Except as otherwise provided in these rules, an attorney who appears on behalf of a party or an *amicus curiae* in any capacity must be admitted to practice before this court, or have pending an application for admission, and must file a Notice of Appearance in accordance with LR 12.3.

(1) Applying for Admission. To request admission to the bar of this court, an attorney must complete an application composed of:

- (A) the attorney admission application;
- (B) the attorney admission oath; and
- (C) the sponsor's motion for attorney admission.

(2) Renewal of Admission; Failure to Renew; Inactive Status. An attorney is admitted for a period of five years, and must renew admission every five years for an additional five-year period. Renewal requires submission of an attorney admission renewal application. An attorney who fails to renew admission within one month after the expiration of the five-year period is placed in inactive status. An attorney in inactive status must complete the renewal process to practice before the court. After 12 months in inactive status, an attorney is removed from the court's admission roll and must reapply for admission in accordance with (a)(1).

(3) Submission of Admission or Renewal Application. An attorney must submit an admission or renewal application electronically in accordance with the instructions posted on the Court's website.

(A) Registration. Prior to submitting an admission application, an attorney must register as a Filing User in the court's electronic filing system.

(B) Signature. The provision governing a Filing User's signature under LR 25.1(f) applies to submission of an attorney admission or renewal application.

(C) Certification. Electronic submission of an attorney admission application constitutes certification that the sponsor's motion for attorney admission and certificate of standing attached to the application are true and correct copies and that the applicant is maintaining the originals for production to the court upon request.

(D) Exemption. Upon an attorney's showing of extreme hardship or exceptional circumstances by letter, the clerk may exempt counsel from the electronic filing requirements under this rule.

(b) Change in Contact Information. An attorney admitted to practice in this court must promptly notify the clerk of a change in any of the contact information required on the attorney admission data form.

(c) Fee. An attorney applying for admission or renewal of admission must pay to the clerk electronically in accordance with the instructions posted on the Court's website the fee set by the court and posted on the court's website.

(d) Pro Hac Vice Admission. An attorney may be admitted pro hac vice to appear in a particular proceeding without formally applying for admission or paying the admission fee. Pro hac vice admission will be considered on submission of a written motion to the court before filing a notice of appearance. To qualify, the attorney must be a member in good standing of a state or the District of Columbia bar and must be one of the following:

(1) a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken under 18 U.S.C. § 3006A;

(2) acting for a party proceeding in forma pauperis; or

(3) able to demonstrate exceptional circumstances justifying admission for the particular proceeding.

(e) Appearance and Argument by Eligible Law Students.

(1) Law Student Appearance. The court on motion may, with sufficient consent of the party or (for a government entity) counsel of record, permit an eligible law student to appear in this court under the supervision of an attorney.

(2) Supervising Attorney. The supervising attorney must be a member of the bar of this court and, with respect to the law student's proposed appearance before this court, must:

(A) file with this court the attorney's written consent to supervise the student;

(B) assume professional responsibility for the student's work;

(C) assist the student to the extent necessary; and

(D) introduce and appear with the student in all proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

(3) Law Student Eligibility. A law student is eligible to appear if:

(A) the student is enrolled in an ABA-accredited law school and has completed at least four semesters of legal studies, or has graduated and is awaiting the results of the first bar examination or bar admission process of any state;

(B) the law school certifies that the student is qualified to provide the legal representation permitted by this rule;

(C) the client does not pay any compensation or remuneration for the student's services; and

(D) the student certifies in writing that the student is familiar and will comply with the ABA's Model Rules of Professional Conduct, FRAP, the rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

THIRD CIRCUIT

<https://www.ca3.uscourts.gov/rules-procedures-0>

Local Appellate Rule 28.3

(d) Except as otherwise authorized by law, each party must include a certification in the initial brief filed by that party with the court that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to 3d Cir. L.A.R. 46.1.

Local Appellate Rule 46.0 ATTORNEYS

46.1 Admission

(a) Except as the court otherwise directs, practice before the court is limited to the members of the bar of this court. Admission to the bar of this court is governed by the provisions of FRAP 46 and such other requirements as the court may adopt from time to time, provided, however, that (i) the applicant must be familiar with the contents of the Federal Rules of Civil Procedure, Criminal Procedure, and Appellate Procedure, as well as with the Local Appellate Rules and Internal Operating Procedures of this court, and (ii) the applicant has read and understood those provisions of the above documents dealing with briefs, motions and appendices. The fee for admission is determined by order of the court and is payable to the clerk as trustee. All funds received from such applications must be deposited in the appropriate accounts of the court designated for this purpose.

(b) Unless the court otherwise directs, an attorney must apply for admission to the bar of this court when the attorney enters an appearance, or at such time as a motion, brief, or other document is filed in this court. An attorney who will argue the appeal, if not previously admitted to the bar of this court, may apply for admission on or before the date of oral argument. Forms prescribed by the court for purpose of admission may be obtained from the clerk of this court.

(c) Any applicant for admission to the bar of this court may be admitted in open court on oral motion, on motion before a single judge of this court, or as the court may otherwise from time to time determine. However, qualified applicants to the bar of this court not previously admitted and who will argue the appeal must be admitted in open court on oral motion.

(d) An applicant for admission to the bar of this court may be admitted on written or oral motion of a member of the bar of this court or a circuit or district judge of this circuit.

(e) The initial brief filed by each party with the court must contain a certification that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to this rule.

Source: 1988 Court Rule 9.1

Cross-references: FRAP 46; 3d Cir. L.A.R. 28.3(a) and L.A.R. Misc. 113; Third Circuit Attorney Disciplinary Rules.

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 9.1 is intended. It is not intended that current practice permitted by law be changed. See L.A.R. Misc. 113.2 for requirements for registration for electronic filing. Technical changes were made in 2008 to conform to new Judicial Conference policies regarding the deposit of funds.

46.2 Entry of Appearance

Within 14 days of notification of the docketing of a case, counsel for the appellant or petitioner must file an entry of appearance which must include an address where notices and papers may be mailed to or served upon him or her. Counsel must include an e-mail address. The entry of appearance form must be served on all parties. Not later than 14 days after the docketing of the appeal, counsel for all parties in the trial court or agency below and any other persons entitled to participate in the proceedings as appellees or respondents and desiring to do so, must file similar appearances. Any such party or other person on whose behalf counsel fails to file an entry of appearance within the time fixed by this rule will not be entitled to receive notices or copies of briefs and appendices until an entry of appearance has been entered for such party. Counsel or a party proceeding pro se who is not registered as a Filing User must be served directly with copies of notices, motions, and briefs.

Source: 1988 Court Rule 9.2

Cross-references: FRAP 46

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 9.2 is intended. The requirement of an e-mail address was added in 2008. Time changed to 14 days in 2010 to conform to amendments in FRAP.

46.3 Entry of Appearance by Eligible Law Students

(a) Eligibility

(1) An eligible law student who represented an indigent litigant in the district court in a civil matter or before an administrative agency may enter an appearance in this court provided that the person on whose behalf the student is appearing indicates in writing his or her consent to that appearance and a supervising lawyer also indicates in writing his or her approval of that appearance.

(2) The court may appoint, either in response to a motion for appointment of counsel or sua sponte, a law student who is participating in a law school clinic or pro bono program to represent an indigent pro se litigant. If the court appoints a law student sua sponte, the person on whose behalf the student is appearing must indicate in writing his or her consent to that appearance. Students appointed by the court must enter an appearance in accordance with this rule.

(3) In each case the written consent and approval of the person the law student represents must be filed in the record of the case and must be brought to the attention of the court.

(4) An eligible law student may engage in other activities under the general supervision of a member of the bar of this court outside the personal presence of that lawyer for the purpose of preparation of briefs, abstracts, and other documents to be filed in this court, but such documents must be signed by the supervising lawyer.

(5) An eligible law student may participate in oral argument in this court but only in the presence of the supervising lawyer, who must be prepared to supplement any written or oral statement made by the student. Students should recognize that argument may be scheduled during school breaks.

(b) Requirements and Limitations. In order to make an appearance pursuant to this rule, the law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a semester basis, or be enrolled in a law school clinic or pro bono program.

(3) If not enrolled in a law school clinic or pro bono program, be certified by the dean of his or her law school as being of good character and competent legal ability, and as being adequately trained to perform as an eligible law student under this rule.

(4) Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the law student renders service, but this will not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

(5) Submit with the appearance form a certification in writing that the law student has read and is familiar with the rules of professional conduct governing attorneys practicing in the jurisdiction of the supervising attorney.

(6) Submit with the appearance form the following signed and notarized oath or affirmation: "I, [name], do swear (or affirm) that I will support the Constitution of the United States, and that, in practicing as an eligible law student under 3d Cir. L.A.R. 46.3 I will conduct myself strictly in accordance with the terms of that rule and according to law."

(c) Certification

(1) The certification of a student by the law school dean must be filed with the clerk of court and, unless it is sooner withdrawn, will remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination of the state where the student's law school is located following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification will continue in effect until the date the student is admitted to the bar. The student is responsible for advising the clerk in writing of any change in status or event affecting the student's certification.

(2) The certification may be withdrawn by the dean at any time by sending a notice to that effect to the clerk of the court. It is not necessary that the notice state the cause for withdrawal.

(3) The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(d) Supervision. The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule must:

(1) Be a lawyer in good standing of the bar of this court and enter an appearance in the case.

(2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(3) Assist the student to the extent the supervising lawyer considers it necessary.

(4) Assure that briefing schedules are met regardless of semester breaks, exams, and vacations.

(5) Be prepared to appear and argue if the student is unavailable when the case is scheduled for oral argument.

Source: 1988 Court Rule 9.3

Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

Committee Comments: The Model Rules of Professional Responsibility replace the Canons of Professional Ethics. No substantive change from prior Court Rule 9.3 is intended. Revised in 2011.

46.4 Signing Documents

All documents, motions and briefs must be signed by an attorney or by a party appearing pro se. Electronically filed documents must be signed with either an electronic signature or “s/ typed name.”

Source: Fed. R. Civ. P. 11

Cross-references: L.A.R. 28.4; L.A.R. Misc. 113.9

Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires signatures on all papers. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief to ensure that it complies with all federal and local rules. The requirement is interpreted broadly and the attorney of record may designate another person to sign the brief. If a party is represented by multiple counsel, the signature from only one attorney of record is required. The rule was amended in 2008 to permit electronic signatures.

FOURTH CIRCUIT

<https://www.ca4.uscourts.gov/rules-and-procedures/federal-local-rules-of-appellate-procedure>

Local Rule 46 ATTORNEYS

Local Rule 46(a). Legal Assistance to Indigents by Law Students.

An eligible law student with the written consent of an indigent and the attorney of record may appear in this Court on behalf of that indigent in any case. An eligible law student with the written consent of the United States Attorney or authorized representative may also appear in this Court on behalf of the United States in any case. An eligible law student with the written consent of the State Attorney General or authorized representative may also appear in this Court on behalf of that state in any case. In each case, the written consent shall be filed with the clerk.

An eligible law student may assist in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility

for the law student's work and for supervising the quality of that work. The attorney should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

In order to make an appearance pursuant to this rule, the law student must:

1. Be duly enrolled in a law school approved by the American Bar Association;
2. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;
3. Be certified by the dean of the student's law school as being of good character and competent legal ability which certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time by mailing notice to the clerk or by termination by this Court without notice of hearing and without any showing of cause;
4. Be introduced to the Court by an attorney admitted to practice before this Court;
5. Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require;
6. Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility or Rules of Professional Conduct in force in the state in which the student's law school is located.

Local Rule 46(b). Admission to Practice.

Only attorneys admitted to the bar of this Court may practice before the Court. An attorney may be named on a brief filed in this Court without being admitted to the bar of the Fourth Circuit, provided that at least one lawyer admitted to practice in this Court also appears on the brief. Any other document submitted by an attorney who is not a member of the bar of the Fourth Circuit will be accepted for filing conditioned on his or her qualifying for membership within a reasonable time.

Each applicant for admission to the bar of this Court shall file with the clerk an application on the form approved by the Court and furnished by the clerk. Thereafter, upon written or oral motion of a member of the bar of the Court, the Court will act upon the application. A qualified attorney may be admitted upon personal appearance in open court. It is not necessary that an applicant appear in open court for the purpose of being admitted unless the Court shall otherwise order.

The requisite \$249 fee must accompany the application, but attorneys appointed by the Court to represent a party in forma pauperis, counsel for the United States and any agency thereof who has a case pending before this Court, and law clerks to the judges of the Court and to the district judges, magistrate judges, and bankruptcy judges within this Circuit shall be admitted

to the bar of this Court without the payment of an admission fee. The clerk shall credit \$199 of each \$249 fee to the Judiciary's fee account and designate the remaining \$50 for deposit to a fund maintained by the Court for the benefit of the bench and bar in the administration of justice.

A certificate indicating that an attorney has been admitted to practice before the Fourth Circuit will be sent to counsel by mail after admission.

Local Rule 46(c). Appearance of Counsel; Withdrawal; Substitutions.

Each attorney of record must file a written appearance with the clerk within 14 days after the appeal is docketed or after being retained or appointed. At the time of docketing, the clerk will send to each counsel or party in the trial court an "appearance of counsel" form. This form should be filled out and returned to the Clerk of the Fourth Circuit within 14 days. Thereafter, the Court will send correspondence, notices of oral argument, and copies of final decisions only to those attorneys who have filed their appearance forms. This form does not affect the attorney information listed on opinions, as that information is drawn from the names listed on the principal briefs.

Once an appearance in an appeal has been filed, an attorney may not withdraw from representation without notice to the party he or she is representing and consent of the Court. A motion to withdraw should state fully the reason for the request. Substitution of counsel of record can be accomplished by submitting a counsel of record form or written appearance for new counsel along with existing counsel's motion to withdraw or strike appearance.

Local Rule 46(d). Appointment of Counsel.

In any appeal in which appointment of counsel is mandated by section (a)(1) of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1), counsel is appointed upon the docketing of the appeal without prior notice to the attorney who represented the indigent in the case below. The duty of counsel appointed under the CJA extends through advising an unsuccessful appellant in writing of the right to seek review in the Supreme Court. If the appellant requests in writing that a petition for a writ of certiorari be filed and in counsel's considered judgment there are grounds for seeking Supreme Court review, counsel shall file such a petition. If appellant requests that a petition for a writ of certiorari be filed but counsel believes that such a petition would be frivolous, counsel may file a motion to withdraw with the Court of Appeals. The motion must reflect that a copy was served on the client and that the client was informed of the right to file a response to the motion within seven days. The Clerk will hold the motion after filing for fifteen days before submitting it to the Court to allow time for appellant's response, if any, to be received.

Assignment of counsel is discretionary in other indigent cases. Therefore, such cases receive a preliminary review before a decision is made regarding appointment of counsel. In assigning counsel, the Court may direct counsel to brief a particular issue, but counsel is free to address any additional issues which appear to be meritorious.

Payment of counsel appointed under the CJA is governed by 18 U.S.C. § 3006A(d) and this Circuit's Plan in Implementation of the Criminal Justice Act. Unless compensation for legal services becomes available to assigned counsel by statute, the Court will pay counsel assigned

for appellate representation not covered by the CJA a maximum fee of \$750 plus expenses from the Attorney Admission Fund.

To receive payment from the Court, court-appointed or court-assigned counsel in all cases must submit to the Clerk's Office an itemized statement of expenses, with receipts, within sixty days of final disposition of the case. Depending upon the course of the case, this may be sixty days from (1) 03/23/2026 37 the date of judgment, (2) dismissal of the appeal, or (3) denial of a petition for rehearing. Before the expiration of the sixty-day time period the Court, for good cause shown, may grant counsel an extension of time to file the application for compensation and reimbursement. If court-appointed counsel files a petition for writ of certiorari with the Supreme Court, the 60-day period for applying for compensation and reimbursement runs from the date of filing the petition for writ of certiorari.

Local Rule 46(e). Attorney's Fees and Expenses.

The Court may award attorney's fees and expenses whenever authorized by statute. Any application for an award must include a reference to the statutory basis for the request and a detailed itemization of the amounts requested. Court-appointed counsel may apply for an award of fees and expenses, but any award by the Court is in lieu of the regular appointment fees provided by the Court. In certain agency cases, counsel may submit the standard government form for fees and expenses provided by the agency for approval by the Court.

Local Rule 46(f). Proceeding Pro Se.

An individual may proceed without the aid of counsel, but should so inform the Court at the earliest possible time. In any pro se appeal, the clerk shall notify the parties that they shall file informal briefs as provided by Local Rule 34(b). The Court will limit its review to the issues raised in the informal briefs and will consider the need for the appointment of counsel when reviewing the appeal under Local Rule 34(a). Cases involving pro se litigants are ordinarily not scheduled for oral argument.

Local Rule 46(g). Rules of Disciplinary Enforcement.

- (1) A member of the bar of this Court may be disciplined by this Court as a result of
 - (a) Conviction in any court of the United States, the District of Columbia, or any state, territory or commonwealth of the United States, of any felony or of any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, or theft;
 - (b) Imposition of discipline by any other court of whose bar the attorney is a member, or an attorney's disbarment by consent or resignation from the bar of such court while an investigation into allegations of misconduct is pending;
 - (c) Conduct with respect to this Court which violates the rules of professional conduct or responsibility in effect in the state or other jurisdiction in which the attorney maintains his or her principal office, the Federal Rules of Appellate Procedure, the local rules of this Court, or orders or other instructions of this Court; or

- (d) Any other conduct unbecoming a member of the bar of this Court.
- (2) Discipline may consist of disbarment, suspension from practice before this Court, monetary sanction, removal from the roster of attorneys eligible for appointment as Court-appointed counsel, reprimand, or any other sanction that the Court may deem appropriate. Disbarment is the presumed discipline for conviction of a crime specified in paragraph (1)(a) above. The identical discipline imposed by another court is presumed appropriate for discipline taken as a result of that other court's action pursuant to paragraph (1)(b). A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client.
- (3) The clerk reviews reports received from other courts concerning discipline imposed on members of the bar of this Court. He refers to the Court all disbarments, suspensions, resignations during the pendency of misconduct investigations, and other actions sufficient to cast doubt upon the member's continuing qualification to practice before this Court.
- (4) The clerk issues a notice to show cause why a member of the bar shall not be disciplined by this Court upon receipt of official notification of an attorney's conviction of a crime specified in paragraph (1)(a) or of the imposition of discipline by another court referred to this Court pursuant to paragraph (3) above, or upon the Court's determination that cause may exist for discipline pursuant to paragraphs (1)(c) or (1)(d). Such notice is sent by certified mail, directs that a response be filed within 30 days of the date of the notice, and directs that the attorney complete and return to the clerk within that time a declaration of the names and addresses of other bars to which he or she is admitted, using the form supplied by the clerk, whether or not the attorney chooses otherwise to respond to the notice. The clerk also appends a copy of Local Rule 46(g).
- (5) Upon receiving official notification that a member of the bar has been convicted of a crime specified in paragraph (1)(a), the clerk automatically will issue an order suspending the attorney's privilege to practice before this Court pending the Court's determination of appropriate discipline.
- (6) An attorney to whom a notice to show cause has been sent may consent to disbarment, by filing with the clerk an affidavit stating that the attorney desires to consent to disbarment and that:
- (a) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (b) The attorney is aware that there is a presently pending proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;
 - (c) The attorney acknowledges that the material facts so alleged are true; and

- (d) The attorney so consents because the attorney knows that he or she cannot successfully defend himself or herself. The order disbarring the attorney on consent is a matter of public record. However, the affidavit will not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.
- (7) If the attorney fails to respond to the notice within 30 days, or such other time as the Court shall allow, the clerk enters an order imposing the presumptive discipline. If no presumptive discipline is specified for the conduct, the clerk notifies the Court of the attorney's nonresponse and the Court takes such action as it deems appropriate.
- (8) All matters pertaining to discipline of attorneys are submitted to the Court's Standing Panel on Attorney Discipline, which consists of three active circuit judges, each of whom is appointed by the Chief Judge to serve on the Panel for a three-year term. The initial members of the Standing Panel are appointed for terms of one, two, and three years so that the Panel members' terms are staggered for continuity of decision making. If any member of the Standing Panel is unable to hear a particular matter, the clerk randomly designates another active circuit judge to the Panel for the purpose of disposing of that matter.
- (9) The Standing Panel considers all materials submitted by an attorney to whom notice to show cause has issued. The Panel may request further information from a court that has previously imposed discipline on the attorney, or from its disciplinary agency. A copy of any such information is made available to the attorney or to his or her counsel. Should an attorney request a hearing on the matter it will be heard by the Standing Panel at a time and place of its choosing.
- (10) The Court may at any time appoint counsel to investigate or prosecute a disciplinary matter, or to represent an indigent attorney instructed to show cause. The Court prefers to appoint as prosecuting counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. However, if the state disciplinary agency declines appointment, or the Court deems other counsel more appropriate, it may appoint any other member of the bar as prosecuting counsel. Counsel appointed either for prosecution or defense will be compensated for his or her services according to the Court's plan for appointment of counsel in criminal cases, from the attorney admission fund.
- (11) The Court's order imposing discipline will set forth the nature of the discipline imposed; if disbarment or suspension from practice before the Court, the terms upon which reinstatement will occur or be considered by the Court; and any instructions to the clerk concerning the notification of the Court's action to be given to other courts or official bodies.
- (12) The clerk is responsible for
- (a) Automatically initiating show cause proceedings when official notice of an attorney's conviction of a crime specified in paragraph (1)(a) or discipline by another court pursuant to paragraph (3) is brought to his or her attention;

- (b) Bringing to the attention of the Standing Panel instances of violations by members of the bar of this Court of the Federal Rules of Appellate Procedure, this Court's local rules or this Court's orders or other instructions that may warrant discipline;
- (c) Obtaining declarations of the names and addresses of other bars of which an attorney possibly subject to discipline by this Court may be a member; and
- (d) Unless directed otherwise by the Court, within 10 days of the imposition of discipline upon a member of the bar of this Court, notifying all other courts of those bars the attorney reports that he or she is a member, and the American Bar Association's National Disciplinary Data Bank, of the Court's action, enclosing a certified copy of the Court's order.

FIFTH CIRCUIT

<https://www.ca5.uscourts.gov/rules-procedures>

5th Cir. R. 46 ATTORNEYS

46.1 Admission and Fees. Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in FED. R. APP. P. 46(a)(1) to be admitted and continue to practice before this court. Admission is governed by FED. R. APP. P. 46 and this rule. Attorneys admitted to this court must provide the clerk a valid e-mail and mailing address, as well as a working telephone number, and must provide updated information to the clerk when changes occur. Attorneys are admitted for a period of five years and must, after notice from the clerk, timely apply for readmission. To be admitted or readmitted, an attorney must pay the fee fixed by court order. No fee will be required of an attorney who otherwise has all qualifications for admission and is: appointed to represent an appellant in forma pauperis; appearing on behalf of the United States; or newly graduated from law school, licensed to practice in Louisiana, Mississippi, or Texas, and on orders for extended active duty in the Judge Advocate General's Corps.

46.2 Suspension or Disbarment. In addition to FED. R. APP. P. 46(b), attorneys may be suspended or removed from the roll of attorneys permitted to practice before this court if the appropriate law licensing authority withdraws or suspends the attorney's license to practice law, or the license to practice lapses.

46.3 Entry of Appearance. Attorneys admitted to the bar of this court must enter their appearance in each case in which they participate at the time the case is docketed or upon notice by the clerk. A form for entry of appearance is provided by the clerk. In addition to other pertinent information, the form requires counsel to cite all pending related cases and any cases on the docket of the Supreme Court, or this or any other United States Court of Appeals, which involve a similar issue or issues. Counsel must update such information at the time of briefing. Counsel must also indicate on the form whether the appeal is in a category of cases requiring preference in processing and disposition as set out in 5TH CIR. R. 47.7.

SIXTH CIRCUIT

<https://www.ca6.uscourts.gov/rules-and-procedures>

6 Cir. R. 46 Attorneys – Admission of Attorneys, Attorney Discipline, Law Student Practice

(a) Admission of Attorneys.

(1) Prerequisite to Practice.

(A) **Generally.** Except as provided in 6 Cir. R. 46(a)(1)(B), (C), and (D), an attorney must be admitted to the bar of this court and must file appearance Form 6CA-68 to file documents or participate in oral argument.

(B) **Government Attorneys.** An attorney representing the United States or its officer or agency may participate in the case without being admitted to the bar of this court.

(C) Attorneys employed by the Federal Public Defenders Office may participate in the case without being admitted to the bar of this court.

(D) **Attorneys for Amici Curiae.** An attorney for an amicus curiae may participate in the case without being admitted to the bar of this court.

(2) **Admission Fee.** Applicants for admission to the bar of this court must pay a fee. The amount is listed on the court's web site. No admission fee is required from:

- attorneys appointed by this court to represent a party in forma pauperis;
- attorneys employed by a federal public defender organization created under 18 U.S.C. § 3006A(g)(2)(A); and
- attorneys presently employed by a United States court.

(3) **Application Procedures.** Admissions are made on the motion of a member of the bar of this court. Application for admission is made by filing the form prescribed by the clerk. The form is available on the court's web site.

(4) **Failure to Secure Admission or File Notice of Appearance.** If counsel for the appellant fails to secure admission and file a notice of appearance within the time the clerk specifies, the court may dismiss the appeal.

(b) **Code of Conduct.** An attorney admitted to practice in this court is subject to the rules of professional conduct or other equivalent rules of the state where the attorney's principal office is located.

(c) Attorney Discipline.

- (1) Conduct Subject to Discipline.** This court may impose discipline on a member who:
 - (A) engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct, whichever applies;
 - (B) fails to comply with the rules or orders of this court; or
 - (C) has been disciplined by a state or other court.
- (2) Records Sealed.** All records pertaining to disciplinary proceedings before the court must be filed under seal, unless the chief judge orders otherwise.
- (3) Scope of Discipline.** Discipline may include disbarment, suspension, reprimand, or other appropriate action. This rule does not limit the court's inherent contempt power or its authority under 28 U.S.C. § 1912 or 28 U.S.C. § 1927.
- (4) Initiation of Disciplinary Proceedings.** Formal disciplinary proceedings are initiated by an order to show cause, signed by the chief judge or by the circuit clerk, acting at the direction of the chief judge.
 - (A) Order to Show Cause.** The court may issue an order to show cause on its own initiative or in response to a complaint filed by a member of the bar of this court or a party before the court.
 - (B) Contents of Complaint.** A complaint of attorney misconduct must include:
 - (i) The name, address, and telephone number of the complainant;
 - (ii) The specific facts that require discipline, including the date, place, and nature of the alleged misconduct, and the names of all persons involved;
 - (iii) Copies of all documents or other evidence that support the factual allegations contained in subsection (ii), including a copy of any rule or order of this court that is alleged to have been violated; and
 - (iv) A statement under the penalty of perjury - at the end of the complaint - that the complainant has read the complaint and that the facts contained there are correct to the best of the complainant's knowledge.
 - (C) Action by Chief Judge.** The clerk will send a complaint to the chief judge for initial review.
 - (i) If the chief judge determines that the complaint - on its face or after investigation - is without merit or does not warrant court action, the chief judge will dismiss the complaint.

- (ii) If the chief judge determines that reasonable grounds exist for further investigation, the chief judge may order investigation. The chief judge may issue an order to show cause if the complaint appears meritorious, either before or after investigation.
 - (iii) If the chief judge issues an order to show cause, the clerk will mail the following to the respondent:
 - the order to show cause;
 - the complaint and supporting documents;
 - a copy of Fed. R. App. P. 46;
 - a copy of this rule; and
 - a written statement that the respondent has 21 days from entry of the order to show cause to respond.
 - (iv) Alternatively, the chief judge may refer the matter to a state disciplinary authority for action.
- (4) **Response.** A respondent has 21 days from entry of the order to show cause to file a response. The response must include:
- (A) The name, address, and telephone number of the respondent;
 - (B) An admission or denial of each factual allegation in the complaint and order to show cause;
 - (C) A specific statement of facts on which respondent relies, including all other relevant dates, places, persons, and conduct;
 - (D) All relevant documents or other supporting evidence not previously filed with the complaint or order;
 - (E) A statement requesting or declining a hearing; and
 - (F) A statement under the penalty of perjury that the respondent has read the response and that the facts contained there are correct to the best of respondent's knowledge.
- (5) **Summary Dismissal.** The chief judge may dismiss the complaint if the response shows that it is without merit.
- (6) **Conformity with Other Discipline.** When a court or other disciplinary authority has disbarred or suspended the respondent and the respondent admits the action complained of or does not respond to the order to show cause, the chief judge may enter a final order imposing similar discipline.

- (7) **Judicial Officer.** After a response is filed, the chief judge may appoint a circuit judge, district judge, or other judicial officer from the circuit to investigate the allegations. The judicial officer must review the documents, conduct hearings if necessary, and issue a written recommendation.
- (8) **Hearing.** A disciplinary hearing will be held if the respondent timely requested one and the judicial officer determines that a hearing is necessary for proper disposition of the charges.
- (A) **Notice.** When a hearing is necessary, the judicial officer will provide the respondent with at least 21 days written notice of the hearing. The notice must contain the date and location of the hearing and a statement that the respondent is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.
- (B) **Procedure.** The judicial officer will conduct the hearing. The judicial officer has authority to resolve procedural and evidentiary disputes. Witnesses must testify under penalty of perjury. Hearings are confidential and will be recorded.
- (C) **Rights of the Complainant and the Respondent.** During the hearing, the respondent is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses. The judicial officer may permit the complainant to participate through counsel.
- (D) **Burden of Proof.** The respondent's violation of the applicable standards of conduct or rules or orders of this court must be proven by clear and convincing evidence. A certified copy of a final order of disbarment or judgment of conviction for a felony offense, entered in any state or federal court, constitutes clear and convincing evidence.
- (E) **Failure to Appear.** The respondent's failure to appear at the hearing is grounds for discipline.
- (9) **Recommendation.** The judicial officer must recommend - in writing - a proposed disposition of the charges.
- (A) **Filing of the Recommendation.** The judicial officer must file the recommendation and send copies to the respondent.
- (B) **Response to the Recommendation.** The respondent may file a written response to the recommendation within 14 days of service of the recommendation. The response must state concisely any inaccuracies, errors, or omissions that warrant a disposition other than the recommended disposition. The response must not exceed 25 pages.
- (10) **Final Action on the Recommendation.** The court will enter a final order of disposition within 30 days of the filing of a response to the recommendation. It will send notice of the final order to the respondent and the complainant.

(11) **Reinstatement.** A suspended or disbarred attorney may petition the court for reinstatement. The petition must include a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed, and the grounds that justify reinstatement.

(A) **Automatic Reinstatement.** The court will automatically reinstate an attorney suspended for a definite term at the end of the suspension period on receipt of:

- a petition for reinstatement; and
- an affidavit showing compliance with the suspension order.

(B) **Petition for Reinstatement.** The court will reinstate a disbarred or indefinitely suspended attorney on petition for reinstatement only for good cause shown. The chief judge will review the petition for clear and convincing evidence that the member has the moral qualifications, competency, and learning in the law required for readmission. After review, the chief judge will make a recommendation to the court.

(C) **Successive Petitions for Reinstatement.** A suspended or disbarred attorney may not petition for reinstatement within one year following an adverse determination on a prior petition.

(12) **Chief Judge's Designees.** The chief judge may designate a circuit judge or judges to perform the duties of the chief judge under this rule. References to "chief judge" in this rule include his or her designees.

(d) **Law Student Practice.**

(1) **Eligibility.** To make an appearance under this rule, a law student must:

(A) Be enrolled in a law school approved by the American Bar Association;

(B) Have completed legal studies for at least four semesters, or the equivalent if the school is on some basis other than a semester basis;

(C) Be certified - with certification filed - by the student's law school dean or authorized representative as being of good character and competent legal ability; and

(D) Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility or Rules of Professional Conduct in force in the state where the student's law school is located.

(2) **Cases in Which a Law Student May Appear.** An eligible law student may appear in this court in the following circumstances:

- (A) On behalf of an indigent, with the written consent of the indigent and the attorney of record.
- (B) On behalf of the United States, with the written consent of the United States Attorney or authorized representative.
- (C) On behalf of a state, with the written consent of the state attorney general or authorized representative.

In each case, the written consent must be filed with the clerk.

- (3) **Preparation of Documents and Oral Argument.** An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but those briefs or other documents must also be signed by the attorney of record. The student may also participate in oral argument with leave of the court, but only in the presence of the attorney of record. The student must be introduced to the court by an attorney admitted to practice before it.
- (4) **Responsibility of the Attorney of Record.** The attorney of record must assume personal professional responsibility for the law student's work and for supervising the quality of that work. The attorney must be familiar with the case and prepared to supplement any written or oral statement by the student.
- (5) **Revocation.** The dean of the student's law school may withdraw certification at any time by mailing notice to the clerk. This court may terminate a student's privileges under this rule at any time. Neither the law school nor this court are required to provide notice, hearing, or any showing of cause.
- (6) **Compensation.** A law student appearing under this rule may not ask for or receive compensation or remuneration from the individual or party on whose behalf the student renders services. But an attorney, legal aid bureau, law school, public defender agency, state, or the United States may compensate the eligible law student. This rule does not prevent an entity from charging a client or other recipient for its services.

SEVENTH CIRCUIT

<https://www.ca7.uscourts.gov/pages/LandingPage.php?page=circuit-rules>

Circuit Rule 26.1 Disclosure Statement

(a) Who Must File. Each attorney for a non-governmental party or amicus curiae, and each private attorney representing a governmental party, must file a separate statement under this rule. A party or amicus required to file a corporate disclosure statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the statement required by the national rule. A disclosure statement constitutes an attorney's appearance. An attorney filing a disclosure statement need not file a representation statement under Fed. R. App. P. 12(b).

(b) Contents of Statement. The statement must disclose the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court. If any litigant is using a pseudonym, the statement must disclose the litigant's true name. A disclosure required by the preceding sentence will be kept under seal. Attorneys are encouraged to use the disclosure statement form posted on the Court of Appeals' website.

(c) Time for Filing. The statement under this rule and Fed. R. App. P. 26.1 must be filed no later than 21 days after docketing the appeal, with a party's first motion or response to an adversary's motion, or when directed by the court, whichever time is earliest. A disclosure statement for each attorney for a non-governmental party or amicus curiae, and each private attorney representing a governmental party, also must accompany any petition for permission to appeal under Fed. R. App. P. 5 and must be included with a second or successive petition for collateral review, an appellant's brief, an appellee's brief, a brief of amicus curiae, and any petition for rehearing en banc. See Cir. R. 22.2(a)(1); Fed. R. App. P. 28(a)(1), (b); Fed. R. App. P. 29(c)(1).

(d) Duty to Update. Counsel must file updated disclosure statements under this rule and Fed. R. App. P. 26.1 within 14 days of any change in the information required to be disclosed.

Circuit Rule 46. Attorneys

(a) Admission to the Bar. Upon filing an appeal, if the lead attorney for a party is not admitted to the bar of this court, then the lead attorney must apply for admission. Attorneys from any federal government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(1) Timing. The lead attorney for each party represented by counsel must apply for admission to practice in this court by the later of:

(A) 30 days from the docketing of the matter in this court; or

(B) 15 days from being retained or appointed as counsel.

An attorney who intends to present oral argument must apply for admission to practice in this court before the filing of the appellee's brief.

(2) Application. An applicant for admission to the bar of this court must file with the clerk an application on the form provided by the clerk. The oath or affirmation may be taken before any officer authorized by federal or state law to administer an oath.

(3) Fees. The prescribed fee for admission is a local fee as set forth in the Seventh Circuit Attorney Admission Local Fee Order, plus a national fee prescribed by the Court of Appeals Miscellaneous Fee Schedule. Local admission fees are segregated and retained in a designated Attorney Admission Fund administered by the custodian in accordance with the Seventh Circuit Attorney Admission Fund Plan. Attorneys appointed to represent a party on appeal pursuant to the Criminal Justice Act under 18 U.S.C. § 3006A and attorneys employed by the United States or its executive and legislative agencies are exempt from the admission fees.

(4) Procedures. When the application and motion have been filed and any applicable fee tendered, the clerk will present the papers to a judge for action in chambers unless the applicant requests admission in open court. For admission in chambers, the applicant and sponsor need not appear. For admission in open court, the applicant must appear in person and the sponsor must make an oral motion in support of the written application.

(b) Suspension or Disbarment. Whenever it is shown to this court that a member of its bar has been disbarred or suspended from practice in any state or the District of Columbia, that attorney will be suspended from practice before this court. The attorney will be afforded an opportunity to show cause, within 30 days, why the attorney should not be stricken from the roll of attorneys admitted to practice before this court.

EIGHTH CIRCUIT

<https://www.ca8.uscourts.gov/rules-procedures>

RULE 46A: ADMITTING, SUSPENDING, AND DISCIPLINING ATTORNEYS

(a) Admission. Applicants for admission must pay an admission fee of \$239.00. An attorney who is appointed to represent a party proceeding in forma pauperis may appear in the case without being admitted to the bar of this court.

(b) Reciprocal Discipline. When a court or other disciplinary authority has disbarred or suspended an attorney, and the attorney does not respond to an order to show cause or does not oppose reciprocal action by this court, the chief judge may enter a final order imposing similar discipline. If the attorney responds to an order to show cause and opposes the imposition of discipline by this court, then the matter will be referred to a three-judge panel for such proceedings as may be warranted and final disposition.

Cross-References: FRAP 46; 8th Cir. R. 47H.

RULE 46B: STUDENT PRACTICE

Any law student acting under a supervising attorney may appear and participate in proceedings in this court.

(a) Eligibility. To be eligible to appear and participate, a law student must:

- (1) be a student in good standing in a law school approved by the American Bar Association;
- (2) have completed legal studies equivalent to 3 semesters;
- (3) file with the clerk of court:
 - (I) a certificate from the dean of the law school or a faculty member stating the student is of good moral character, satisfies the requirements listed above, and is qualified to serve as a legal intern;

(ii) a certificate stating the student has read and agrees to abide by the rules of the court, all applicable codes of professional responsibility, and other relevant federal practice rules;

(iii) a notice of appearance prescribed by the court and signed by the supervising attorney and the client in each case in which the student is participating or appearing as a law student intern; and

(4) be introduced to the court by an attorney admitted to practice in this court.

(b) Restrictions. No law student admitted under these rules may:

(1) request or receive compensation from the client;

(2) appear in court without the supervising attorney; or

(3) file any documents or papers with the court that have not been read, approved, and signed by the supervising attorney and cosigned by the student.

This restriction does not prevent the supervising attorney, law school, public defender, or government from paying compensation to the law student, or an agency from charging for its services.

(c) Supervising Attorneys. A person acting as a supervising attorney under this rule must be admitted to practice in this court and must:

(1) assume responsibility for the conduct of the student;

(2) read and sign pleadings, papers, and documents prepared by the student;

(3) advise the court of the student's participation, be present with the student at all times in court, and be prepared to supplement the student's oral or written work as the court requests or as necessary to ensure the client's proper representation; and

(4) be available to consult with the client.

(d) Special Notice of Appearance to be filed by law student:

SPECIAL NOTICE OF APPEARANCE

Supervising Attorney and Law Student

Title of Action

Case Docket No.

Please be advised that [name of supervising attorney] appears as attorney for [name of client] and is acting as supervising attorney for [name of law student], a law student who satisfies the requirements for student practice under 8th Cir. R. 46B.

The supervising attorney and the law student have read and agree to abide by 8th Cir. R. 46B governing student practice.

Supervising Attorney Date

Law Student Date

Address and Phone

Address and Phone

Law School Name and Address

Client Consent

I authorize [name of law student], who is being supervised by my attorney, [name of attorney], to appear in court and other proceedings on my behalf and to prepare documents on my behalf. My attorney must be present when the law student appears in court.

Client

Date

Address

RULE 47H: ATTORNEY ADMISSION FEE FUND

(a) Use of Fund. The court will maintain an Attorney Admission Fee Fund to receive admission fees and other funds not required to be deposited in the Treasury of the United States. The fund may be used for:

- (1) expenditures related to attorney admission proceedings;
- (2) continuing legal education programs involving bench and bar;

(3) publication of rules, procedures, and plans of the court of appeals, the judicial council, or federal advisory committee for distribution to the bar;

(4) expenditures relating to the court's libraries;

(5) reimbursement of reasonable out-of-pocket expenses incurred by court-appointed attorneys representing indigents in civil cases not covered by the Criminal Justice Act; and

(6) any other purpose set out in the guidelines prepared by the Attorney Admission Fee Fund Committee and adopted by the court of appeals on July 2, 1985.

(b) Custodian of Fund. The circuit executive will serve as custodian of the Attorney Admission Fee Fund. As custodian, the circuit executive will make expenditures from this fund as directed by the Attorney Admission Fee Fund Committee and the chief judge, will keep an account of the receipts and disbursements of the Fund for examination and approval by the Committee, and will give bonds as the Committee may require.

Internal Operating Procedures

II. ATTORNEYS

A. ADMISSION TO PRACTICE

The requirements for admission to the Eighth Circuit bar are provided in FRAP 46(a) and 8th Cir. R. 46A. An attorney must be a member of the Eighth Circuit bar before appearing for oral argument unless the attorney is representing the federal government or has been appointed to represent a party proceeding in forma pauperis. An attorney who is not a member may file briefs, motions, and pleadings. Attorneys representing the federal government, attorneys appointed under the Criminal Justice Act, and attorneys appointed to represent a party proceeding in forma pauperis are exempt from the requirement that they be admitted to the Eighth Circuit bar before appearing for oral argument.

The fee for admission is \$239. The form for admission is available from the clerk's office or may be downloaded from the court's website. Checks should be made payable to the "Attorney Admission Fee Fund." The admission form and payment of the admission fee using a credit card, may also be submitted electronically, using the Utilities tab on the CM/ECF home screen. Admission to the Eighth Circuit bar may be granted in open court or by the clerk of court, but most admissions are processed by mail. Counsel will be mailed a receipt and bar certificate.

Attorneys may obtain Certificates of Good Standing by making a written request to the clerk's office and paying a \$21 service fee. Payment of the fee for a certificate of good standing may also be made electronically using a credit card using the Utilities tab on CM/ECF and paid through pay.gov. Fees are subject to change, and current fee information may be found on the court's website under "Fee Schedule."

B. ENTRY OF APPEARANCE.

The clerk's office must be informed of the names, addresses, email addresses and telephone numbers of the attorneys participating in an appeal. Counsel who represent a party on appeal must enter an appearance with the court of appeals either on a form supplied by the clerk or by letter. Appearance forms may be downloaded from the "Forms" link on the court's website.

Counsel should complete the appearance form and immediately file it through the CM/ECF system. Individual rather than firm names should be listed on the form. If the appearance form is submitted by CM/ECF, counsel should retain a signed copy. Notification of the court's actions cannot be assured without the entry of appearance by counsel. The early filing of the form by each attorney ensures prompt communication throughout the appellate process.

D. APPOINTMENT OF COUNSEL

1. *Criminal Justice Act*

The Criminal Justice Act of 1964, 18 U.S.C. §§ 3001-3013, authorizes the payment of compensation to counsel appointed to represent indigents in criminal cases, habeas corpus cases, and other designated proceedings. *Id.* § 3006A(d). Information on hourly rates and compensation maximums can be found on the court's website under the "CJA Information & Forms" button. The Eighth Circuit Plan to Implement the Criminal Justice Act of 1964 regulates the appointment of attorneys. Counsel may find the Plan at the "Rules and Publications" button on the court's website. In direct criminal appeals and habeas corpus cases in which the district court or the circuit court has granted a certificate of appealability, trial counsel is reappointed automatically on appeal. In all other cases, counsel is appointed only by order of the court, and a party or a party's counsel must file a formal motion with the clerk seeking appointment on appeal. The clerk forwards motions for appointment of counsel to an administrative panel. If the motion is granted, the clerk enters the order of appointment and sends the appointed attorney the necessary voucher and login information to the eVoucher system with appropriate instructions. When the case is placed on the oral argument calendar, a travel voucher will be sent through CM/ECF to counsel who must travel by air to oral argument, allowing counsel to use a designated travel agent and to charge the airfare directly to the court's designated CJA credit card account. Counsel are requested to notify the clerk's office and the travel agency if counsel must cancel any reservation or travel plans. The "CJA Information & Forms" button on court's website contains helpful information on completing and submitting the voucher, and contains a link to the eVoucher application. Generally, the voucher should not be completed and submitted to the clerk's office until after the mandate has issued in the case. Vouchers must be submitted through eVoucher, as they cannot be submitted through the CM/ECF filing system. Vouchers are due within 45 days of issuance of the mandate.

To be relieved of an appointment, an attorney must file a motion with the clerk specifying the reason for the request. Motions for leave to withdraw must be served on the client. The court discourages these requests and will authorize withdrawal only for good cause. See 8th Cir. R. 27B(b). Trial counsel requesting permission to withdraw must preserve the client's right to appeal. Unless the prospective appellant in a criminal case expresses a desire not to appeal in a written notice to the district court, trial counsel must file a timely notice of appeal, enter an appearance, and prosecute the appeal with diligence until the court grants leave to withdraw. Appointed counsel who believes an appeal is without merit must nonetheless file a brief in

conformity with *Anders v. California*, 386 U.S. 738 (1967), *Penson v. Ohio*, 488 U.S. 75 (1988), and *Robinson v. Black*, 812 F.2d 1084 (8th Cir. 1987).

Counsel's obligation under the Court's Plan to Implement the Criminal Justice Act extends through the filing of a petition for writ of certiorari in the United States Supreme Court. See Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act, found on the court's website under "Rules and Publications."

2. Appointment of Counsel in Civil Cases

The court has the power to appoint counsel in certain civil cases. See 28 U.S.C. § 1915(e)(1). The court exercises its power of appointment sparingly, primarily in civil rights actions. Proof of indigency is required, and the party seeking appointment of counsel must satisfy the court the appeal has merit and is not frivolous.

No fee is authorized for legal services of counsel appointed under this court's authority. The court does, however, authorize reimbursement from the Attorney Admission Fee Fund for reasonable out-of-pocket expenses incurred in connection with the appointment. See 8th Cir. R. 47H. Appointed counsel must keep an accurate record of all out-of-pocket expenses incurred and submit an itemized statement to the clerk after issuance of the mandate. The statement should be mailed to the St. Louis clerk's office for processing; it cannot be submitted through the CM/ECF system or the eVoucher application. Counsel should consult the "Civil Appointment Information" button on the court's website for instructions in preparing a claim for reimbursement.

E. DISCIPLINE OF COUNSEL

A member of the bar is subject to suspension or disbarment for improper conduct and may be disciplined for failure to comply with the Federal Rules of Appellate Procedure or Eighth Circuit Rules. See FRAP 46(c). Counsel should notify the clerk's office promptly of any problem in a pending appeal. The clerk works with counsel to resolve procedural or other problems that could result in disciplinary action. Failure to meet briefing deadlines or submit timely motions for extensions of time may result in the issuance of an order directing counsel to show cause why discipline should not be imposed.

NINTH CIRCUIT

<https://www.ca9.uscourts.gov/attorneys/bar-admission/>

CIRCUIT RULE 46-1. ATTORNEYS

46-1.1. Forms for Written Motions

Written motions for admission to the bar of the Court shall be on the form approved by the Court and furnished by the Clerk. (Rev. 7/93)

46-1.2. Time for Application

Any attorney who causes a case to be docketed in this Court or who enters an appearance in this Court, and who is not already admitted to the Bar of the Court, shall simultaneously apply for admission. *(Rev. 7/93)*

CIRCUIT RULE 46-2. ATTORNEY SUSPENSION, DISBARMENT OR OTHER DISCIPLINE

- (a) **Conduct Subject to Discipline.** This Court may impose discipline on any attorney practicing before this Court who engages in conduct violating applicable rules of professional conduct, or who fails to comply with rules or orders of this Court. The discipline may consist of disbarment, suspension, reprimand, counseling, education, a monetary penalty, restitution, or any other action that the Court deems appropriate and just.
- (b) **Initiation of Disciplinary Proceedings Based on Conduct Before This Court.** The Chief Judge or a panel of judges may initiate disciplinary proceedings based on conduct before this Court by issuing an order to show cause under this rule that identifies the basis for imposing discipline.
- (c) **Reciprocal Discipline.** An attorney who practices before this Court shall provide the Clerk of this Court with a copy of any order or other official notification that the attorney has been subjected to suspension or disbarment in another jurisdiction. When this Court learns that a member of the bar of this Court has been disbarred or suspended from the practice of law by any court or other competent authority or resigns during the pendency of disciplinary proceedings, the Clerk shall issue an order to show cause why the attorney should not be suspended or disbarred from practice in this Court.
- (d) **Response.** An attorney against whom an order to show cause is issued shall have 28 days from the date of the order in which to file a response. The attorney may include in the response a request for a hearing pursuant to FRAP 46(c). The failure to request a hearing will be deemed a waiver of any right to a hearing. The failure to file a timely response may result in the imposition of discipline without further notice. *(Rev. 12/1/09)*
- (e) **Hearings on Disciplinary Charges.** If requested, the Court will hold a hearing on the disciplinary charges, at which the attorney may be represented by counsel. In a matter based on an order to show cause why reciprocal discipline should not be imposed, an appellate commissioner will conduct the hearing. In a matter based on an order to show cause based on conduct before this Court, the Court may refer the matter to an appellate commissioner or other judicial officer to conduct the hearing. In appropriate cases, the Court may appoint an attorney to prosecute charges of misconduct. *(Rev. 1/1/12)*
- (f) **Report and Recommendation.** If the matter is referred to an appellate commissioner or other judicial officer, that judicial officer shall prepare a report and recommendation. The report and recommendation shall be served on the attorney, and the attorney shall have 21 days from the date of the order within which to file a response. The report and recommendation together with any response shall be presented to a three-judge panel. *(Rev. 12/1/09)*

- (g) **Final Disciplinary Action.** The final order in a disciplinary proceeding shall be issued by a three-judge panel. If the Court disbars or suspends the attorney, a copy of the final order shall be furnished to the appropriate courts and state disciplinary agencies. If the order imposes a sanction of \$1,000 or more, the Court may furnish a copy of the order to the appropriate courts and state disciplinary agencies. If a copy of the final order is distributed to other courts or state disciplinary agencies, the order will inform the attorney of that distribution.
- (h) **Reinstatement.** A suspended or disbarred attorney may file a petition for reinstatement with the Clerk. The petition shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by this Court, and the grounds that justify reinstatement of the attorney.
- (i) **Monetary Sanctions.** Nothing in the rule limits the Court’s power to impose monetary sanctions as authorized under other existing authority. (*New 1/1/02*)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 46-2

The Court may impose monetary sanctions as follows:

- (3) Against a party, its counsel, or both under FRAP 38, where the Court determines that “an appeal is frivolous, it may award just damages and single or double costs to the appellee.”
- (4) Against a party, its counsel, or both under 28 U.S.C. § 1912, “[w]here a judgment is affirmed by . . . a court of appeals, the Court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.”
- (5) Under 28 U.S.C. § 1927, where counsel “so multiplies the proceedings in any case unreasonably or vexatiously,” counsel “may be required by the Court to satisfy personally the excess costs, expenses and attorneys’ fees reasonably incurred because of such conduct.”
- (6) Abrogated 12/1/20
- (7) Under Circuit Rule 42-1, against counsel for “failure to prosecute an appeal to hearing as required by FRAP and the Circuit Rules.
- (8) Against counsel for failure to comply with the requirements of FRAP 28 and Circuit Rules 28-1 through 28-3, dealing with the form and content of briefs on appeal. *See, e.g., Mitchel v. General Electric Co.*, 689 F.2d 877 (9th Cir. 1982).
- (9) Against counsel for conduct that violates the orders or other instructions of the Court, or for failure to comply with the Federal Rules of Appellate Procedure or any Circuit Rule.
- (10) Under the inherent powers of the Court. *See, e.g., Chambers v. Nasco, Inc.*, 501 U.S. 32, 45-50 (1991).
- (11) As a form of discipline under FRAP 46(c) and Circuit Rule 46-2, with notice of such sanctions provided to the appropriate courts and state disciplinary agencies when the Court deems such notice to be justified. (Rev. 1/1/02)

CIRCUIT RULE 46-3. CHANGE OF ADDRESS

Changes in the address of counsel and pro se litigants registered for the Appellate Electronic Filing System must be reported by updating their account at: <https://pacer.psc.uscourts.gov/pscof/login.jsf>. Changes in the address of counsel and pro se litigants who are exempt from or who are not registered for the Appellate Electronic Filing System must be reported to the Clerk of this Court immediately and in writing. (Rev. 12/1/09)

CIRCUIT RULE 46-4. PARTICIPATION OF LAW STUDENTS

An eligible law student acting under the supervision of a member of the bar of this Court may appear on behalf of any client in a case before this Court with the written consent of the client if the Requirements for Student Practice before this Court are met. The Requirements for Student Practice are available from the Clerk of Court and on the website at www.ca9.uscourts.gov.

CIRCUIT RULE 46-5. RESTRICTIONS ON FORMER COURT EMPLOYEES PARTICIPATING IN CASES

No former employee of the Court shall participate or assist, by way of representation, consultation, or otherwise, in any case that was pending in the Court during the employee's period of employment. It shall be the responsibility of any former employee, as well as the persons employing or associating with a former employee in the practice of law before this Court, to ensure compliance with this rule.

An attorney or other former employee who had no direct or indirect involvement with the case during employment with the Court, and who was not employed or assigned in the chambers of any judge who participated in the case during the attorney or other former employee's employment with the Court, may seek an exemption. To do so, the attorney or other former employee must file a completed Form 35 Certificate of Exemption under Circuit Rule 46-5 in the case at issue. (Rev. 1/1/11; Rev. 7/1/13; Rev. 6/1/26)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 46-5

The rule is intended to avoid the appearance of impropriety if a former court employee were to work on a matter that was pending in the court during the employee's period of employment.

With respect to attorneys employed or assigned in the chambers of any judge, an application for an exemption shall show that the judge did not participate in ruling on any motion or other aspect of the case, including making, responding to, or voting on an en banc call during the employee's period of employment. (New 7/1/13)

TENTH CIRCUIT

<https://www.ca10.uscourts.gov/clerk/rules>

10th Cir. R. 46

46.1 Entry of appearance

- (A) **Attorneys.** Within 14 days after an appeal or other proceeding is docketed in this court, counsel for the parties must file written appearances in a form approved by the court (see 10th Cir. Form 2). Other attorneys whose names subsequently appear on filed papers must also file written appearances. While the court requires a separate, formal entry of appearance from all attorneys in the appeal or other proceeding, counsel should also note that attorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements. Attorneys who appear in a case in this court may not withdraw absent entry of a court order allowing them to do so.
- (B) **Pro se.** A party appearing without counsel may notify the Clerk in writing of that status by filing an entry of appearance on a form approved by the court (see 10th Cir. Form 3).
- (C) **Change of address and obligation to keep account information current.** Once an appearance has been entered, the Clerk must be notified of any subsequent change in address. This requirement applies to changes in both street addresses and changes made to email addresses. Registered attorneys are required to keep their email addresses current and may update ECF registration with the PACER Service Center. See www.pacer.psc.uscourts.gov.
- (D) **Certification of interested parties.**
- (1) **Certificate.** Each entry of appearance must be accompanied by a certificate listing the names of all interested parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal.
 - (2) **List.** The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation. For corporations, *see* Fed. R. App. P. 26.1.
 - (3) **Generic description.** An individual listing is not necessary if a large group of persons or firms can be identified by a generic description.
 - (4) **Attorneys.** Attorneys not entering an appearance in this court must be listed if they have appeared for any party in a proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.
 - (5) **No additional parties.** If there are no additional parties, entities, or attorneys in any of these categories not previously reported to the court, a report to that effect also is required.
 - (6) **Obligation to amend.** The certificate must be kept current.

46.2 Admission to Tenth Circuit bar

- (A) **Prerequisite to practice.** Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission. Forms (as well as other information) are available on the court's website at www.ca10.uscourts.gov.

- (B) Method of admission and fees.** Federal Rule of Appellate Procedure 46 applies to admission to the Tenth Circuit bar. The amount of the admission fee will be set by the court and is payable to the Clerk as trustee. The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal. Per the court's Plan For Attorney Disciplinary 149 Enforcement, any lawyer disbarred from practice before the Circuit will be required to pay the fee prior to being readmitted.
- (C) Trust account.** The Clerk will hold all admission fees in a trust account known as the "Attorney Admission Fund." The Clerk will disburse money from this account as the chief judge or a delegated judicial committee directs to defray expenses of the annual judicial conference and support other activities and purchases that will benefit the bench and the bar. The Clerk must account to the court annually for the trust funds.
- (D) Required Notification of Suspension or Disbarment.** An attorney admitted to practice in this court who is disbarred or suspended by the bar of a state or another court must file with the Clerk a copy of that disciplinary order within 30 days. For purposes of this rule, an attorney who resigns from the bar of a state or court while under investigation for alleged misconduct is deemed disbarred by that state or court, and the attorney's resignation, along with any acknowledgment or acceptance of that resignation by the state or court, is deemed an order of disbarment.

46.3 Responsibilities in criminal and postconviction cases.

- (A) Prosecution of appeal.** Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2241, § 2254 or § 2255, or who has not obtained an order from the district court granting permission to withdraw from further representation prior to the filing of a pro se notice of appeal, has entered an appearance in this court and may not withdraw without the court's permission. Before filing a proper motion to withdraw under Rule 46.4 counsel must file, at a minimum, an entry of appearance and docketing statement. Before moving to withdraw, counsel appointed under the Criminal Justice Act must also order the transcript(s) of any change of plea, sentencing, or trial that took place in the district court. *See* 10th Cir. R. 10.2.
- (B) Additional motion requirement for CJA counsel.** All counsel appearing in this court pursuant to a Criminal Justice Act appointment made originally in the district court must file a motion, within 14 days after the appeal or other proceeding is docketed in this court, seeking either a continued appointment for the appeal or permission to withdraw.
- (1)** All motions to withdraw must comply with Rule 46.4(A).
- (2)** All motions to continue the appointment on appeal must include:
- (a)** a statement regarding whether the attorney is currently, or was previously, a member of the Tenth Circuit Criminal Justice Act appellate panel; and

(b) a statement regarding why the continuation is sought and the benefit to the appeal by virtue of a continued appointment.

(3) In counsel's discretion, motions to continue may be filed ex parte and/or under seal.

(4) Consistent with the provisions of Rule 46.3(A), this requirement applies equally if the defendant files a pro se notice of appeal.

46.4 Withdrawal.

(A) Motion requirements. Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

(1) the reasons for withdrawal;

(2) one of the following:

(a) a showing that new counsel has been retained or the client already has other counsel of record in the appeal;

(b) a showing that: (i) the client has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A; and (ii) the client desires the appointment of counsel;

(c) if the client has been found ineligible for benefits under 18 U.S.C. § 3006A, a statement that counsel has advised the client to obtain other counsel promptly;

(d) if the client intends to proceed pro se: (i) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for appointment of counsel and expressly electing to appear without counsel; and (ii) a statement from counsel that he or she has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or this court's local rules; or

(e) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection; and

(3) proof of service on the client.

(B) Frivolous appeals.

(1) **Duty of counsel.** In a direct criminal appeal, if counsel believes the appeal is wholly frivolous or believes opposition to a motion to dismiss would be wholly frivolous, counsel must file an *Anders* brief, request permission to withdraw, and advise the court of the defendant's current address. *See Anders v. California*, 386 U.S. 738 (1967). If the defendant is a non-English speaker, the motion to withdraw must state counsel has made "reasonable efforts to contact the defendant in person or by telephone, with the aid of an interpreter if necessary, to explain to the defendant the

substance of counsel's *Anders* brief, the defendant's right to oppose it, and the likelihood that the brief could result in dismissal of the appeal." *United States v. Cervantes*, 795 F.3d 1189, 1190 (10th Cir. 2015) (internal quotation and ellipses omitted). Written notice in a language understood by the defendant will also satisfy this duty. *Id.* The motion required by Rule 46.3(B) is separate from any motion filed later, in connection with the filing of the *Anders* brief. That is, the requirement set forth in Rule 46.3(B) is distinct from any motion later filed under *Anders*.

(2) Notice to defendant. Except as provided in (3), the Clerk will send the defendant by certified mail, return receipt requested, a copy of the *Anders* brief, the motion to withdraw, and a letter in the form set out in 10th Cir. Form 4. (3) Incompetent defendant. If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so state, and the matter will be referred to the court for appropriate action.

(C) Attorney withdrawal in civil cases. Where counsel of record for any party files a motion to withdraw after the mandate has issued, the court will treat the motion as a notice of withdrawal. This rule applies in civil cases only and does not apply in postconviction proceedings filed under 28 U.S.C. § 2254 or § 2255.

46.5 Signing briefs, motions, and other papers; representations to court; sanctions.

(A) Signature. Every brief, motion, or other paper must be signed by at least one attorney of record—or, in a pro se case, by the party personally. The paper must state the signer's mailing address, email address, and telephone number. Unless a rule or statute provides otherwise, a paper need not be verified or accompanied by an affidavit.

(B) Representations to court. By presenting to the court—whether by signing (electronically or through an original signature), filing, submitting, or later advocating—a brief, motion, or other paper, an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1)** the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense in the litigation;
- (2)** the issues presented are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; and
- (3)** the factual contentions or denials are supported in the record.

(C) Sanctions. If a brief, motion, or other paper is signed in violation of this rule, the court—on its own or on a party's motion—may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including:

- (1)** dismissal or affirmance of the appeal;
- (2)** monetary sanctions;

- (3) initiation of disciplinary proceedings under the Plan for Attorney Disciplinary Enforcement; and
- (4) an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the paper, including reasonable attorney's fees.

46.6 Discipline of counsel or parties.

- (A) **Sanctions for increasing cost of litigation.** After giving notice and an opportunity to respond, this court may impose sanctions against parties and attorneys who unreasonably increase the cost of litigation. Examples of unreasonable cost increases include, but are not limited to, putting unnecessary material in records, briefs, appendices, addenda, and other papers.
- (B) **Court-appointed counsel.** If court-appointed counsel for an appellant fails to comply with the Federal Rules of Appellate Procedure or with these rules, the Clerk may issue an order requiring counsel to show cause why disciplinary action should not be taken. Action by the court may include monetary sanctions.
- (C) **Inadequate representation.** After giving notice, the court may take disciplinary action against attorneys for inadequate representation on appeal, which includes but is not limited to failing to follow the rules and directives of the court.

46.7 Student practice.

(A) Appearance by law students.

- (1) **Consent of party.** An eligible law student may enter an appearance in the court on behalf of a party if the party has filed a statement of consent.
- (2) **Agreement of supervising attorney.** A member of the Tenth Circuit bar must file an agreement to supervise the student. The agreement must contain:
 - (a) a certification by the supervising attorney that the student has satisfied the requirements of Rule 46.7(C); and
 - (b) a copy of the law school certification required by Rule 46.7(C)(3).

(B) Student participation.

- (1) **Briefs.** A law student who has entered an appearance in a case under Rule 46.7(A) may appear on a brief if the supervising attorney also appears on the brief.
- (2) **Oral argument.** An eligible student may participate in oral argument if the supervising attorney is present in court.
- (3) **Other.** The student may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(C) Student eligibility. To be eligible to make an appearance under this rule, the law student must provide a letter as described in Rule 46.7(D) or otherwise document that he or she:

- (1) is enrolled and in good standing in a law school accredited by the American Bar Association; or is a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;
- (2) has completed the equivalent of 4 semesters of legal studies;
- (3) is certified to be of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, by either the law school's dean or a faculty member designated by the dean; and
- (4) is familiar with the Federal Rules of Civil, Criminal, and Appellate Procedure, the Federal Rules of Evidence, the American Bar Association Code of Professional Responsibility, and the rules of this court.

(D) Dean's letter. A letter from the law school's dean or the designated faculty member describing the student's qualifications under Rule 46.7(C) may demonstrate eligibility.

(E) Supervising attorney. An attorney who supervises an eligible law student under this rule must:

- (1) be a member in good standing of the Tenth Circuit bar;
- (2) assume personal professional responsibility for the quality of the student's work;
- (3) guide and assist the student as necessary or appropriate under the circumstances;
- (4) sign all documents filed with the court (the student may also sign documents, but the attorney's signature is required);
- (5) appear with the student in any oral presentations before the court;
- (6) file a written agreement to supervise the student; and
- (7) supplement any written or oral statement made by the student to this court or opposing counsel if the court so requests.

ELEVENTH CIRCUIT

<https://www.ca11.uscourts.gov/rules-procedures>

11th Cir. R. 46

11th Cir. R. 46-1 Bar Admission and Fees. Only attorneys admitted to the bar of this court may practice before the court, except as otherwise provided in these rules. Admission is governed by FRAP 46 and this Eleventh Circuit Rule, and attorneys must also meet the requirements of 11th Cir. R. 46-7. To request admission to the bar, an attorney must complete an application form,

available on the court's website. The application form must be accompanied by a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1). Upon admission, the attorney must pay the non-refundable attorney admission fee, which is composed of: (1) the national admission fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913; and (2) the local admission fee prescribed pursuant to FRAP 46(a)(3) and posted on the court's website. Failure to pay the fee within 14 days of admission will require that the attorney submit a new application form. All attorneys must apply for admission and submit attorney admission fees through PACER.

Each member of the bar has a continuing obligation to keep this court informed of any changes to addresses, phone numbers, fax numbers, and e-mail addresses.

The clerk is authorized to admit attorneys to the bar of this court in such circumstances as determined by the court when the attorney has applied for admission, paid the required fee, and otherwise meets the requirements for admission in FRAP 46 and the accompanying circuit rules.

11th Cir. R. 46-2 Renewal of Bar Membership; Inactive Status. Each attorney admitted to the bar of this court shall pay the bar membership renewal fee prescribed by the court and posted on the court's website every five years from the date of admission. A new certificate of admission will not issue upon payment of this fee. During the first week of the month in which an attorney's renewal fee is due, the clerk shall send by mail, e-mail, or other means a notice to the attorney using the contact information on the roll of attorneys admitted to practice before this court (attorney roll), and advise the attorney that payment of the renewal fee is due by the last day of that month. If the notice is returned undelivered due to incorrect or invalid contact information, no further notice will be sent. If the renewal fee is not paid by the last day of the month in which the notice is sent, the attorney's membership in the bar of this court will be placed in inactive status for a period of 12 months, beginning on the first day of the next month. An attorney whose bar membership is in inactive status may not practice before the court. To renew a bar membership, including one in inactive status, an attorney must complete a bar membership renewal form, available at www.ca11.uscourts.gov. The renewal form must be accompanied by the non-refundable bar membership renewal fee. All attorneys must use the court's Electronic Case Files (ECF) system to submit their renewal forms and payments.

After 12 months in inactive status, if an attorney has not paid the bar membership renewal fee, the clerk shall strike the attorney's name from the attorney roll. An attorney whose name is stricken from the attorney roll due to nonpayment of the renewal fee who thereafter wishes to practice before the court must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

11th Cir. R. 46-3 Admission for Particular Proceeding. The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application or payment of the admission fee: an attorney appearing on behalf of the United States, a federal public defender, an attorney appointed by a federal court under the Criminal Justice Act, and any attorney appointed by this court.

11th Cir. R. 46-4 Pro Hac Vice Admission. A non-appointed attorney who is representing a client on a pro bono basis, is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules, and also meets the requirements of 11th Cir. R. 46-7, may apply to appear pro hac vice in a particular proceeding. The following items must be provided:

- a completed Application to Appear Pro Hac Vice form, available at www.ca11.uscourts.gov, with proof of service;
- a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee prescribed by the court and posted on the court's website.

An attorney may apply to appear before this court pro hac vice only two times.

To practice before the court, an attorney who is not representing a client on a pro bono basis or who has two times previously applied to appear before this court pro hac vice, must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

The clerk is authorized to grant an application to appear pro hac vice in an appeal not yet assigned or under submission, in such circumstances as determined by the court, when an attorney meets the requirements of the rules.

11th Cir. R. 46-5 Entry of Appearance. Every attorney, except one appointed by the court for a specific case, must file an Appearance of Counsel Form in order to participate in a case before the court. The form must be filed within 14 days after the date on the notice from the clerk that the Appearance of Counsel Form must be filed. With a court-appointed attorney, the order of appointment will be treated as the appearance form.

Except for those who are court-appointed, an attorney who has not previously filed an Appearance of Counsel Form in a case will not be permitted to participate in oral argument of the case until the appearance form is filed.

11th Cir. R. 46-6 Clerk's Authority to Accept Filings.

(a) Filings from an Attorney Who Is Not Authorized to Practice Before this Court.

(1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not authorized to practice before this court, unless the attorney has been suspended or disbarred from practice before this court or has been denied admission to the bar of this court:

- a petition or application that initiates a proceeding in this court;
- an emergency motion as described in 11th Cir. R. 27-1(b);
- a motion or petition that is treated by the clerk as "time sensitive" as that term is used in 11th Cir. R. 27-1(b).

(2) Upon filing the petition, application, or motion, the clerk will notify the attorney that in order to participate in the appeal the attorney must submit an appropriate application for admission, renewal form, or application to appear pro hac vice within 21 days from the date of such notice.

(3) Within the 21-day notice period, the clerk may conditionally file motions and other papers received from the attorney, subject to receipt of an appropriate application or renewal form within that period. At the expiration of the 21-day notice period, if an appropriate application or renewal form has not been received, the motions and other papers may be clerically stricken and treated as though they were never filed. The clerk may stay further proceedings in the appeal for 60 days, if necessary, to allow the attorney's client to seek new counsel.

(4) When an appropriate application is received within the 21-day notice period, the clerk may continue to conditionally file motions and other papers received from the attorney, subject to the court's approval of the attorney's application or renewal form. If the attorney's application or renewal is denied, the motions and other papers may be clerically stricken and treated as though they were never filed. The clerk may stay further proceedings in the appeal for 60 days, if necessary, to allow the attorney's client to seek new counsel.

(b) Filings from an Attorney Who Has Not Filed an Appearance of Counsel Form Within 14 Days After Notice is Mailed by the Clerk. When an attorney fails to file a required Appearance of Counsel Form within 14 days after notice of that requirement is mailed by the clerk, the clerk may not accept any further filings (except for a brief) from the attorney until the attorney files an Appearance of Counsel Form. When an attorney who has not filed an Appearance of Counsel Form tenders a brief for filing, the clerk will treat the failure to file an Appearance of Counsel Form as a deficiency in the form of the brief. An Appearance of Counsel Form need not be accompanied by a motion to file out of time.

11th Cir. R. 46-7 Active Membership in Good Standing with State Bar Required to Practice; Changes in Status of Bar Membership Must Be Reported. In addition to the requirements of FRAP 46 and the corresponding circuit rules, and Addendum Eight, an attorney may not practice before this court if the attorney is not an active member in good standing with a state bar or the bar of the highest court of a state, or the District of Columbia (hereinafter, "state bar"). When an attorney's active membership in good standing with a state bar lapses for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees, or failure to complete continuing education requirements, the attorney must notify the clerk of this court within 14 days. That notification must also list every other state bar and federal bar of which the attorney is a member, including state bar numbers and the attorney's status with that bar (e.g., active, inactive, retired, etc.). Members of the Eleventh Circuit bar have a continuing obligation to provide such notification, and attorneys appearing pro hac vice in a particular case or appeal must provide such notification while that case or appeal is pending. Upon receipt of

that notification, the court may take any action it deems appropriate, including placing the attorney's bar membership in inactive status until the attorney provides documentation of active membership in good standing with a state bar.

11th Cir. R. 46-8 Certificate of Admission. Upon admission to the bar of this court, the clerk will send the attorney a certificate of admission. A duplicate certificate of admission is available for purchase upon payment of the fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

11th Cir. R. 46-9 Attorney Discipline. This court has adopted rules governing attorney conduct and discipline. See Addendum Eight.

11th Cir. R. 46-10 Appointment or Withdrawal of Counsel.

(a) Appellate Obligations of Retained Counsel. Retained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Criminal Justice Act, and may not abandon or cease representation of a defendant except upon order of the court.

(b) Habeas Corpus or 28 U.S.C. § 2255 Pauper Appeals. When any pro se appeal for either habeas corpus or 2255 relief is classified for oral argument, counsel will normally be appointed under the Criminal Justice Act before the appeal is calendared. The non-argument panel that classifies the appeal for oral argument will advise the clerk who will then obtain counsel under the regular procedure.

(c) Relieving Court Appointed Counsel on Appeal. Counsel appointed by the trial court shall not be relieved on appeal except in the event of incompatibility between attorney and client or other serious circumstances.

(d) Criminal Justice Act Appointments. The Judicial Council of this circuit has adopted the Eleventh Circuit Plan under the Criminal Justice Act and Guidelines for Counsel Supplementing the Eleventh Circuit Plan under the Criminal Justice Act. See Addendum Four.

(e) Non-Criminal Justice Act Appointments. This court has adopted rules governing Non-Criminal Justice Act Appointments. See Addendum Five.

11th Cir. R. 46-11 Appearance and Argument by Eligible Law Students.

(a) Scope of Legal Assistance.

(1) Notice of Appearance. An eligible law student, as described below, acting under a supervising attorney of record, may enter an appearance in this court on behalf of any indigent person, the United States, or a governmental agency in any civil or criminal case, provided that the party on whose behalf the student appears and the supervising attorney of record has consented thereto in writing. The written consent of the party(or

the party's representative) and the supervising attorney of record must be filed with this court.

(2) Briefs. An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be reviewed, approved entirely, and signed by the supervising attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs.

(3) Oral Argument. Except, on behalf of the accused, in a direct appeal from a criminal prosecution, an eligible law student may also participate in oral argument, but only in the presence of the supervising attorney of record.

(b) Law Student Eligibility Requirements.

In order to appear before this court, the law student must:

(1) Be enrolled in a law school approved by the American Bar Association;

(2) Have completed legal studies for which the student has received at least 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

(3) Be certified by the dean of the law student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

(4) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent these entities from making proper charges for its services;

(5) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court; and

(6) File all of the certifications and consents necessary under this rule with the clerk of this court prior to the submission of any briefs or documents containing the law student's name and the law student's appearance at oral argument.

(c) Supervising Attorney of Record Requirements.

(1) The supervising attorney of record must be a member in good standing of the bar of this court.

(2) With respect to the law student's appearance, the supervising attorney of record shall certify in writing to this court that he or she:

(A) consents to the participation of the law student and agrees to supervise the law student;

(B) assumes full, personal professional responsibility for the case and for the quality of the law student's work;

(C) will assist the student to the extent necessary; and

(D) will appear with the student in all written and oral proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

* * * *

I.O.P. –

1. Admissions. There is no formal swearing-in ceremony.

2. Payment Returned or Denied for Insufficient Funds. When a payment of a fee is returned unpaid or denied by a financial institution due to insufficient funds, counsel must thereafter pay the fee by money order or cashier's check made payable to the same entity or account as the returned check or denied payment. In addition, counsel must also remit by separate money order or cashier's check the returned-or-denied-payment fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

3. Components of Attorney Admission Fee. The attorney admission fee is composed of two separate fees. A national admission fee has been prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. This fee is remitted to the federal judiciary. A local admission fee has been prescribed by this court pursuant to FRAP 46(a)(3), and is posted on the court's website. This fee is deposited in the court's non-appropriated fund account to be used for the benefit of the bench and bar in the administration of justice

D.C. CIRCUIT

<https://www.cadc.uscourts.gov/circuit-rules-procedures>

Circuit Rule 46

Attorneys; Appearance by Law Student

(a) Appearances. Except as otherwise provided by law, the docketing statement and all papers filed thereafter in this court must be signed by at least one member of the bar of this court, and only members of the bar of this court may present oral argument. However, on motion for good cause shown, the court may allow argument to be presented in a case by an attorney who is not a member of the bar of this court.

(b) Admission. Each applicant for admission to the bar of this court must file with the clerk an application for admission on a form approved by the court and furnished by the clerk, accompanied by a certificate, executed not more than 60 days prior to the date of the application, from the court upon which the application is based, evidencing the applicant's admission to practice before that court and current good standing. Upon the court's grant of an application for admission, the clerk will mail to the applicant a certificate of admission. Applicants for admission to the bar of this court need not appear in person for the purpose of taking the oath or affirmation of admission. The fee for admission will be set periodically by order of the court and must be tendered with the application.

(c) Change of Address. Changes in the address of counsel and pro se litigants must be immediately reported to the clerk in writing. Counsel and pro se litigants who are registered for the court's CM/ECF system must immediately report any change in their postal or e-mail address by updating their appellate filer account.

(d) Change of Name of Attorney After Admission. Any member of the bar of this court may file with the clerk a certificate that he or she is engaged in practice under a new name. The clerk will note such change of name on the roll of attorneys and on the records of this court.

(e) Disbarment and Suspension. For provisions governing the discipline of members of the bar of this court, see the court's Rules of Disciplinary Enforcement.

(f) Committee on Admissions and Grievances. For provisions governing the Committee on Admissions and Grievances and the referral of matters to that committee, see the court's Rules of Disciplinary Enforcement.

(g) Appearance by Law Student.

(1) Entry of Appearance on Written Consent of Party. An eligible law student may enter an appearance in this court on behalf of any party including the United States or a governmental agency, provided that the party on whose behalf the student appears has consented thereto in writing, and that a supervising lawyer has also indicated in writing approval of that appearance. In each case, the written consent and approval must be filed with the clerk.

(2) Appearance on Briefs and Participation in Oral Argument. A law student who has entered an appearance in a case pursuant to paragraph (1) may appear on the brief, provided the supervising attorney also appears on the brief; may participate in oral argument, provided the supervising attorney is present in court; and may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(3) Eligibility. In order to be eligible to make an appearance pursuant to this rule, the law student must:

(A) be duly enrolled in a law school accredited by the American Bar Association;

(B) have completed legal studies amounting to at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;

(C) be enrolled in or have passed a clinical program of an accredited law school for credit, held under the direction of a faculty member of such law school, in which a law student obtains practical experience by participating in cases and matters pending before the courts;

(D) be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

(4) Students Not to Be Compensated by Parties. A law student appearing pursuant to this rule may neither ask for nor receive any compensation or remuneration of any kind for services from any party on whose behalf the services are rendered; this rule does not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor does it prevent any agency from making such charges for its services as may otherwise be proper.

(5) Withdrawal or Termination of Certification. The certification of a student by the law school dean must be filed with the clerk of this court and, unless it is sooner withdrawn, will remain in effect for 18 months, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination, or who is admitted to the bar without taking an examination, the certification will continue in effect until the date the student is admitted to the bar. The certification may be withdrawn by the dean at any time by mailing a notice to that effect to the student and to the clerk of this court. It is not necessary that the notice state the cause for withdrawal, unless requested by the student. The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(6) Supervising Attorney. An attorney under whose supervision an eligible law student undertakes any activity permitted by this rule must:

(A) be a member in good standing of the bar of this court;

(B) assume responsibility for the quality of the student's work;

(C) guide and assist the student in preparation to the extent necessary or appropriate under the circumstances.

Handbook of Practice and Internal Procedures

II. PRELIMINARY MATTERS

A. ADMISSION TO PRACTICE

(See Fed. R. App. P. 46; D.C. Cir. Rules 1, 46)

1. When Required

An attorney practicing before the Court must be a member of the bar of the Court, except as otherwise provided by law. Membership in the bar of another court does not confer membership in the bar of this Court. The Clerk's Office will not file briefs, motions, or other

papers not signed by a member of this Court's bar. The pleading will, however, be lodged with the Court and filed once the attorney becomes a member of the bar of this Court.

There are three qualifications to this rule. First, in order to file a notice of appeal in the district court or a petition for review, an attorney need not be a member of the bar of this Court. The docketing statement and any further filing in the case, however, must be signed by a member of the bar of this Court. Second, the requirement is temporarily suspended whenever a problem of timeliness might arise. Where this is the case, the Clerk will file the pleading and immediately notify counsel of the admission requirement. Third, law students may participate in a case under the direction of a supervising attorney, as provided in Circuit Rule 46(g).

An attorney who is not a member of the Court's bar may be granted leave by the Court to present oral argument in a case. A motion for leave to argue *pro hac vice* must be filed at least 7 days before the date of oral argument by a sponsoring attorney who is a member of the bar of this Court. Counsel may not make repeated appearances *pro hac vice*, but must apply for admission to the bar of the Court instead. Similarly, counsel may not seek to appear *pro hac vice* in order to file pleadings; rather, counsel must apply for admission to the bar of the Court. Counsel who are not members of the bar of the Court or who have not been granted leave to appear *pro hac vice* will not appear on the opinion heading.

2. Obtaining Admission

The Court admits to practice before it attorneys who have previously been admitted to the bar of the highest court of a state or to the bar of other federal courts. Applicants must fill out the forms supplied by the Clerk's Office and submit them with certification of their membership and good standing in the bar that qualifies them for admission. They must also remit the fee specified by order of the Court. Attorneys may be admitted on the written application without a personal appearance. The Clerk's Office will send the attorney a certificate of membership in the bar of the Court.

3. Exclusion from Practice

As a general rule, employees of the Court may not engage in the practice of law while employed by the Court. *See* D.C. Cir. Rule 1(c). No person employed by the Court, including law clerks, after leaving the employ of the Court, may practice as an attorney in any case that was pending in the Court during the person's term of service. A case is pending in the Court from the moment the appeal or petition for review is docketed until final disposition of the appeal or petition. This prohibition includes signing briefs and giving advice in connection with the case. No former employee of this Court may appear at counsel table or on pleadings in any case in this Court for a period of one year after leaving Court employment.

Suspension or disbarment by any other court of record may result in the suspension or disbarment of a member of this Court's bar. Before any reciprocal discipline is imposed, the attorney will be afforded an opportunity to show cause why he or she should not be suspended from practice in the Court or disbarred. The Court may refer to its Committee on Admissions and Grievances this or any other suggestion of professional misconduct on the part of a member of the bar. *See* D.C. Cir. Rules, Appx. II.

FEDERAL CIRCUIT

<https://www.cafc.uscourts.gov/home/rules-procedures-forms/>

FEDERAL CIRCUIT RULE 46

Attorneys

(a) Eligibility.

An attorney is eligible for admission to the bar of this court if that attorney is of good moral and professional character and is admitted to practice before and of good standing in any of the following:

- (1) any of the courts listed in Federal Rule of Appellate Procedure 46(a);
- (2) the United States Court of International Trade;
- (3) the United States Court of Federal Claims;
- (4) the United States Court of Appeals for Veterans Claims; or
- (5) the District of Columbia Court of Appeals.

(b) Procedure for Admission.

(1) Motion in Open Court.

An attorney may be admitted to the bar in open court by appearing personally with a sponsor who is a member of the bar of this court and who states the applicant's qualifications and moves the admission. Motions for admission to the bar will be entertained at the opening of each session of court.

(2) Written Motion by Member of the Court's Bar.

An attorney may be admitted on written motion of a member of the bar of the court who attests to the applicant's qualifications.

(3) Written Motion by Attorney.

An attorney may be admitted on that attorney's own motion, accompanied by a certificate of good standing from a court listed in Federal Circuit Rule 46(a). The certificate must be dated within thirty (30) days of the motion for admission and must bear the seal of the issuing court. A written motion for admission must be submitted on a form approved by this court. The clerk of court will furnish the form.

(4) Oath.

Each attorney admitted to the bar of this court must take an oath prescribed by the court.

(c) Application, Submission, and Payment.

An attorney seeking admission to the bar of this court must electronically submit an application for admission in accordance with the court's Electronic Filing Procedures. After admission, the applicant will receive a certificate of admission in the mail. The fees for admission to the bar and a duplicate certificate are set by the court and are posted in accordance with Federal Circuit Rule 52(a).

(d) Government Attorney.

An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney's official duties without formal admission to the bar of the court.

(e) Change of Name or Contact Information.

An attorney admitted to the bar of this court must promptly update electronic filing account information to reflect any change of name or change in contact information.

(f) Disciplinary Action.

Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

(g) Law Student Practice.

(1) With the written consent of a party or party's representative and a supervising attorney filed with this court, an eligible law student may enter an appearance on behalf of that party in this court.

(2) Eligible Law Student.

An individual is eligible to appear under this rule if:

- (A) The individual is duly enrolled in a law school accredited by the American Bar Association and has completed at least four full-time semesters of legal studies (or the equivalent), or has graduated from such a law school and is awaiting the results of the first bar examination or bar admission process;
- (B) The dean of the law school, or a faculty member designated by the dean, certifies that the individual is of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, and the certification is filed with this court;
- (C) The individual is familiar with the Federal Rules of Appellate Procedure, the rules of this court, the American Bar Association's Model Rules of Professional Conduct, and any other rules relevant to the case in which the student is appearing; and

(D) The individual certifies compliance with this rule.

(3) Dean Certification.

The certification under Federal Circuit Rule 46(g)(2)(B) may be withdrawn by the dean or authorized faculty member at any time by sending notice to that effect to the clerk of court. It is not necessary that the notice state the cause for the withdrawal. The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(4) Supervising Attorney.

To qualify under this rule, a supervising attorney must:

(A) Be a member of good standing of the bar of this court and enter an appearance in the case;

(B) Sign all documents filed with the court;

(C) Assume full professional responsibility for the quality and accuracy of the eligible law student's work in the case;

(D) Guide, assist, and supervise the eligible law student to the extent necessary and appropriate;

(E) Ensure that court deadlines are met;

(F) Be prepared to appear and argue regardless of the eligible law student's availability; and

(G) Certify compliance with this rule.

(5) Eligible Law Students Not to Be Compensated by Parties.

An eligible law student appearing pursuant to this rule may neither ask for, nor receive, any compensation or remuneration of any kind from a party for services rendered in the case. This rule neither prevents a lawyer, legal aid bureau, law school, or the government from paying compensation to the eligible law student, nor shall it prevent these entities from making such charges for its services as may otherwise be proper.

(6) Eligible Law Student Appearance on Briefs.

An eligible law student appearing pursuant to this rule may appear on a brief, provided the supervising attorney also appears on the brief.

(7) Eligible Law Student Participation in Oral Argument.

An eligible law student may participate in oral argument with leave of court, but only in the presence of the supervising attorney, who shall introduce the eligible law student at

argument and be prepared to supplement any written or oral statement that has been made by the eligible law student to this court or opposing counsel. Any motion filed under this subsection shall be filed no later than seven (7) days following the end of briefing and will be deferred to the merits panel. If leave is sought for an eligible law student to participate in oral argument, the supervising attorney may include the eligible law student's scheduling conflicts when filing their response under Federal Circuit Rule 34(d)(2).

(8) Exceptions.

This court retains the authority to establish exceptions to these requirements in any individual case.

PRACTICE NOTES TO RULE 46

Form for Written Motion for Admission.

Using Federal Circuit Form 21 satisfies the requirements for a written motion for admission under Federal Circuit Rule 46(b)(2) and (3).

Forms for Eligible Law Student Practice.

Using Federal Circuit Forms 35 and 36 satisfies the relevant requirements under Federal Circuit Rule 46(g). Federal Circuit Form 36 constitutes the eligible law student's entry of appearance.

FEDERAL CIRCUIT RULE 47.3

Representation and Appearance

(a) Representation Requirements.

A corporation, partnership, organization, or other legal entity must be represented by counsel before this court. An individual person may choose to be represented by counsel or to proceed without counsel but may not be represented by a non-member of the bar of this court.

(b) Appearance.

(1) Counsel.

Counsel retained prior to docketing must file an entry of appearance within fourteen (14) days after the court docket the case, and one counsel must be designated as the "principal counsel." Counsel retained after initial docketing must file an entry of appearance within fourteen (14) days after being retained or admitted to the court's bar, whichever is later. All counsel must file an entry of appearance, except for government officials, who, by reason of their status as supervisors or heads of offices, may be listed on filings in their ex officio capacity.

(2) Counsel Not Entering Appearances.

Except for government officials noted above, counsel who have not filed an entry of appearance will neither be listed on the case docket nor on any decision in the case.

(3) Intervenor and Amicus Curiae.

Counsel for each intervenor, amicus curiae, or movant must file an entry of appearance contemporaneously with the first document filed by that intervenor, amicus curiae, or movant.

(4) Appearance Before Merits Panel.

Counsel seeking to appear for the first time after the case is assigned to a merits panel must file a motion for leave of court to appear. Only counsel who have filed entries of appearance may present oral argument.

(5) Unrepresented Parties.

Each unrepresented party must submit a notice of unrepresented person appearance within fourteen (14) days after the case is docketed or fourteen (14) days after the last remaining counsel for the party has withdrawn.

(6) Form and Contents.

An entry of appearance or notice of unrepresented person appearance must be prepared on the form supplied by the clerk of court, and all information requested on the form must be provided. At the time of filing an entry of appearance, any counsel listed on that form may file and sign the form on behalf of all listed counsel.

(c) Substitution or Withdrawal of Counsel.

Principal counsel may not withdraw from representing a party without notice to the party and leave of the court. Government attorneys and non-principal counsel for other parties may withdraw by filing a notice with the clerk of court. To substitute principal counsel, the current principal counsel and new principal counsel must each file amended entries of appearance noting the changes in representation.

PRACTICE NOTES TO RULE 47.3

Appearance Form.

Using Federal Circuit Form 8A satisfies the entry of appearance requirements under Federal Circuit Rule 47.3(b)(1) for counsel. Using Federal Circuit Form 8B satisfies the notice requirements under Federal Circuit Rule 47.3(b)(5) for unrepresented parties.

Counsel on Appeal.

For information on the service of documents on a party before counsel has entered an appearance, refer to Federal Circuit Rule 25(e)(5). New counsel on appeal should provide a copy of the entry of appearance form filed in this court to the lower court or agency to expedite service of the certified list and other communications.

FEDERAL CIRCUIT RULE 47.4

Certificate of Interest

(a) Purpose; Contents.

A certificate of interest is required to determine whether recusal by a judge is necessary or appropriate. The certificate must contain the information below in the order listed. For purposes of subsections (1)– (4) below, “entity” refers to any party, intervenor, amicus curiae, or movant represented in the case by the counsel filing the certificate of interest. Negative responses, if applicable, are required as to each item.

(1) The full name of every entity represented in the case by the counsel filing the certificate.

(2) For each entity, the name of every real party in interest, if that entity is not the real party in interest.

(3) For each entity, that entity’s parent corporation(s) and every publicly held corporation that owns ten percent (10%) or more of its stock. This satisfies the disclosure statement requirement of Federal Rule of Appellate Procedure 26.1(a).

(4) The names of all law firms, partners, and associates that have not entered an appearance in the appeal, and

(A) appeared for the entity in the lower tribunal; or

(B) are expected to appear for the entity in this court.

(5) An indication as to whether there are any related or prior cases, other than the originating case number(s), that meet the criteria under Federal Circuit Rule 47.5.

(6) All information required by Federal Rule of Appellate Procedure 26.1(b) and (c) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases.

(b) Filing.

Each party, intervenor, amicus curiae, or movant must file a certificate of interest. The certificate must be filed contemporaneously with the first-filed entry of appearance.

However, the United States, or its officers or agencies, and unrepresented individuals are exempt from filing a certificate of interest unless disclosing information under Federal Circuit Rule 47.4(a)(6) in compliance with Federal Rule of Appellate Procedure 26.1(b). The

certificate must also be included with each motion, petition, or related response, and in each principal brief and brief amicus curiae.

(c) Changes.

If any of the information required by Federal Circuit Rule 47.4(a) changes after the certificate is first filed and before the mandate has issued, an amended certificate must be filed within seven (7) days after the change.

PRACTICE NOTES TO RULE 47.4

Certificate of Interest.

Using Federal Circuit Form 9 satisfies the certificate of interest requirements under Federal Circuit Rule 47.4(a).

TAB 6B

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: August 31, 2026
RE: **Rule 25 Privacy Suggestion
(26-AP-2)**

John A. Hawkinson has submitted a rules suggestion concerning the committee's project on privacy and Rule 25 (22-AP-E).

In most cases, a court of appeals borrows the privacy rule applied in the prior proceeding (*e.g.*, Civil Rule 5.2). Such a rule may restrict public access to material meeting certain criteria. However, when a district court has used its discretion under the applicable rule to order that specific types of material meeting those criteria be made more accessible, Hawkinson argues that some courts of appeals will then apply the criteria again on a blank slate to restrict public access. Moreover, even when a nonparty motion to access the material is granted, such access might be limited to the movant rather than shared with the public at large. Hawkinson makes several proposals to address these issues.

I recommend that this suggestion be referred to the Privacy subcommittee and consolidated on the agenda with 22-AP-E.

John A. Hawkinson, freelance news reporter
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March 27, 2026

Advisory Committee on Civil Rules
Honorable Sarah S. Vance, Chair

Advisory Committee on Appellate Rules
Honorable Allison H. Eid, Chair

Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

BY ELECTRONIC MAIL: rulescommittee_secretary@ao.uscourts.gov

**Re: Proposed immigration case changes to
Civil Rule 5.2(c) and Appellate Rule 25(a)(5)**

Dear Judge Vance, Judge Eid, and
members of the Civil and Appellate advisory rules committees:

I am a Boston-based freelance journalist, and my ambit covers immigration cases in federal court, and has for the past eight years.

I write, hopefully prior to the decision to publish changes to the privacy rules, to request both the Civil and Appellate advisory committees take a look at the current rules that effectively bar electronic access to documents in immigration cases, especially including immigration *habeas corpus* cases — cases which are increasingly of significant import and public interest that transcends the private interest of individual litigants.

I propose changes both to Civil Rule 5.2(c), which limits access at the district court level; as well as to Appellate Rule 25(a)(5), which in practice restricts access to appellate cases even where district courts have removed the restriction below. For both rules, I have concerns about whether they are operated as intended, as well as whether the en-

vironment has changed such that what appropriate in 2007 may not be appropriate in 2026.

This letter builds on comments previously offered in June of 2020 in the context of emergency COVID-19 procedures; said comments which were docketed as 20-CIV-29¹, so may feel familiar, but here are offered in a different posture. (Those comments were written when some courthouses were inaccessible to the public, heightening the concerns with documents being only available at courthouses.)

Civil Rule 5.2(c)

As a general matter, remote PACER access to civil immigration case documents is barred by Fed. R. Civ. P. 5.2(c), which seeks to strike a balance the privacy interest of litigants against the public interest, and is written with the presumption that there is generally not a lot of public interest in such cases. The public is required to go to the courthouse during clerk's office business hours to view or obtain a filing.

With the increased prevalence of "impact" immigration litigation over the past decade, that balance becomes more questionable. When a civil immigration action affects many people, such as in a class action, or where it defines a critical area of law that impacts other subsequent cases, that balance increasingly seems problematically tilted against the public interest.²

And with this past year's recent explosion in immigration *habeas corpus* actions³, the

¹ and may be found on pp. 150–162 of *appellate_and_civil_comments.pdf* available at <https://www.uscourts.gov/file/28159/download>.

² Morawetz. *A Better Balance for Federal Rules Governing Public Access to Appeal Records in Immigration Cases*. 69 *Hastings L.J.* 1271 (2018). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3223569

³ See Cheney, Kyle. POLITICO. "Hundreds of judges reject Trump's mandatory detention policy, with no end in sight: Judges have ruled against the administration in more than 1,600 cases." <https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494> January 5, 2026 05:55 AM EST. See also Cheney, Kyle. POLITICO. "Our running list of judges who have ruled on ICE's mass detention

inability to track them comprehensively at a national level and to review filings is a real problem. Although it is theoretically possible for a local reporter covering a single district to keep on top of all immigration cases in that district (but still quite challenging), it is thoroughly impractical for anyone to visit the scores of courthouses required to comprehensively review immigration actions on a national level. Nor does it permit harnessing of automated tools to review the full text of documents, or harnessing an army of graduate students or document review attorneys to do the same. Although the restriction does not apply to opinions of the court nor to review of the docket report in a case, those are insufficient to get a full view into what is going on in a case.

Since 5.2(c) was adopted in 2007, generalized expectations for access to court documents have changed. The pace of public interest and news is measured in seconds and minutes, not days. Important timely filings occur during hours and weekends when courthouses are closed and even the most diligent reporter could not possibly get to the courthouse to get a filing. The legal community expects to be able to retrieve filings electronically quickly and easily, and access to immigration cases feels like it is left in the pre-electronic filing era.

Although Rule 5.2(c) allows an “unless the court orders otherwise” carveout, it is challenging to obtain public access that way. For a journalist to seek such an order from a judge can be intimidating and challenging, whether by letter or non-party motion or intervention. With limited resources, many cases go unreviewed by the press.

And even when reporters are prepared to retain counsel and seek to lift 5.2(c) restrictions, they are not always successful. *See, e.g., U.H.A. et al v. Bondi*, ECF No. 125, “ORDER denying 92 Motion to Intervene,” February 18, 2026. D. Minn. No. 0:26-cv-00417-JRT-DLM at 2: “First, Law Dork seeks to intervene in this case to obtain public access to the

policy: POLITICO is keeping track of the federal judges who have ruled on the administration’s effort to systematically lock up thousands of people.” <https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-00784614>
February 18, 2026 05:00 AM EST, Updated March 24, 2026 04:45 PM EDT.

docket in this case. It states that it is a news agency, and granting unrestricted electronic access to court records will protect the public's right of access to court proceedings. (Doc. 94 at 2-3.) But the public may already access filings in this case through the public terminals available at each federal courthouse in the district."

That is, a Washington-DC -based legal reporter retained counsel and moved to intervene to lift 5.2(c) restrictions and was denied because the documents were accessible at the courthouse in Minneapolis — true, but thoroughly impractical for a national reporter.

Furthermore, Rule 5.2(c) is not clear on access to *hardcopies*. Most district courts appear to allow the public to pay for and print copies of immigration filings, but not all. The language of the rule, despite being titled "Limitations on remote access to electronic files" and speaking only to "remote electronic access" has been interpreted by some clerks to bar access to hardcopies (which are neither remote nor electronic). Specifically, in D. Massachusetts, prior to 2019, printing was prohibited; and at present, it is permitted only while at the same time requiring the public to sign an agreement to comply with the court's general order to not publish them within thirty days. (See "The D. Massachusetts compromise," below).

Rule 5.2(c) covers social security appeals and immigration cases, but this heightened public interest appears to only affect a narrower slice — Nature of Suit (NOS) code 463 *habeas corpus* petitions. I am not aware of either social security cases or other kinds of immigration cases (*e.g.* NOS 462 Naturalization or NOS 465 Other Immigration Actions) where there is widespread public interest in case documents.

The D. Massachusetts compromise

In 2018 and 2019, when my attention first turned to this issue, I adopted a practice of seeking to remove access restrictions in *habeas* cases that seemed potentially newsworthy within my home district, the District of Massachusetts. Generally speaking, that was

through motion practice.

In 2019, D. Mass entered a General Order intended to allow general public access to such cases after a 30-day period to allow time for the parties to object⁴.

It was signed by sixteen of the court's seventeen active judges as the time.⁵

That compromise has had the effect of reducing the volume of motion practice to remove access restrictions, but it has not been a panacea. Most newsworthy *habeas* cases are newsworthy within their first 30 days, and indeed, many are fully resolved within their first 30 days, meaning the time period of public access under the compromise does not align well with the time period of public interest.

Also, for immigration cases to which there is no significant public interest (historically that is most of them), it has had the effect of making those cases public in the absence of any objection filed, and objections are almost never filed⁶. This burden falls unfairly on solo practitioners or small immigration firms who may not realize the import of the general order on their client's privacy, even though it is docketed in every applicable case⁷.

Proposed revisions:

(1) A revised Rule 5.2(c) should make clear that the public has an unrestricted right to print or obtain hardcopies of immigration case documents at a courthouse to resolve

⁴ General Order 19-02: Standing Procedural Order Re: Public Access to Immigration Cases Restricted by Federal Rules Of Civil Procedure 5.2(c), June 1, 2019, <http://www.mad.uscourts.gov/caseinfo/pdf/general/General%20Order%2019-2%20w%20Electronic%20Signature.pdf>. The order also includes a so-called gag provision on Internet publication of case documents within the first 30 days of case filing.

⁵ Despite covering related issues in depth since 2019, it was only in 2026 that I became aware that one D. Mass judge withheld his signature from the order, and that was because he declined to adopt the practice of automatically removing restrictions in his cases.

⁶ Following hundreds of these cases for the past six years, I can only recall one instance of an objection being filed to the automatic removal of restrictions.

⁷ It is not rare to find personally identifying information in a *habeas* petition that was seemingly never needed for adjudication of the petition. I suspect that many practitioners rely on 5.2(c)'s protections as a crutch to avoid removing private information that should never have been included, and operate in ignorance of the D. Mass general order, despite it being docketed in each of their cases.

problematic interpretations of the rule. It should also be clear that blanket prohibitions and prior restraints on publication of those documents are inappropriate⁸.

(2) Petitioners should be allowed to opt-out of 5.2(c) restrictions at the time of filing. In practice, CM/ECF automatically imposes access restrictions based on the NOS code of the filing, but, *e.g.*, even when petitioner's counsel files a *habeas* action under NOS 530 (Habeas Corpus: General), clerk's office staff will generally review and change it to NOS 463 (Immigration: Habeas Corpus – Alien Detainee), automatically imposing the restriction. The rule should make clear that this sort of opt-out is permissible. (In some cases, judges have not consented to remove access restrictions at the sole request of *habeas* petitioners.)

(3) Class certification should presumptively terminate any 5.2(c) restriction. If a case merits class consideration, there should be no blanket ban on access to its materials. If appropriate to the case, the proper mechanism would be sealing and all that entails.

(4) The committee should look at whether some further weakening of the 5.2(c) restrictions for *habeas* cases makes sense. Whether excluding *habeas* cases from 5.2(c) entirely, permitting an automatic lifting of restrictions after a 7-day period (shorter than the D. Mass 30-day period) in the absence of objection, or any easier and less burdensome process for the public to request the lifting of restrictions.

Appellate Rule 25(a)(5)

At the circuit level, Appellate Rule 25(a)(5) provides that “an appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal.”

In practice, the many circuits interpret this rule to restrict access on appeal, even

⁸ (they feel offensive to the First Amendment)

in cases where the District Court has entered an order lifting the restrictions. The rule should be revised to make clear that when restrictions are lifted below, they should not be automatically reimposed at the appellate level. Reporters should not have to engage in motion practice at the appellate level that is duplicative of motion practice at the district court level.⁹

Furthermore, it is undersigned's experience in both the Tenth Circuit and the First Circuit that unopposed motions seeking public access are resolved by granting access solely to the movant, not to the public at large¹⁰. On the other hand, the Second Circuit and Third Circuit have allowed access more generally.¹¹

Guidance in the rule or in the Committee Note as to the appropriate breath of a resolution of a motion for public access would be appreciated.

But furthermore, the privacy interests that FRCP 5.2(c) is designed to protect don't generally arise during appellate litigation that arises out of the district court. The briefing is generally legal rather than fact-bound, and where it references facts, does not include private personally identifying information.

It would be a boon for public access if legal briefing in immigration *habeas* cases were public in PACER at the appellate level, even if the record appendix below were restricted. Doing so would not compromise the interest of most petitioners.

It may well be that such a relaxation of the rule make sense for cases that originated

⁹ As the Committee considers the prudence of a rule for intervention on appeal, I will note that at present intervention in the district court is the appropriate mechanism for adjudicating these media requests for access within the First Circuit, but at the appellate level the mechanism is a non-party motion. It is substantially more difficult to obtain consent of the parties to intervene than it is to file a non-party motion (because of the rights intervenors receive), and I fear that a rule prescribing the process for intervention on appeal would channel what is now an easy non-party motion into a more complicated intervention-on-appeal. The committee should think about whether a rule for intervention-on-appeal makes sense without a concomitant rule for non-party motions on appeal.

¹⁰ See, e.g., *Doe v. Tompkins*, No. 19-1368, 1st Cir., Order of April 14, 2020. Furthermore, the pace of resolution may be discordant with the pace of public interest and of other docket activity. The unopposed motion seeking relief in that case was filed on August 12, 2019.

¹¹ See, e.g., *Öztürk v. Hyde*, No. 25-1019, 2nd Cir., Order of May 9, 2025.

in the district court as *habeas* cases, but not for other immigration cases such as petitions for review from decisions of the Board of Immigration Appeals. I am insufficiently experienced with them to know, although in at least one case I followed a BIA case after the petitioner's *habeas* case drew attention, and subsequently successfully sought relief in the court of appeals for access to the case's documents.

An appellate frustration outside the scope of the rules¹² is that the Judicial Conference fee schedules charges 50¢ per page for hardcopies at the Court of Appeals, compared to 10¢ at the district court or through PACER. Although not huge, that 5x increase can really add up.

I have further been advised by one circuit court clerk in a different part of the country that were I to send a request for a document by postal mail with an accompanying check, they would not be able to return the document to me by mail. Rather, my only choices were to file a motion seeking access or travel to the courthouse myself (or engage a representative to do so).

Proposed revisions:

(1) Drop the automatic restriction of immigration cases at the appellate level if they have been unrestricted below.

(2) Drop the automatic restriction of anything other appendices and addenda that are copies of the record below.

(3) Drop the applicability of FRAP 25(a)(5) to immigration *habeas* (NOS 463) cases from the district court, while retaining it for other immigration cases as well as social security and railroad retirement cases.

¹² I am not sure of the appropriate forum for this concern.

Closing

I thank the Committees very much for their time and attention to this matter. Please do not hesitate to contact me if desired.

Very truly yours,

/s/ John A. Hawkinson
John A. Hawkinson

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September 16, 2026

Advisory Committee on Civil Rules
Honorable Sarah S. Vance, Chair

Advisory Committee on Appellate Rules
Honorable Allison H. Eid, Chair

Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
BY ELECTRONIC MAIL: rulescommittee_secretary@ao.uscourts.gov

**Re: Proposed immigration case changes to
Civil Rule 5.2(c) and Appellate Rule 25(a)(5)**

Dear Judge Vance, Judge Eid, and
members of the Civil and Appellate advisory rules committees:

I write to supplement my earlier suggestion from March of this year, dual docketed as 26-CV-12 and 26-AP-2: yesterday the Associated Press, represented by the Reporter's Committee for the Freedom of the Press (RCFP), filed a civil complaint in the District of Columbia challenging the constitutionality of Civil Rule 5.2(c).

A copy of the complaint is attached, No. 26-cv-3219.

(The RCFP filed suggestion 26-CV-20 in May urging the removal of Rule 5.2(c) as to immigration. Also related is the suggestion of Roger Parloff from this month, dual docketed as 26-CV-29 and 26-AP-6.)

Of additional potential interest is a Fordham University student law note similarly arguing unconstitutionality. See Doris H. Zhang, Remote Access Restrictions to Immigration-Related Court Records, 94 Fordham L. Rev. 2453 (2026). Available at <https://ir.lawnet.fordham.edu/flr/vol94/iss6/10> and attached hereto.

Very truly yours,

/s/ John A. Hawkinson
John A. Hawkinson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE ASSOCIATED PRESS,
200 Liberty Street
New York, NY 10281

Plaintiff,

v.

Civil Action No. _____

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,**
Thurgood Marshall Federal
Judiciary Building
One Columbus Circle NE
Washington, DC 20544

and

ROBERT J. CONRAD, JR.,
*in his official capacity as Director of the
Administrative Office of the United
States Courts,*
Thurgood Marshall Federal
Judiciary Building
One Columbus Circle NE
Washington, DC 20544

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. The public's ability to observe federal court proceedings is "an essential component in our structure of self-government," *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 606 (1982), as "justice cannot survive behind walls of silence," *Sheppard v. Maxwell*, 384 U.S. 333, 349 (1966).

2. To that end, this suit challenges the constitutionality of Federal Rule of Civil Procedure 5.2(c), which restricts transparency in a particularly newsworthy set of cases: habeas corpus petitions filed by noncitizens seeking release from detentions that allegedly violate their constitutional rights.

3. Tens of thousands of such lawsuits (hereinafter, “immigration habeas cases”) were filed between January 2025 and April 2026 alone,¹ alongside a sharp increase in the number of individuals held in federal immigration detention centers.²

4. Plaintiff The Associated Press (“AP”) has sought to report on immigration habeas cases as they are filed nationwide due to the immense public interest in the federal government’s immigration enforcement policies and the treatment of detainees in its custody.

5. AP’s reporters wish not only to cover fast-moving developments in individual habeas cases,³ but also to cover immigration habeas cases in the aggregate by reviewing key filings in the thousands of cases docketed since January 2025 to monitor how the administration is enforcing its immigration policies, find patterns in

¹ Rebecca Boone, *Appeals Court Rejects Trump’s No-Bond Immigration Detentions, Setting Stage for Supreme Court Review*, Associated Press (Apr. 28, 2026), <https://perma.cc/9PRP-3PH8>.

² Rae Ellen Bichell et al., *From Festering Infections to Untreated Cancer, ICE Detainees Across the US Describe Medical Neglect*, Associated Press (June 2, 2026), <https://perma.cc/ARD3-SQ2X>.

³ See, e.g., Jake Offenhartz, Kathy McCormack & Michael Casey, *Turkish Student at Tufts University Detained, Video Shows Masked People Handcuffing Her* (Mar. 26, 2025), <https://perma.cc/D92B-G28V>.

alleged government misconduct, and document how federal courts are handling the flood of immigration habeas petitions.⁴

6. But over and over, AP reporters have met a roadblock that substantially impedes AP’s ability to report on these immigration habeas cases in a timely fashion, and in some respects prevents covering these cases at all. That roadblock is Federal Rule of Civil Procedure 5.2(c), which restricts “remote electronic access” to documents filed in “an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention”—including immigration habeas cases. Fed. R. Civ. P. 5.2(c) (“Rule 5.2(c)” or the “Rule”).

7. In effect, Rule 5.2(c) exempts immigration cases from the typical procedure for accessing unsealed federal court records immediately and as a matter of course through the Public Electronic Access to Court Records (“PACER”) system. Instead, AP reporters seeking to access *any* document filed in immigration habeas cases (including habeas petitions) must travel or send a representative to the courthouse where the case was filed across the ninety-four federal district courts in the country to attempt to access such judicial records in-person. Such access is possible only if the clerk’s office is open and its public terminal is running smoothly. Even after arriving at a clerk’s office in person, AP reporters have encountered many obstacles to viewing documents that hinder their newsgathering.

⁴ See, e.g., Sudhin Thanawala, *Trump’s Immigration Crackdown is Straining Federal Courts. Judges are Raising the Alarm*, Associated Press (Feb. 9, 2026), <https://perma.cc/URW2-CBFH>.

8. By requiring the AP’s reporters and the public to travel to a courthouse to access otherwise unsealed judicial records, the Rule prevents timely news coverage and impedes any comprehensive, nationwide accounting of what petitioners and the government are asserting in immigration habeas cases.

9. Rule 5.2(c) has thus deprived AP of meaningful access to habeas petitions and other critical documents filed in immigration cases across the country, violating AP’s constitutional rights under either of two First Amendment doctrines.

10. First, the Rule is a content-based restriction on speech that violates the First Amendment. Rule 5.2(c) on its face restricts access to filings based solely on the subject matter of the case—most relevant here, immigration. “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of City of Chi. v. Mosley*, 408 U.S. 92, 95 (1972). The Rule does exactly that, and so is subject to strict scrutiny.

11. The result—even if unintentional—is that immigrants’ claims of unlawful detention by the federal government are much less visible to the public than other kinds of federal lawsuits.

12. Second, immigration habeas records in federal court are subject to a qualified right of access under the First Amendment, *see Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 9–10 (1986) (“*Press-Enterprise II*”). The Rule dramatically narrows or eliminates that access and so can only be justified if it is “essential to preserve

higher values” and “narrowly tailored to serve” them, *id.* The Rule fails both requirements.

13. The Rule’s scope does not fit any overriding or compelling government interest. To the extent the Rule is intended to protect privacy interests of petitioners in immigration habeas cases, it is both too broad and too narrow to accomplish that goal. It restricts electronic access to every word in every party filing, regardless of whether that information is sensitive, while still making potentially sensitive information available to anyone who travels to the courthouse in person and accesses the filing.

14. By unduly restricting access to judicial records in immigration habeas cases, Rule 5.2(c) violates the First Amendment.

15. AP respectfully requests that this Court declare Rule 5.2(c) unconstitutional and enjoin its enforcement to end the ongoing harm to AP’s efforts to report on these matters of immense and urgent public interest. The relief sought here would simply require federal courts to treat immigration case records the same as all other civil records, instead of shielding them from public view.

PARTIES

16. Plaintiff The Associated Press is an independent, not-for-profit, global news organization headquartered in New York City. AP’s journalists cover the news in nearly 100 countries and all 50 states and the District of Columbia, providing coverage for over half the world’s population. Reporters at AP provide daily news

coverage on a wide range of topics, including, but not limited to, immigration, politics, and investigations.

17. Defendant the Administrative Office of United States Courts (“Administrative Office”) was established by Congress to provide administrative support to the United States Courts. The Administrative Office is supervised by a director pursuant to 28 U.S.C. § 601.

18. Defendant Robert J. Conrad, Jr. (“Conrad” or “Judge Conrad”) previously served as a Judge of the United States District Court for the Western District of North Carolina and is now the Director of the Administrative Office of the United States Courts. He was appointed pursuant to 28 U.S.C. § 604 and began serving in this role on March 1, 2024. He is sued in his official capacity.

JURISDICTION & VENUE

19. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because this civil action arises under the Constitution and laws of the United States.

20. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(e)(1) and 28 U.S.C. § 1391(b)(1) because Defendants perform their official duties in the District and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in the District.

FACTUAL ALLEGATIONS

21. The most up-to-date data indicates that approximately 73,318 habeas petitions have been filed by noncitizens detained by the federal government since

January 2025—more than were filed during the past three administrations combined.⁵

22. These petitions for habeas corpus provide a vehicle for immigrants to challenge the legality of their detention and ask a federal court to order their release. *See* U.S. Const. Art. I § 9; 28 U.S.C. § 2241. The Framers of the United States Constitution “viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.” *Boumediene v. Bush*, 553 U.S. 723, 739–40 (2008). Indeed, it “was one of the few safeguards of liberty specified in a Constitution that, at the outset, had no Bill of Rights.” *Id.* at 739.

23. Reporters at AP have sought to cover and contextualize the sharp rise in immigration habeas cases across the country, including by recounting what these immigrants allege in court filings and what the government argues in response, but have been unconstitutionally constrained from doing so by Federal Rule of Civil Procedure 5.2(c).

A. History and Application of Rule 5.2(c)

24. Rule 5.2(c) applies to any “action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention,” as well as to “an action for benefits under the Social Security Act.” Fed. R. Civ. P. 5.2(c).

⁵ Ruth Talbot, Pratheek Rebala & Carla Astudillo, *Tracking Habeas Cases*, ProPublica (Aug. 25, 2026), <https://perma.cc/GBF5-78TS>.

25. In those cases, the Rule limits electronic access to the “full record” of an immigration case to parties and their lawyers only. *Id.* The public may view via PACER the “docket maintained by the court” and “an opinion, order, judgment, or other disposition of the court, *but not any other part of the case file* or the administrative record.” Fed. R. Civ. P. 5.2(c)(2)(B) (emphasis added). To look at any other record, a nonparty must go in-person to the courthouse where the document was filed and use the public terminal in the clerk’s office to view it.

26. While the Rule provides for electronic access to “the docket” and “an opinion, order, judgment, or other disposition” in immigration cases, such documents do not convey the full story of a case, particularly when a habeas petition is first filed. Moreover, habeas petitions detail the petitioner’s claims—without access to those documents, the public utilizing PACER is unable to glean even the most basic facts and context of a given case.

27. In cases not covered by the Rule—that is, cases outside of immigration and social security cases—PACER automatically provides the public with electronic public access to any federal court record not under seal, amounting to “instantaneous access to more than 1 billion documents filed at all federal courts.”⁶

28. PACER’s functionality is in keeping with the country’s long history of providing timely access to records in judicial proceedings, which is protected by a qualified First Amendment right of access to those records. *See Richmond*

⁶ *Frequently Asked Questions*, PACER (last visited Aug. 31, 2026), <https://perma.cc/R4CR-GUHB>.

Newspapers, Inc. v. Virginia, 448 U.S. 555, 564–572 (1980); *Courthouse News Serv. v. Omundson*, No. 24-6697, 2026 WL 2603864, at *6 (9th Cir. Sep. 3, 2026). Providing the public and the press with such access is critical to the democratic system for a number of reasons, including that it helps keep the public informed about the functioning of the judicial system and enables them to hold participants accountable. See *Richmond Newspapers*, 448 U.S. at 564–572.

29. “[T]he federal courts of appeals have widely agreed that” this right of access “extends to civil proceedings and associated records and documents.” *Courthouse News Serv. v. Planet*, 750 F.3d 776, 786 (9th Cir. 2014) (citing authority). “Because the writ of habeas corpus is an important part of our Constitution and a ‘vital instrument for the protection of individual liberty,’ the public’s qualified right to informed discussion about its government would apply no less in these proceedings.” *Dhiab v. Trump*, 852 F.3d 1087, 1102 (D.C. Cir. 2017) (Rogers, J., concurring in part and concurring in the judgment) (quoting *Boumediene*, 553 U.S. at 743). “[C]riminal trials and habeas proceedings are designed to protect against abuses of Executive power and guard individual liberty,” so “why would the First Amendment right of access apply differently in the two proceedings?” *Id.* at 1101.

30. Rule 5.2(c) departs from this widely recognized tradition of access and blocks PACER’s instantaneous access to records in immigration cases. Instead, if a

nonparty uses PACER to attempt to view a document filed by a party in an immigration case, they would see only the following error message:



31. The current version of the Rule was promulgated in 2007 by the Supreme Court, on recommendation from the Judicial Conference pursuant to the Rules Enabling Act, 28 U.S.C. § 2072.

32. According to the advisory committee’s note for Rule 5.2(c), immigration cases were deemed “entitled to special treatment” due to the purported “prevalence of sensitive information and the volume of filings.”

33. Minutes from the Civil Rules Advisory Committee meeting in May 2006, when the current version of the Rule was last discussed, indicate that the Department of Justice initially proposed applying the Rule to immigration cases due to the “burden of redacting the administrative file and because of the risk that mistakes still would be made.”⁷ The minutes do not cite any further evidence that immigration records are unusually difficult to redact, or how often redactions are necessary.

34. The minutes also do not explain why regular sealing procedures would be insufficient to protect privacy. Instead, they suggest that “public media and

⁷ See Meeting Minutes, Civ. Rules Advisory Comm., 3:110–12 (May 22–23, 2006), <https://perma.cc/SZ3A-ENBJ>.

academic researchers” could seek “a court order permitting access,”⁸ without acknowledging the burden of moving for such an order in every case.

35. The minutes also do not reflect any input from noncitizens (or their representatives) whose private information is actually at issue. Indeed, in many immigration habeas cases, noncitizens have consented to the lifting of Rule 5.2(c) restrictions.⁹

36. Notably, Rule 5.2(c) applies to every document filed by a party in nearly every immigration case in federal court, regardless of whether an administrative file is ever submitted or what claims those cases may involve.

37. The Rule’s scope includes immigration habeas petitions and has been applied to denaturalization suits by the government, among other cases.

38. For example, the Department of Justice recently filed a series of denaturalization complaints and published them on its website to tout its crackdown on “egregious violations of our immigration system.”¹⁰ But access to those same complaints—and any other party filings that may follow, including an Answer or

⁸ *Id.*

⁹ See, e.g., Mot. to Remove Remote Access Restriction, *Suri v. Trump*, No. 25-1560, Dkt. No. 24 (4th Cir. June 24, 2025) (“Petitioner-Appellee consents to The Intercept’s request to remove the access restrictions.”); Text Ord., *Kordia v. Noem*, No. 3:25-cv-01072, ECF No. 47 (N.D. Tex. June 2, 2025) (“The parties agree to lift the current viewing restrictions on the docket.”); Text Ord., *Khalil v. Joyce*, No. 1:25-cv-01935, ECF No. 29 (S.D.N.Y. Mar. 12, 2025) (“With the consent of both parties, the Court orders that the limitations on remote access to electronic files otherwise applicable in this case, see Fed. R. Civ. P. 5.2(c), are lifted.”).

¹⁰ Press Release, Justice Department Moves to Denaturalize 12 Individuals for Concealing Terrorist Support, War Crimes, Espionage, Sexual Abuse, and More, U.S. Dep’t of Justice (May 8, 2026), <https://perma.cc/5F22-QLRG>.

Motion to Dismiss where a defendant may deny the government’s allegations—is not available to the public on PACER because of Rule 5.2(c).

39. The only way for the public to obtain electronic access to filings covered by the Rule is by action of the court on a motion to lift the Rule 5.2(c) restrictions. *See* Fed. R. Civ. P. 5.2(c) (“Unless the court orders otherwise . . .”).

40. This path imposes a huge burden on news organizations and other nonparties to move to lift the access restrictions in every case they might want to cover—an impossible task given the volume of these matters nationwide and the fact that a reporter cannot know which cases are newsworthy without being able to access basic information about it.

41. One federal district court has departed from the Rule by entering a standing order requiring the clerk to lift the restrictions in immigration cases after 30 days absent objection by a party, *see* D. Mass. Gen. Order 19-02 (June 1, 2019), <https://perma.cc/C637-S8WB>.

42. But one court taking action does not solve the problem across U.S. courts, which is the scope of the Rule’s application. And even in Massachusetts, immigration habeas petitions and other important documents remain restricted for the first 30 days of an action, when important and time-sensitive motions could be filed at any time.

B. Defendants’ Role in Enforcing the Rule

43. The Administrative Office of the U.S. Courts provides administrative, legal, management, program, and information technology services to the federal

courts. It is the agency responsible for implementing and executing Judicial Conference policies and applicable federal statutes and regulations.¹¹

44. Defendant Robert J. Conrad is the “administrative officer of the courts.” 28 U.S.C. § 604(a)(1).

45. As such, Judge Conrad “[s]upervise[s] all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts,” “[e]xamines the state of the dockets of the courts,” and compiles the Federal Rule of Civil Procedure (which includes Rule 5.2(c)), among other duties. 28 U.S.C. § 604(a)(1)–(2), 20.

46. As part of his official duties, Judge Conrad also implements the policies of the Judicial Conference of the United States, which on information and belief, includes advising court administrators regarding procedural and administrative matters, managing the federal courts’ system for electronic access to court documents, and prescribing the form and manner by which all federal clerks must maintain civil dockets.¹²

47. Clerks of federal district courts are required to keep a civil docket “in the form and manner prescribed by the Director of the Administrative Office of the

¹¹ See Administrative Office of United States Courts, Federal Register (last visited Sep. 4, 2026), <https://perma.cc/FQ75-CHN9>.

¹² See *In Profile: The Administrative Office of the U.S. Courts – Annual Report 2025*, U.S. Courts (last visited Sep. 2, 2026), <https://perma.cc/6UTZ-8B4C>; *Court Operations – Annual Report 2024*, U.S. Courts (last visited Sep. 2, 2026), <https://perma.cc/TMB3-BZS8>; Fed. R. Civ. P. 79(a)(1).

United States Courts with the approval of the Judicial Conference of the United States.” Fed. R. Civ. P. 79(a)(1).

48. On information and belief, Judge Conrad supervises and directs each district court clerk’s implementation and enforcement of Rule 5.2(c), including the directive to automatically restrict Plaintiff’s electronic access to immigration habeas case filings via PACER.

C. Rule 5.2(c)’s Damaging Effects on AP’s Newsgathering and First Amendment Right to Access Judicial Records

49. AP reporters have sought to report on the Trump administration’s immigration enforcement on both a granular and systemic level, sometimes by telling individual stories and other times by analyzing widespread impacts of government policies. At both levels, Rule 5.2(c) has hindered their ability to do so in a timely and complete way.

50. AP routinely covers individual cases of detentions, from the detention of the five-year-old child detained in Minnesota¹³ to the story of an eighty-five-year-old French widow held at a facility in Louisiana.¹⁴

51. Journalists face significant time pressure to gather information about these cases, particularly in the current media climate where newsworthiness fades by the day, if not by the hour or minute.

¹³ Hallie Golden & Sarah Raza, *Federal Officials Detain a 5-Year-Old Boy Who a School Official Says Was Used as “Bait,”* Associated Press (Jan. 22, 2026), <https://perma.cc/M4L5-N6JF>.

¹⁴ Jade Le Deley, *85-Year-Old French Widow Caught in Trump’s Immigration Crackdown Describes Her Detention,* Associated Press (May 12, 2026), <https://perma.cc/36SQ-NS8W>.

52. Accessing court records fast enough to meet deadlines is rarely feasible for AP reporters when the documents are unavailable on PACER and is practically impossible when the courthouse containing the filings is hundreds of miles away.

53. For example, in April 2026, AP reported on the detention of Deisy Rivera Ortega, the wife an active-duty United States Army sergeant, which was newsworthy in part because it signaled a departure from a previous Department of Homeland Security (“DHS”) policy of “leniency toward the families of members of the military and veterans.”¹⁵ Rivera Ortega was being held at a facility in El Paso, Texas, and challenged her detention in the U.S. District Court for the Western District of Texas through a petition for habeas corpus naming the warden of the El Paso processing center and several DHS officials as defendants. *See* Petition for Writ of Habeas Corpus, *Rivera Ortega v. Warden*, No. 3:26-cv-01121, ECF No. 1 (W.D. Tex. Apr. 17, 2026). She filed her habeas petition on April 17, 2026 (a Friday), and a motion for a temporary restraining order on April 20, 2026 (the following Monday). *See* Mot. for Temp. Restraining Ord., *Rivera Ortega v. Warden*, No. 3:26-cv-01121, ECF No. 6 (W.D. Tex. Apr. 20, 2026). None of those documents were available on PACER, and they remain inaccessible electronically today.

54. AP sought to cover Rivera Ortega’s case as breaking news, but its then-Santa Fe correspondent lived more than five hours away from the El Paso federal courthouse by car and could not make the weekend round-trip journey before the

¹⁵ Morgan Lee, *ICE Detains the Wife of an Army Sergeant in Texas as Military Family Leniency Wanes*, Associated Press (Apr. 21, 2026), <https://perma.cc/6SUP-VTSE>.

deadline. AP published an article about the case on April 21, 2026,¹⁶ but AP was never able to access the court records and so could not include any details from them. Instead, AP had to rely on statements from Rivera Ortega’s husband and her counsel, and from DHS.

55. In many of these cases, a detainee may affirmatively want their records to be made public and reported by the press, obviating any arguable privacy concerns. For instance, AP global investigative reporter Garance Burke was in touch with Reydel Martí Corona, a noncitizen who filed a habeas petition in late January 2026 while being held at a detention center in Los Fresnos, Texas. *See Martí Corona v. Shaver*, No. 1:26-cv-00077 (S.D. Tex.). He called Burke several times and told her he had been beaten and kicked by officials and asked her to help make public the conditions of his confinement and his mistreatment. Despite his wishes, Martí Corona’s habeas petition and other case records were unavailable to the public via PACER at the time he reached out to Burke. Martí Corona re-filed his habeas petition in September 2026, and DHS promptly filed a motion for summary judgment. *See Corona v. Thompson*, No. 4:26-cv-07416 (S.D. Tex.). But both the habeas petition and DHS’s dispositive motion remain unavailable on PACER pursuant to Rule 5.2(c). As a result, Burke—who is not based in Texas—is unable to track developments in Martí Corona’s case in real time, despite his desire to make his story known.

56. Multiple AP reporters have made long and costly trips to courthouses across the country solely to view and print records in immigration cases. And even

¹⁶ *Id.*

when an AP reporter *does* make it to the courthouse, in-person viewing of immigration habeas records can be slow and costly, delaying newsgathering.

57. As an example, AP’s then-Santa Fe correspondent traveled to El Paso on February 11, 2026, to try to access immigration case records for a longer-term reporting assignment. When he arrived at the El Paso federal courthouse, he was informed by clerk’s office staff that he was not authorized to access immigration habeas records at all, even in-person. After intervention by a supervisor, the reporter was informed that he was permitted to access the records, but in fact could not do so because the only public terminal in the courthouse was broken. He had to return to the courthouse the following day, after staff had repaired the computer.

58. Once the access terminal was repaired, the clerk’s office charged AP’s reporter 50 cents per page to print.¹⁷ That price is five times the cost of accessing documents electronically via PACER.¹⁸

59. The AP reporter was instructed by the clerk’s office in El Paso to provide a money order or cashier’s check to pay for the printed records. He had to rush to the bank to procure the check and return before the courthouse closed at 5pm. It was a Friday. Had he not made it in time, he would have had to stay in El Paso and wait to get the records until the clerk’s office re-opened on Monday morning.

¹⁷ See *District Court Miscellaneous Fee Schedule*, U.S. Courts (last visited June 23, 2026), <https://perma.cc/9VUJ-3WEH> (“For reproducing any record and providing a copy in paper form, \$.50 per page.”).

¹⁸ See *PACER Pricing: How Fees Work*, PACER (last visited June 23, 2026), <https://perma.cc/U5KJ-XTAH>.

60. The total cost for printing court records at a federal courthouse can quickly become very high (not including the separate and potentially high cost of transit to and from the courthouse).

61. Along similar lines, AP reporter Garance Burke has attempted to access immigration case records at the San Francisco courthouse in the Northern District of California but found the process cumbersome. During Burke's most recent visit in July 2026, she identified eight newsworthy cases using the courthouse's single public terminal. She attempted to print records from those cases, but when she approached the clerk to retrieve the copies, the clerk provided records from only one case. Burke asked for the other documents, but the clerk said only one case had printed and charged her \$4.50 for it. The whole ordeal took nearly two hours, and in the end, Burke was denied access to seven of the newsworthy filings she attempted to print.

62. Upon information and belief, more than one federal district court has refused to allow printing or copying immigration habeas case records even from the courthouse's public terminal because of Rule 5.2(c).

63. For systemic-level analyses, Rule 5.2(c) makes reporting even more difficult. Though AP employs reporters in all 50 states, they cannot be at every federal courthouse at once—there is simply no way for AP and its reporters to view all or even most immigration habeas petitions filed across the country.

64. These difficulties were particularly apparent in a recent piece published by AP reporters in partnership with KFF Health News, which described allegations of medical neglect faced by detainees at immigration detention facilities across the

country.¹⁹ The investigation sought to provide an overview of medical treatment in detention centers and uncovered instances of inadequate medical care at facilities across thirty-three states. It detailed allegations of delayed or denied medication dispersal for conditions like high blood pressure, diabetes, depression, epilepsy, Parkinson's and HIV; unanswered or delayed requests for treatment of injury and illness sustained while in detention; and delayed or denied access to routine or necessary medical treatments and surgeries for detainees.

65. To publish this investigation, reporters at AP and KFF used PACER to identify more than 33,000 immigration habeas dockets in cases filed between January 20, 2025, and March 2026.²⁰ But PACER access to practically every habeas petition on those dockets was blocked by Rule 5.2(c), preventing the reporters from reviewing them.

66. Instead, the reporters had to rely on habeas petitions sent directly by sources (such as lawyers for noncitizen petitioners) or provided by Habeas Dockets, a nonprofit project that coordinates a nationwide network of volunteers to travel to courthouses, print immigration habeas records, and make them available online.²¹ The reporters also pulled several dozen case files from the District of Massachusetts, as that court's standing order departing from Rule 5.2(c) makes immigration habeas

¹⁹ Bichell, *supra* note 2.

²⁰ *The Methodology of an AP-KFF Health News Investigation into Medical Neglect at ICE Detention Centers*, Associated Press (June 2, 2026), <https://perma.cc/U92P-WGRB>.

²¹ *See About*, Habeas Dockets (last visited Sep. 2, 2026), <https://perma.cc/7F3A-KQV2>.

records more readily available. And in a few instances, AP and KFF reporters undertook the time-consuming and expensive task of traveling to courthouses in person to access the records themselves.

67. Even with all those efforts, the reporters were only able to view a small subset of immigration habeas petitions—less than 5,000, or about 13 percent of the pool of cases they had identified.²²

68. The reporters then searched that small subset of reviewable court records, using key words to try to find petitions alleging medical neglect. That search yielded 500 results, and two reporters reviewed each manually. In the end, the reporters were able to identify 300 immigration habeas cases alleging “delayed, denied or deficient healthcare” provided by the federal government to detainees.²³

69. Despite the AP and KFF reporters’ effort to review as many cases as possible, their reporting on medical neglect in immigration detention centers could provide only “a limited window into the landscape of claims, rather than a comprehensive picture,”²⁴ in part because Rule 5.2(c) blocked their electronic access to hundreds of thousands of filings in immigration habeas cases.

70. In other reporting by AP on alleged poor conditions in detention centers,²⁵ reporters have been forced to rely on sources other than public court records

²² Bichell, *supra* note 2.

²³ *Id.*

²⁴ *Id.*

²⁵ See, e.g., Garance Burke, Adam Geller, & Valerie Gonzalez, *Worms in Food, Poor Medical Care, Lights on 24/7: Families Tell of Life in Texas Detention Center*, Associated Press (Feb. 28, 2026), <https://perma.cc/2QXP-EFVG>; Morgan Lee, Ryan J.

in immigration habeas cases because of Rule 5.2(c) access restrictions, making reporting more difficult and less complete.

71. Rule 5.2 has made it practically impossible for AP to undertake a comprehensive review of all immigration habeas cases, hamstringing any bird's eye-view approach to newsgathering on these matters of intense public concern and imposing extremely high costs for the coverage it is able to produce.

72. Further, the news value of a story often grows stale as time passes. By restricting access to immigration case records to in-person only—with that access being further limited by a clerk's office hours, a public terminal's functionality, availability of a cashier's check, and a printer's speed, among other things—Rule 5.2(c) drastically slows the ability of AP to report breaking news related to immigration cases and leaves the public in the dark about key filings in these matters.

73. Gaining electronic, contemporaneous access to immigration habeas case records across the country through PACER—the same way they are able to access other federal case records—would enable AP's reporters and other members of the press to engage in the broad, survey-style reporting on immigration issues that AP seeks to provide to the public. It would also provide other reporters and members of the public crucial insight into these cases.

Foley, & Micheal Biesecker, *Attempted Suicides, Fights, Pain: 911 Calls Reveal Misery at ICE's Largest Detention Facility*, Associated Press (Mar. 6, 2026), <https://perma.cc/9VX5-HTTY>.

74. Lack of access to these documents undermines the benefit of public scrutiny, and indeed often results in less prominent news coverage or none at all. It contradicts the principles of openness that are protected by the First Amendment and integral to a functional democratic system.

75. AP thus asks the Court to halt enforcement of the Rule in immigration cases by the federal district court clerks supervised by Defendant. The relief sought here would simply ensure that immigration cases are treated the same as other civil matters, with records made instantly available via PACER by default and parties free to seek sealing of sensitive information where appropriate.

CLAIM FOR RELIEF

COUNT ONE Violation of the First Amendment (All Defendants)

76. Plaintiff realleges and incorporates by reference the preceding paragraphs of the Complaint.

77. “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

78. Rule 5.2(c) is unconstitutionally content-based on its face, as its restrictions on access “target” case records “based on”] [their] communicative content,” *Reed*, 576 U.S. at 163—*i.e.*, based on the fact that they “relat[e] to an order

of removal, to relief from removal, or to immigration benefits or detention,” Fed. R. Civ. P. 5.2(c).

79. Because the Rule treats immigration case records differently from other civil filings simply because they are immigration cases, it is subject to strict scrutiny, *see Reed*, 576 U.S. at 163. It fails that test, as its scope is not narrowly tailored to a compelling interest, including an interest in protecting parties’ privacy.

80. To the contrary, the Rule applies to every page of every document filed by a party in every immigration case regardless of whether it contains sensitive information. If a document *does* contain sensitive information, the Rule’s measures to protect it are ineffectual, as anyone could view it at the courthouse where it was filed. Also, judicial opinions are exempted from the Rule, even if they contain the same purportedly sensitive information found in the party filings.

81. The Rule therefore violates the First Amendment because it is a content-based restriction on speech.

82. Independent of its content-based nature, the Rule violates the First Amendment because it unduly restricts the right of the press and public—including AP reporters—to access judicial records, *see Press-Enterprise II*, 478 U.S. at 9. That right is critical to the public’s ability to understand and monitor the workings of the judicial system, as well as the conduct of government officials.

83. This First Amendment right attaches to records filed in immigration cases in federal court, including noncitizen habeas petitions and other documents that play a role in the adjudicative process. *See Dhiab*, 852 F.3d at 1101 (Rogers, J.,

concurring in part and concurring in the judgment); *see also Planet*, 750 F.3d at 786 (citing authority).

84. Rule 5.2(c) infringes the First Amendment right of access by preventing timely access to immigration judicial records and blocking AP’s reporters and the public from any electronic access to party filings in immigration cases. *See Omundson*, 2026 WL 2603864, at *6 (“The core public interest that the First Amendment right of public access protects includes ‘obtaining contemporaneous news.’” (citation omitted)). The Rule applies “to the full record” of an immigration case, with exceptions only for the docket sheet and judicial decisions—but no exception for habeas petitions or other dispositive documents. Fed. R. Civ. P. 5.2(c).

85. The Rule is not tailored to any overriding interest, *see Press-Enterprise II*, 478 U.S. at 8, for many of the same reasons it fails strict scrutiny. As such, it violates the First Amendment.

86. On information and belief, Defendant Conrad has supervisory authority over federal clerks and management of the electronic access system for the federal court records. Accordingly, he must ensure that those clerks do not violate federal or constitutional law in providing access to federal court records—including by instructing them to cease applying the Rule 5.2(c) restrictions in immigration matters.

87. On information and belief, the Administrative Office of the U.S. Courts is the agency charged with implementing the administrative aspects of all Judicial

Conference policies, including the Federal Rules of Civil Procedure and the application of Rule 5.2(c)'s restrictions on electronic access.

88. The enforcement of the Rule in immigration cases is violating AP's First Amendment rights and causing ongoing harm to its reporting on these critical matters of public concern.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Declare that Federal Rule of Civil Procedure 5.2(c) unconstitutionally restricts access to records in immigration cases in violation of the First Amendment, pursuant to the Court's authority under 28 U.S.C. §§ 2201, 2202;

(2) Enjoin Defendants, and all their officers, agents, servants, employees, contractors, and attorneys, and those persons in active concert or participation with him who receive actual notice of the injunction—including in particular federal district court clerks—from enforcing Federal Rule of Civil Procedure 5.2(c) in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention;

(3) Award any further relief the Court deems just and proper.

Dated: September 15, 2026

Respectfully submitted,

s/Renee M. Griffin

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Remote Access Restrictions to Immigration-Related Court Records

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REMOTE ACCESS RESTRICTIONS TO IMMIGRATION-RELATED COURT RECORDS

*Doris H. Zhang**

Journalists today often report on newsworthy federal court cases by remotely accessing the court records online. However, thanks to Federal Rule of Civil Procedure 5.2(c), remote access is not available by default in immigration-related cases. To obtain any court records in immigration cases, journalists must go to the courthouse, hire someone to go on their behalf, or ask the court to exercise its discretion to lift the Rule 5.2(c) remote access restrictions. These alternatives are burdensome, hindering the ability of the press and the public to keep track of immigration cases in federal courts. Despite the burdens on the press and the public, the remote access restriction has remained since its adoption in 2007 for the stated purpose of protecting immigrant plaintiffs' privacy interests.

This Note argues that the remote access restrictions imposed by Rule 5.2(c) are unconstitutional and imprudent as a matter of policy. Specifically, Rule 5.2(c)'s treatment of immigration cases based on their content violates the First Amendment's prohibition against content-based discrimination. The rule creates a significant burden on the press and does not sufficiently accomplish its stated purpose of protecting privacy. This Note thus proposes a narrowing of the remote access restrictions placed on immigration-related cases in federal courts.

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INTRODUCTION

In 2009, Chinese immigrant Xiu Ping Jiang was in the process of being deported for alleged violations of immigration law.¹ When the immigration judge asked for her name during her administrative hearing, she responded outright rather than waiting for the court interpreter to translate the question first.² The judge viewed her response to be in bad faith and told her he would treat her as if she had not appeared at the hearing, ordered her deportation, and sent her back to immigration jail.³ Jiang later filed a habeas petition.⁴ Immigration habeas petitions, like all immigration-related court documents, usually cannot be accessed remotely by the public because of Rule 5.2(c) of the Federal Rules of Civil Procedure.⁵ This rule requires members of the public and the press who want to view court records in immigration-related cases to visit the federal courthouse in person to request them.⁶

Because Jiang's habeas petition related to her immigration status, her court records should not have been remotely accessible under 5.2(c).⁷ But Jiang's petition was misfiled, and remote access was thus allowed.⁸ A *New York*

1. See Robert Hinkle, David McGraw, Daniel Kanstroom & Eleanor Acer, *Panel Two: Should There Be Remote Public Access to Court Filings in Immigration Cases?*, 79 FORDHAM L. REV. 25, 27 (2011).

2. *Id.*; Nina Bernstein, *Mentally Ill and in Immigration Limbo*, N.Y. TIMES (May 3, 2009), <https://www.nytimes.com/2009/05/04/nyregion/04immigrant.html> (on file with the *Fordham Law Review*).

3. See Hinkle et al., *supra* note 1, at 27; Bernstein, *supra* note 2.

4. See Bernstein, *supra* note 2.

5. FED. R. CIV. P. 5.2(c).

6. *Id.*

7. See Hinkle et al., *supra* note 1, at 26–27.

8. See *id.* at 27.

Times reporter stumbled across her case record online while reporting another story and brought Jiang's story to the public.⁹ After the *Times* report, Jiang's case was reopened by another immigration judge, and she was ultimately freed on bail.¹⁰ If the habeas petition had not been misfiled, Jiang's story likely would not have seen the light of day.¹¹

In the past year, the administration of President Donald J. Trump's efforts to deport pro-Palestine student activists have made headlines.¹² Because the habeas cases associated with these deportation attempts are immigration-related, they are subject to the same Rule 5.2(c) remote access restriction; this makes access difficult for news organizations that do not have the resources to send runners to every federal courthouse adjudicating a student activist's case.¹³ As a result, the rule hinders the interests of both the press and the public in contemporaneously tracking the developments in immigration cases.¹⁴

Although the remote access restrictions in Rule 5.2(c) aim to protect the privacy of immigrants, the restrictions can, in practice, do more to shroud the government's actions in secrecy rather than provide necessary privacy protections. The Rule 5.2(c) remote access restrictions also raise questions about the rule's constitutionality—every federal court of appeals to consider the issue has held that the First Amendment guarantees both the press and the public a qualified right of access to civil proceedings.¹⁵ This Note argues that the Rule 5.2(c) remote access restrictions are unconstitutional under the First Amendment because they constitute content-based discrimination and fail strict scrutiny. Additionally, the public policy reasons behind the First Amendment right of access also counsel changing the rule.

This Note proceeds in three parts. Part I provides an overview of the First Amendment right of access to judicial records and the history of Federal Rule of Civil Procedure 5.2(c). Part II discusses how courts and scholars have treated the constitutional and policy implications of remote access

9. *Id.*; see Bernstein, *supra* note 2.

10. See Nina Bernstein, *Immigrant Finds Path Out of Maze of Detention*, N.Y. TIMES (Sep. 10, 2009), <https://www.nytimes.com/2009/09/11/nyregion/11mental.html> (on file with the *Fordham Law Review*).

11. See Hinkle et al., *supra* note 1, at 27.

12. See, e.g., *A Look at the People Ensnared in Trump's Campaign Against Pro-Palestinian Activism at US Colleges*, AP (Apr. 1, 2025, at 18:38 ET), <https://apnews.com/article/immigration-detainees-students-ozturk-khalil-78f544fb2c8b593c88a0c1f0e0ad9c5f> [<https://perma.cc/EM8C-Q5XU>].

13. Shawn Musgrave, *How the Intercept Fought to Reveal Key Evidence in Student Deportation Cases*, THE INTERCEPT (July 9, 2025, at 10:41), <https://theintercept.com/2025/07/09/student-deportations-palestine-transparency/> (on file with the *Fordham Law Review*); see Motion of The Intercept Media, Inc. to Intervene and Lift the Remote Access Restrictions Under Fed. R. Civ. P. 5.2(c), with Incorporated Memorandum of Law at 8, *Ercelik v. Hyde*, No. 25-cv-11007 (D. Mass. May 23, 2025).

14. See Motion of The Intercept Media, Inc. to Intervene and Lift the Remote Access Restrictions Under Fed. R. Civ. P. 5.2(c), with Incorporated Memorandum of Law, *supra* note 13, at 8.

15. *The Roots of Access Rights*, REPS. COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/open-court-sections/a-the-roots-of-access-rights/> [<https://perma.cc/9PAX-NGSQ>] (last visited Feb. 26, 2026) (collecting cases).

restrictions to judicial records. Finally, Part III argues that Rule 5.2(c) as written is unconstitutional and is imprudent policy. It also proposes changing the rule so that only administrative records are not remotely accessible by default.

I. THE FIRST AMENDMENT RIGHT OF ACCESS AND RULE 5.2(C)

The First Amendment protects freedom of speech and of the press; the seminal free speech and free press cases from the U.S. Supreme Court largely protect individuals and news organizations from government restrictions on what they are allowed to say.¹⁶ As a corollary, the Supreme Court has also held that the press and the public have a right to access judicial proceedings under the First Amendment.¹⁷

Part I.A reviews the development of right-of-access jurisprudence in the Supreme Court and courts of appeals. Part I.B traces more recent developments in circuit courts holding that unnecessary delays in granting access to judicial records may constitute a First Amendment violation. Part I.C outlines the different levels of scrutiny that courts apply when analyzing laws that may restrict First Amendment rights and when each applies. Finally, Part I.D provides the history and purpose of Rule 5.2(c).

A. History of the Right of Access

The Supreme Court first explicitly established a First Amendment right of access to judicial proceedings in the context of criminal trials. In *Richmond Newspapers, Inc. v. Virginia*,¹⁸ a man was on trial for murder and moved for the trial to be closed to the public because he did not want information about witnesses and testimony to spread outside the courtroom.¹⁹ The prosecution did not object, and the judge granted the motion to close the proceedings to the public.²⁰ The publication, *Richmond Newspapers*, had sent two reporters to cover the case and challenged the closure order.²¹ The Supreme Court ultimately decided by plurality that the trial court's exclusion of reporters and the public from the trial was unconstitutional.²²

16. See U.S. CONST. amend. I; see, e.g., *Texas v. Johnson*, 491 U.S. 397, 399, 404–06 (1989) (upholding the First Amendment right to free speech expressed through the burning of the American flag); *N.Y. Times v. United States*, 403 U.S. 713, 714 (1971) (per curiam) (invalidating the government's attempted prior restraint on *The New York Times*'s publication of the Pentagon Papers).

17. See, e.g., *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 (1980). The Supreme Court has also recognized a common-law right of access, which this Note does not address. See *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.”).

18. 448 U.S. 555 (1980).

19. *Id.* at 559–60, 580–81.

20. *Id.* at 560.

21. *Id.* at 559–60.

22. *Id.* at 581.

The *Richmond Newspapers* opinion was the first time the Court read the First Amendment broadly to include the public's and the press's rights to seek information in criminal trials.²³ The Court reasoned that the right of access and the First Amendment's explicit protections of the right of the press²⁴ are necessarily intertwined—for “without some protection for seeking out the news, freedom of the press could be eviscerated.”²⁵ In its opinion, the Court observed that criminal trials had historically been presumed open under Anglo-American common law.²⁶ It also emphasized that the First Amendment protects not only the freedom to speak but also “some freedom to listen.”²⁷ The government therefore cannot “summarily clos[e] courtroom doors which had long been open to the public at the time that Amendment was adopted.”²⁸ The *Richmond Newspapers* Court did not directly hold that the First Amendment right of access applied to civil proceedings, but some justices suggested the right applies to civil proceedings for many of the same reasons.²⁹

Six years later, the Court considered another court access challenge in *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*.³⁰ Following

23. *Id.* at 576. Like other First Amendment rights, the right of access is not absolute and may be reasonably limited for legitimate reasons such as protecting trade secrets or a witness in a sexual assault case. *Id.* at 600 & n.5 (Stewart, J., concurring).

24. The First Amendment provides, in relevant part, “Congress shall make no law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. As Justice Potter Stewart observed, “[t]hat the First Amendment speaks separately of freedom of speech and freedom of the press is no constitutional accident, but an acknowledgment of the critical role played by the press in American society.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 17 (1978) (Stewart, J., concurring). The Supreme Court has consistently upheld protections for the press, including against libel suits from public officials, government prior restraint to publication, or compelled speech. *See, e.g., N.Y. Times v. Sullivan*, 376 U.S. 254, 279–80 (1964) (establishing a heightened “actual malice” standard for public officials suing the press for libel); *N.Y. Times v. United States*, 403 U.S. 713, 714 (1971) (invalidating prior restraint); *Mia. Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 244, 258 (1974) (striking down a Florida law that required newspapers to print responses by candidates for public office if their “personal character” is “assailed” by the paper as unconstitutional under the First Amendment’s free press clause).

25. *Richmond Newspapers*, 448 U.S. at 576 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)).

26. *Id.* at 569.

27. *Id.* at 576.

28. *Id.*

29. *Id.* at 596 (Brennan, J., concurring) (finding “[f]acilitation of the trial factfinding process” through public trials is important to avoid mistakes in civil trials that could inflict costs on the public in addition to the parties); *id.* at 599 (Stewart, J., concurring) (finding “the First and Fourteenth Amendments clearly give the press and the public a right of access” in both civil and criminal trials). While the majority did not reach a conclusion regarding civil trials, it noted that like criminal trials, civil trials have also historically been presumptively open to the public and the press. *Id.* at 580 n.17 (majority opinion).

30. 478 U.S. 1 (1986). In this case, the news organization sought access to the preliminary hearings to a murder trial after the trial judge closed the hearings per the defendant’s request. *Id.* at 3–5. Under California law, exclusion of the public was permitted when necessary “in order to protect the defendant’s right to a fair and impartial trial.” *Id.* at 4 (quoting CAL. PENAL CODE § 868 (West 1985)). The defendant moved for the hearing to be closed, the government did not oppose the motion, and the judge granted the motion, finding closure necessary “because the case had attracted national publicity” and reporting may be one-sided. *Id.*

much of the reasoning behind finding a right of access in *Richmond Newspapers*, the Court announced a two-prong test to determine when there is a right of access to a particular judicial proceeding: (1) whether the type of proceeding has “historically been open to the press and general public” and (2) “whether public access plays a significant positive role in the functioning of the particular process in question.”³¹ This test is known as the “experience and logic” or “*Press-Enterprise II*” test.³²

The experience prong of the test follows the Court’s historical common-law analysis employed in *Richmond Newspapers*.³³ The Court reasoned that a history of access suggests that Anglo-American courts had positive experiences with open access, so the tradition should continue.³⁴

The logic prong stems from the value of public scrutiny in the administration of justice.³⁵ In an early case affirming the First Amendment right of access, the Court held that public access both “safeguards the integrity of the factfinding process” by allowing the public to play a supervisory role and “fosters an appearance of fairness,” which in turn leads to greater public trust in the judicial system.³⁶ The logic analysis is context-specific and depends on whether a specific type of proceeding benefits from openness; for example, the fairness of criminal trials is enhanced by openness, while grand jury proceedings depend on secrecy.³⁷ Given these reasons for the importance of public access, this First Amendment right can be overcome only when “closure is essential to preserv[ing] higher values and is narrowly tailored to serve that interest.”³⁸

Although the Supreme Court has not explicitly extended the First Amendment right of access to civil proceedings, all the circuit courts that have considered the issue have extended the right to various types of civil proceedings.³⁹ Multiple circuit courts explained that principles underlying the right of access in criminal cases—integrity of trials and encouraging public trust in the courts—similarly apply in civil proceedings.⁴⁰

31. *Id.* at 8.

32. *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 326 (4th Cir. 2021).

33. *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise II)*, 478 U.S. at 8.

34. *See id.*

35. *See Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982).

36. *Id.*

37. *Press-Enterprise II*, 478 U.S. at 8–9.

38. *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise I)*, 464 U.S. 501, 510 (1984); *see Globe Newspaper*, 457 U.S. at 606–07 (holding the state may only deny access when it can show “a compelling governmental interest, and [denial] is narrowly tailored to serve that interest”).

39. *See generally* N.Y.C.L. *Union v. N.Y.C. Transit Auth.*, 684 F.3d 286 (2d Cir. 2012); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984); *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249 (4th Cir. 1988); *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002); *In re Cont’l Ill. Sec. Litig.*, 732 F.2d 1302 (7th Cir. 1984); *In re Iowa Freedom of Info. Council*, 724 F.2d 658 (8th Cir. 1983); *Courthouse News Serv. v. Planet*, 947 F.3d 581 (9th Cir. 2020); *Courthouse News Serv. v. N.M. Admin. Off. of Cts.*, 53 F.4th 1245 (10th Cir. 2022); *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983). *See also In re Guantanamo Bay Detainee Litig.*, 624 F. Supp. 2d 27 (D.D.C. 2009).

40. *See, e.g., Planet*, 947 F.3d at 592 (holding that public access to records “buttresses the institutional integrity of the judiciary”); N.Y.C.L. *Union*, 684 F.3d at 299.

*B. Contemporaneous Requirements
to the Right of Access*

More recently, developments in technology have rendered news cycles much faster than at the time of *Richmond Newspapers* and *Press-Enterprise II*. Accordingly, some circuit courts have specified that the First Amendment right of access includes a timeliness requirement.⁴¹ Courts have held that this right attaches contemporaneously and “[e]ach passing day may constitute a separate and cognizable infringement of the First Amendment.”⁴² In adding a timeliness requirement, these circuit courts relied on the Supreme Court’s reasoning in *Richmond Newspapers*, which held that transparency is essential to promoting justice in judicial proceedings and maintaining the public’s confidence in the judicial system.⁴³ Without contemporaneous access, the public and the press are unable to exercise their right to “monitor the progress of the litigation as it unfold[s].”⁴⁴

This timeliness requirement is consistent with the long-standing recognition that timeliness is an essential aspect of news.⁴⁵ Over one hundred years ago, the Supreme Court recognized in a case unrelated to access that “[t]he peculiar value of news is in the spreading of it while it is fresh.”⁴⁶ The Court later held that a ban on reporting news only at “the time [the] audience would be most receptive” is tantamount to government censorship.⁴⁷ Since then, courts across the country have continued to value the “freshness” of news coverage.⁴⁸ In *Courthouse News Service v. Planet*,⁴⁹ for example, the U.S. Court of Appeals for the Ninth Circuit adopted the position of amici—the Reporters Committee for Freedom of the Press and several news organizations—that insufficiently contemporaneous news is not news at

41. See, e.g., *Doe v. Pub. Citizen*, 749 F.3d 246, 272–73 (4th Cir. 2014); *Planet*, 947 F.3d at 596, 600.

42. *Doe*, 749 F.3d at 272 (quoting *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)); see also *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 329 (4th Cir. 2021) (“The press and public enjoy a First Amendment right of access to newly filed civil complaints. This right requires courts to make newly filed civil complaints available as expeditiously as possible.”); *Planet*, 947 F.3d at 596, 600 (holding that a county court’s policy to allow media access only after prolonged processing was unconstitutional but that the policy of making scanned civil complaints available on public computers passed the right-of-access balancing test); *Courthouse News Serv. v. Quinlan*, 32 F.4th 15, 21 (1st Cir. 2022) (holding that administrative delays in court records access must, at the very least, reasonably serve government interests and be narrowly tailored to that end).

43. See *Schaefer*, 2 F.4th at 327; *Planet*, 947 F.3d at 589.

44. *Doe*, 749 F.3d at 273.

45. See, e.g., *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918).

46. *Id.*

47. *Planet*, 947 F.3d at 594 (alteration in original) (quoting *Bridges v. California*, 314 U.S. 252, 269 (1941)).

48. See, e.g., *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”); *Ross v. Abercrombie & Fitch Co.*, Nos. 05-cv-0819, 05-cv-0848, 05-cv-0879, 05-cv-0893, 05-cv-0913, 05-cv-0959, 2010 WL 419947 at *4 (S.D. Ohio Jan. 28, 2010) (agreeing with the “wisdom in the adage that ‘old news is no news’”).

49. 947 F.3d 581 (9th Cir. 2020).

all.⁵⁰ The court's holding is consistent with the importance of contemporaneous reporting in the increasingly rapid news cycles of the digital age.⁵¹

While circuit courts that have considered the issue generally agree on some timeliness requirement for access, no court has announced a standard for exactly how much time may elapse before this requirement is violated. The U.S. Court of Appeals for the Fourth Circuit has held that a court clerk violated the First Amendment when access delays were not "necessary or unavoidable."⁵² The Ninth Circuit, on the other hand, struck down a policy that caused access delays of two or more court days, deeming such delays untimely, but upheld a policy that sometimes made filings available the day after filing.⁵³ The Ninth Circuit's inquiry into what constitutes sufficient contemporaneity largely depended on a fact-intensive inquiry into the practicality of minimizing delays to access.⁵⁴

C. Content-Based and Content-Neutral Restrictions Under the First Amendment

While jurisprudence around timely access to judicial records shows courts value contemporaneity, it does not speak directly to any right of remote access.⁵⁵ Courts' right-of-access jurisprudence therefore establishes whether and when the public has a right to access certain records, but not how. These cases, which began in the 1980s, did not account for differences between in-person and remote access.⁵⁶ Thus, right-of-access cases generally do not address any potential right to remote access. However, when a remote-access system exists, the First Amendment's prohibition against content discrimination is implicated. Content-discrimination jurisprudence is therefore better suited to answer the question of whether the government may limit *how* people access records in certain cases, compared to the experience

50. *Id.* at 594.

51. *Id.* Studies on Americans' news consumption habits support courts' recognition of the importance of timely news. Almost 60 percent of Americans say they often get news from "digital devices," where news can be delivered instantaneously. *News Platform Fact Sheet*, PEW RSCH. CTR. (Sep. 25, 2025), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/> [<https://perma.cc/5RWY-W8E9?type=image>]. Additionally, 34 percent of Americans say social media is their main source of news. NIC NEWMAN, AMY ROSS ARGUEDAS, CRAIG T. ROBERTSON, RASMUS KLEIS NIELSEN & RICHARD FLETCHER, REUTERS INSTITUTE DIGITAL NEWS REPORT 2025, at 13 (2025).

52. *See* *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 329 (4th Cir. 2021).

53. *See* *Planet*, 947 F.3d at 598 (holding that delays were unconstitutional where the court's "administrative interests" could be furthered by "substantially less restrictive means" than delaying access).

54. *See id.* at 598–99 (using the *Press-Enterprise II* test of whether "no reasonable alternatives" were available to protect the government's interests).

55. As a practical matter, the ease of remote access would likely allow more members of the public to access records contemporaneously. But strictly speaking, if a court record is available in person at the courthouse immediately after it is filed, it may be accessed contemporaneously, even if it is not accessible remotely.

56. *See generally* *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

and logic test, which answers the question of *whether* there is a right of access at all.

The level of scrutiny the Supreme Court applies in First Amendment cases depends on whether the government’s policy is content based or content neutral.⁵⁷ If a restriction is based on the content of the speech, it is presumptively unconstitutional and subject to strict scrutiny.⁵⁸ If the government imposes a content-neutral “time, place, or manner” restriction, it is subject to intermediate scrutiny and is permissible if “narrowly tailored to serve the government’s legitimate, content-neutral interests”; content-neutral restrictions need not be the least restrictive means of achieving those interests.⁵⁹

To determine whether a restriction is based on the content of the speech, courts employ a two-step analysis: first asking whether the law is content neutral on its face and then whether its justification or purpose is content neutral.⁶⁰ Under the first step, a law is facially content discriminatory if its application is dependent on the “communicative content” of the regulated speech.⁶¹ For example, in *Reed v. Town of Gilbert*,⁶² the Supreme Court struck down a town code that imposed different rules for sign displays based on whether they were “ideological,” “political,” “temporary directional,” or in some other category.⁶³ The Court reasoned that because the code categorizes and regulates signs based on the messages they contain, the code was content based on its face.⁶⁴ Therefore, the code was unconstitutional regardless of any neutral justifications and purposes the government advanced.⁶⁵

Complicating matters, the Court in *City of Austin v. Reagan National Advertising of Austin, LLC*⁶⁶ upheld a sign ordinance that permitted billboards advertising the business on the same premise but prohibited billboards advertising off-premises services or products.⁶⁷ In doing so, the Court found that because examining the speech on billboards was only “in service of drawing neutral, location-based lines,” there was no content-based “purpose or justification” that triggered application of strict scrutiny.⁶⁸ Unlike *Reed*, the ordinance did not implicate the same concerns that the Court historically had about the government’s discrimination against certain categories of speech.⁶⁹ Instead, billboards containing any type of message

57. See *Reed v. Town of Gilbert*, 576 U.S. 155, 165 (2015); *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989).

58. See *Reed*, 576 U.S. at 165.

59. *Ward*, 491 U.S. at 798.

60. See *Reed*, 576 U.S. at 166–67.

61. *Id.* at 163.

62. 576 U.S. 155 (2015).

63. *Id.* at 159–61.

64. *Id.* at 164–65.

65. *Id.*

66. 142 S. Ct. 1464 (2022).

67. *Id.* at 1469–70.

68. *Id.* at 1471.

69. *Id.*

were allowed to appear so long as they were on the same premise as the subject of their advertising.⁷⁰ Taking *Reed* and *Reagan National Advertising* together, the Court's content-neutrality determinations seem to depend not simply on whether a reader needs to read the sign before determining its legality, but whether the law makes categorical distinctions based on the sign's message.

Even when a speech-regulating statute is content neutral on its face, it is still unconstitutional if the government's interest is "related 'to the suppression of free expression.'"⁷¹ For example, the Court struck down a law that prohibited flag burning after finding an impermissible governmental interest "in preserving the flag as a symbol of nationhood and national unity."⁷² The Court found this interest impermissibly related to the "suppression of free expression."⁷³

The strict scrutiny test also applies when the government withholds an otherwise available benefit based on the content of the speech involved. In the height of the Cold War, Congress directed the postmaster general to intercept and withhold mail from abroad that contained "communist political propaganda."⁷⁴ The mail's addressee would then be informed that such mail had been received, and the addressee was required to return a reply card indicating their desire to receive the material within twenty days.⁷⁵ Otherwise, the material would be destroyed.⁷⁶ The Supreme Court struck down this law, reasoning that it limited addressees' First Amendment rights by imposing the requirement to return the reply card.⁷⁷ The Court also quoted Justice Oliver Wendell Holmes Jr.: "The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues."⁷⁸ Even if people do not have a right to a government service like the post office, the government may not discriminate in the provision of those services in violation of the First Amendment.⁷⁹

Consistent with Justice Holmes's reasoning, in *Bullfrog Films, Inc. v. Wick*,⁸⁰ the Ninth Circuit struck down a U.S. Information Agency regulation that distributed international-treaty-based benefits to film producers based on the content of their films.⁸¹ The regulations provided that the agency would

70. *Id.* at 1472–73.

71. *United States v. Eichman*, 496 U.S. 310, 315 (1990) (quoting *Texas v. Johnson*, 491 U.S. 397, 410 (1989)).

72. *Id.* at 314–15 (quoting *Johnson*, 491 U.S. at 410).

73. *Id.* at 315.

74. *Lamont v. Postmaster Gen.*, 381 U.S. 301, 302 (1965) (quoting 39 U.S.C. § 4008(a), *invalidated by Lamont*, 381 U.S. 301).

75. *Id.* at 303.

76. *Id.*

77. *Id.* at 305.

78. *Id.* (quoting *United States ex rel. Milwaukee Soc. Democratic Publ'g Co. v. Burleson*, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting)).

79. *See id.*

80. 847 F.2d 502 (9th Cir. 1988).

81. *Id.* at 514.

decline to certify benefits for films that “attempt[ed] generally to influence opinion, conviction or policy” or “may lend itself to misinterpretation, or misrepresentation of the United States or other countries”⁸² The filmmakers thus were asked to compromise their ability to produce films of any content to obtain the government benefit.⁸³ The court rejected the government’s argument that the regulation did not implicate the First Amendment because it did not “punish or directly obstruct” the filmmaker’s expression.⁸⁴ Instead, the court found that strict scrutiny applied because the government conditioned benefits on the content of filmmakers’ speech.⁸⁵ The court struck down the statute under the First Amendment, holding that the government had violated the “well-established principle that government may not condition the conferral of a benefit on the relinquishment of a constitutional right.”⁸⁶

D. Overview of Rule 5.2(c)

Federal Rule of Civil Procedure 5.2 raises a potential issue under the First Amendment’s prohibition against content discrimination because subsection (c) limits remote access in immigration and Social Security cases.⁸⁷ The rule generally provides privacy protections for records filed in federal district courts, including redaction requirements, remote access restrictions, options for filing under seal, and protective orders.⁸⁸ On appeal, all Rule 5.2 requirements follow the case, as incorporated by the Federal Rules of Appellate Procedure.⁸⁹

Generally, federal civil court records are remotely accessible via the Public Access to Court Electronic Records (PACER) system by default.⁹⁰ Rule 5.2 traces back to a policy adopted by the Judicial Conference of the United States in 2001, which recommended that records in civil cases should be “available electronically to the same extent that they are available at the courthouse.”⁹¹ The conference recommended that Social Security cases be excluded from remote access and that certain “personal data identifiers” such as date of birth and Social Security number be redacted by the parties.⁹² The recommendations do not discuss the reason for excluding Social Security

82. *Id.* at 505.

83. *Id.*

84. *Id.* at 509.

85. *Id.* at 511.

86. *Id.*

87. *See* FED. R. CIV. P. 5.2(c). These rules only apply to civil cases, to which the Supreme Court has yet to extend a right of access. However, every circuit court to consider the issue has extended this right to civil cases. *See supra* note 39 and accompanying text.

88. FED. R. CIV. P. 5.2(c).

89. FED. R. APP. P. 25(a)(5).

90. Jennifer Nelson, Renee Griffin, Gunita Singh, Allyson Veile, Matt Singer & Ellen Goodrich, *Immigration Reporting Legal Guide*, REPS. COMM. FOR FREEDOM OF THE PRESS (Nov. 2025), <https://www.rcfp.org/resources/immigration-reporting-legal-guide/> [https://perma.cc/PF5M-S7UR].

91. JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 49 (2001).

92. *Id.*

cases nor do they mention immigration cases.⁹³ Subsequently, the E-Government Act of 2002⁹⁴ required the Supreme Court to “prescribe rules . . . to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.”⁹⁵ Rule 5.2 was developed to comply with the statute.⁹⁶

In the Advisory Committee on Civil Rules’s drafting process of Rule 5.2, the U.S. Department of Justice (DOJ) recommended to the committee that remote access restrictions be expanded to include immigration cases.⁹⁷ The DOJ argued that this expansion was necessary in light of the high volume of immigration cases and the “great amounts of intensely private information” that are often found in immigration court records.⁹⁸ Another judicial conference committee, the Committee on Court Administration and Case Management (CACM), recommended a “compromise provision,” where the administrative record in immigration cases would be exempt from electronic filing requirements (and therefore exempt from remote electronic access) until “a system is perfected for redacting the administrative record at the time it is prepared.”⁹⁹ This proposal, which the government found acceptable, implies that some concern around immigration records stemmed from the technological and administrative feasibility of timely redaction, given the volume of cases.¹⁰⁰ The proposal also suggests that CACM expected the feasibility concerns to be eventually resolved.¹⁰¹ The Advisory Committee on Civil Rules, however, ultimately voted to adopt the Justice Department’s recommendation for the reasons the department advanced, writing, “[immigration and Social Security cases] are entitled to special treatment due to the prevalence of sensitive information and the volume of filings.”¹⁰² The committee did not explain its rejection of the “compromise provision.”¹⁰³

As a result, for immigration and Social Security cases governed under Rule 5.2(c), only the parties and their attorneys have remote access to the whole case file by default.¹⁰⁴ All other members of the public may access the electronic case file in person at the courthouse, but they only have remote access to the docket, as well as “opinion[s], order[s], judgment[s], or other

93. *Id.*

94. Pub. L. No. 107-347, 116 Stat. 2899 (codified as amended in scattered sections of the U.S. Code).

95. *Id.* § 205(c)(3); FED. R. CIV. P. 5.2 advisory committee’s note to 2007 amendment.

96. FED. R. CIV. P. 5.2 advisory committee’s note to 2007 amendment.

97. CIV. RULES ADVISORY COMM., MINUTES 22 (Oct. 28–29, 2004).

98. *Id.*; see FED. R. CIV. P. 5.2(c) advisory committee’s note to 2007 amendment.

99. CIV. RULES ADVISORY COMM., *supra* note 97, at 22.

100. *See id.*

101. *See id.*

102. FED. R. CIV. P. 5.2(c) advisory committee’s note to 2007 amendment; CIV. RULES ADVISORY COMM., *supra* note 97, at 23. The Advisory Committee on Civil Rules considered a total of three options in its decision: (1) treating immigration cases like Social Security cases, (2) adopting the “compromise provision,” and (3) saying nothing about immigration cases in Rule 5.2. *Id.*

103. CIV. RULES ADVISORY COMM., *supra* note 97, at 23.

104. FED. R. CIV. P. 5.2(c)(1).

disposition[s] of the court.”¹⁰⁵ Thus, members of the public and the press who wish to follow the litigation must visit the courthouse in person to access case records or ask the court to exercise its discretion and grant remote access.¹⁰⁶

II. THE RIGHT OF REMOTE ACCESS AND RULE 5.2(C)

Since the implementation of Rule 5.2(c), experts in immigration and press freedom have disagreed on the prudence of limiting remote access to immigration proceeding records. One court has also considered the constitutionality of a state records system that limited remote access to case records.¹⁰⁷ Today, as journalists report on stories far from their physical locations, remote access is increasingly important to ensure they can track the activities of federal courts in a timely and low-cost manner. However, easy online access may have negative implications for immigrant plaintiffs whose records contain sensitive personal information.¹⁰⁸ Part II outlines the current debate around the constitutionality and policy merits of including immigration in Rule 5.2(c).¹⁰⁹ Part II.A discusses the only constitutional challenge a circuit court has taken up around restrictions to remote access to court records. Part II.B outlines how Rule 5.2(c) access affects journalists’ ability to report on immigration stories in a timely manner. Part II.C surveys divergent expert opinions on how Rule 5.2(c) remote access restrictions fare in advancing its professed interest of protecting immigrant litigants’ privacy interests.

A. *Constitutionality of Remote Access Limitations*

In challenging delays in accessing court records, litigants have not claimed a freestanding First Amendment right of remote access to those records.¹¹⁰ Thus, only the Fourth Circuit has considered a claim to a right of remote access to judicial records.¹¹¹ The challenge did not assert a freestanding right but was rather based on a theory that the state’s remote access regime was an

105. FED. R. CIV. P. 5.2(c)(2).

106. *See id.*; Musgrave, *supra* note 13.

107. *See infra* Part II.A.

108. *See infra* Part II.C.

109. As discussed above, Rule 5.2(c) also restricts remote access in Social Security cases. *See* FED. R. CIV. P. 5.2(c). However, given the potential differences in policy implications in Rule 5.2(c)’s application across different types of cases, this Note discusses only the remote access exemption as applied to immigration-related proceedings.

110. *See, e.g.*, Courthouse News Serv. v. Smith, 126 F.4th 899, 907 (4th Cir. 2025).

111. *See Smith*, 126 F.4th at 905. The lack of court decisions on this issue may be because plaintiffs challenging access restrictions do not always seek remote access. *See, e.g.*, Courthouse News Serv. v. Harris, No. CV 22-0548, 2022 WL 17850125 at *2 (D. Md. Dec. 22, 2022).

unconstitutional speaker-based restriction.¹¹² At issue in *Courthouse News Service v. Smith*¹¹³ was Virginia's remote access system, the Officer of the Court Remote Access (OCRA) system.¹¹⁴ OCRA limited remote access to civil court records only to lawyers admitted to practice in Virginia and their staff.¹¹⁵ Virginia attorneys already had remote access to their own cases independent of OCRA, and OCRA expanded their access to encompass all civil cases.¹¹⁶ Other members of the public who were not authorized to use OCRA, including the press, could only access court records in person via public access terminals at the courthouse.¹¹⁷ There was no difference in the content accessible on OCRA and at the courthouse; the only difference was the method of access.¹¹⁸

Courthouse News Service ("Courthouse News"), a national news outlet that reports on state and federal civil litigation news, sued the court clerk, claiming that the statute limiting remote access violated its First Amendment right of equal access to judicial records.¹¹⁹ Courthouse News did not claim a "freestanding First Amendment right of [remote] access."¹²⁰ Instead, it argued only that OCRA's limits were a speaker-based restriction that, like content-based restrictions, triggered strict scrutiny under the First Amendment.¹²¹ Courthouse News argued the attorneys-only remote access system made it easier for "judicial insiders—attorneys and the government" to engage in "public discussion about ongoing judicial proceedings" while making such engagement harder for the public, including the press.¹²² The Reporters Committee for Freedom of the Press, along with other news organizations, also argued, as *amicus curiae*, that the remote access restriction made the press's job in reporting on court proceedings across the state "impracticable if not impossible."¹²³ The remote access restriction, amici argued, constituted the type of discrimination against the press that the Supreme Court has historically struck down.¹²⁴

112. See *Smith*, 126 F.4th at 905. As discussed in Parts I.B and I.C above, claiming a freestanding right would likely be analyzed under the experience and logic test while a content- or speaker-discrimination claim would be subject to strict scrutiny.

113. 126 F.4th 899 (4th Cir. 2025).

114. *Id.* at 905–06.

115. *Id.*

116. Brief of Appellant at 38, *Smith*, 126 F.4th 899 (No. 22-2110).

117. *Smith*, 126 F.4th at 906.

118. See *id.*

119. *Id.*

120. *Id.* at 907.

121. *Id.* at 909; Brief of Appellant, *supra* note 116, at 37.

122. Brief of Appellant, *supra* note 116, at 39. The discrepancy in who is allowed access may be interpreted as a speaker-based restriction, which is also subject to strict scrutiny under the First Amendment. See *Smith*, 126 F.4th at 909. Courts disfavor speaker-based restrictions because it can often be "a means to control content." *Id.* (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015)).

123. Brief of Amici Curiae the Reporters Committee for Freedom of the Press and 38 Media Organizations in Support of Plaintiff-Appellant at 17, *Smith*, 126 F.4th 899 (No. 22-2110).

124. *Id.* at 17–18; see also *Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 575 (1983) (holding that a paper and ink use tax impermissibly discriminated

Because Courthouse News did not claim a freestanding right of remote access, the parties did not employ the “experience and logic” test to argue whether the First Amendment right of access applies to the records at issue.¹²⁵ The “experience and logic” test answers the question of whether a party may access certain court records or proceedings at all, whereas the First Amendment’s prohibition on speaker- and content-based discrimination answers the question of whether limiting methods of access for certain speakers or topics may be unconstitutionally discriminatory.¹²⁶

The Fourth Circuit rejected Courthouse News’s argument and found that the policy restricting remote access to attorneys was a content-neutral “time, place, and manner” restriction that passes constitutional muster so long as it was narrowly tailored.¹²⁷ This is because Courthouse News was not prohibited from accessing the records it sought; it could access the records “during business hours at the courthouse using public access terminals.”¹²⁸ In other words, the remote access restriction did not prevent members of the press from accessing court records but rather governed the manner in which they may access them. The court next considered whether the policy advanced an important government interest and was narrowly tailored.¹²⁹ It held that the government had an important interest in protecting litigants’ privacy and the access restriction directly advances that goal; therefore, it passed constitutional muster.¹³⁰

Unlike OCRA, Rule 5.2(c) only minimally bases its remote access restrictions on the status of the person seeking access—by default, any person who is not an attorney to a party does not have remote access.¹³¹ Thus, the rule does not have the preference for “judicial insiders” that Courthouse News challenged in OCRA.¹³² Rule 5.2(c), however, singles out Social Security and immigration-related proceedings in its remote access restriction.¹³³ This is distinct from OCRA’s restriction, which applies to all civil cases.¹³⁴ The constitutionality of Rule 5.2(c)’s explicit content-based classification was neither litigated nor adjudicated in *Smith*, nor has it been litigated or discussed by scholars. This Note will show in Part III.A that the rule is likely unconstitutional.

against the press); *Ark. Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 234 (1987) (striking down a tax scheme that applied only to some publications); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 251 (1936) (striking down a tax for high-circulation publications).

125. *Smith*, 126 F.4th at 907 n.7.

126. *See Press-Enterprise II*, 478 U.S. 1, 8 (1986); *Smith*, 126 F.4th at 907–08.

127. *Smith*, 126 F.4th at 908.

128. *Id.*

129. *Id.* at 910–13.

130. *Id.*

131. FED. R. CIV. P. 5.2(c).

132. Brief of Appellant, *supra* note 116, at 28–29.

133. FED. R. CIV. P. 5.2(c).

134. *See Smith*, 126 F.4th at 905–06.

*B. Developments in Lifting
Rule 5.2(c) Restrictions*

Rule 5.2(c) provides that records in immigration cases are not accessible remotely by default, thereby making them more difficult for journalists to access.¹³⁵ However, the rule grants courts discretion in lifting the default remote access restrictions.¹³⁶ In practice, courts across the country appear amenable to lifting access restrictions when they find that it is in the public interest—at least in high-profile cases where journalists have requested such orders.¹³⁷ The Intercept, a digital nonprofit newsroom, has been at the forefront of advocating for the removal of remote access restrictions and has largely been successful.¹³⁸ Courts’ lifting of restrictions shows that they sometimes find remote access is important to advance the public interest.¹³⁹

In some cases, including the high-profile detention of then-Tufts University student Rümeysa Öztürk and a separate class action challenging immigrants’ deportations, the plaintiffs themselves filed motions to lift access restrictions, which the judges granted.¹⁴⁰ In other cases, The Intercept sent letters to the courts asking that access restrictions be lifted, and the judges subsequently granted the request.¹⁴¹ In one case, the judge lifted access restrictions for all filings except for an administrative record and exhibits accompanying a motion for a temporary restraining order.¹⁴² In other cases, the news organization filed motions to intervene to request that access restrictions be lifted.¹⁴³ The Intercept succeeded in many cases.¹⁴⁴

At least one court—the U.S. District Court for the District of Massachusetts—has put in a standing order to ease Rule 5.2(c) restrictions.¹⁴⁵ The general order provides that, absent parties’ objections, remote access restrictions are lifted thirty days after the case is filed.¹⁴⁶ In one case in which The Intercept filed a motion to intervene, the motion was

135. See FED. R. CIV. P. 5.2(c).

136. See *id.* (imposing remote access restrictions “[u]nless the court orders otherwise”); Musgrave, *supra* note 13 (recounting successes in requests for lifting access restrictions).

137. See Musgrave, *supra* note 13.

138. *Id.*

139. See *infra* notes 161–62 and accompanying text.

140. See *infra* notes 161–62 and accompanying text. Öztürk was a doctoral student at Tufts University who was captured and detained for more than six weeks by the Trump administration after she published an op-ed in her student newspaper critical of the school’s response to the war in Gaza. See Adrian Florido, *Tufts Student Rümeysa Öztürk Freed from Immigration Detention*, NPR (May 9, 2025, at 20:53 ET), <https://www.npr.org/2025/05/09/nx-s1-5393055/tufts-student-rumeysa-ozturk-ordered-freed-from-immigration-detention> [https://perma.cc/PB9D-S38A].

141. See Florido, *supra* note 140.

142. Minute Order, *Patel v. Lyons*, No. 25-cv-01096 (D.D.C. May 6, 2025), https://www.courtlistener.com/docket/69878463/patel-v-lyons/?order_by=desc#minute-entry-424579965 [https://perma.cc/QM63-M3CQ].

143. See Musgrave, *supra* note 13.

144. *Id.*

145. D. Mass. Gen. Ord. 19-02 (June 1, 2019), <https://www.mad.uscourts.gov/caseinfo/pdf/general/General%20Order%2019-2%20w%20Electronic%20Signature.pdf> [https://perma.cc/NW8H-WPG8]. The General Order does not explain why it was put in place. *Id.*

146. *Id.*

denied because the underlying case had ended. Still, the remote access restrictions were nonetheless lifted pursuant to the District of Massachusetts's general order.¹⁴⁷

In one instance where the U.S. District Court for the Southern District of New York lifted access restrictions, the court observed that strong public interest in a particular case counsels in favor of lifting restrictions to “promot[e] readily available public access to the record.”¹⁴⁸ In that case, immigrant advocacy groups challenged in absentia immigration removal orders, which the government obtained against unrepresented immigrants “without first affording them proper notice of a hearing or a meaningful opportunity to be heard.”¹⁴⁹ The case files were not remotely accessible given Rule 5.2(c)'s broad language exempting cases “relating to” immigration matters.¹⁵⁰ However, the court found that the records did not contain the type of “sensitive information” that Rule 5.2(c) drafters intended to protect—the case did not involve any individual immigrant—and that the usual tools of redaction and sealing sufficed to protect any privacy interests.¹⁵¹ Because the privacy interests in this case were low and the public interest was high given the case's potential impact, the court found that the remote access restrictions were inappropriate as applied and lifted them.¹⁵²

More recently, the U.S. District Court for the Central District of California lifted access restrictions on an immigration-related class action over the government's objection.¹⁵³ Filed on behalf of immigrants and immigration advocacy organizations, the class action alleged that U.S. Immigration and Customs Enforcement officers had used unconstitutional deceptive practices when conducting immigration arrests.¹⁵⁴ The suit asserts claims against ten agents, all identified as Doe, in addition to the United States and agency leaders.¹⁵⁵ After the parties agreed to settle on one of the class's claims, the plaintiffs requested that the court reclassify the case such that Rule 5.2(c) restrictions no longer applied.¹⁵⁶ The government objected to the plaintiffs' motion, criticizing plaintiffs' timing and procedure, but made no arguments as to any potential privacy interests that would counsel against the

147. Electronic Order, *Ercelik v. Hyde*, No. 25-cv-11007 (May 23, 2025), Dkt. No. 39, <https://www.courtlistener.com/docket/69903924/ercelik-v-hyde/> [<https://perma.cc/8E54-S7PE>].

148. *Asylum Seeker Advoc. Project v. Barr*, No. 19-CV-6443, 2019 U.S. Dist. LEXIS 119101, at *2–3 (S.D.N.Y. July 17, 2019).

149. *Asylum Seeker Advoc. Project v. Barr*, 409 F. Supp. 3d 221, 222–23 (S.D.N.Y. 2019).

150. See FED. R. CIV. P. 5.2(c).

151. *Asylum Seeker Advoc. Project*, 2019 U.S. Dist. LEXIS 119101, at *2–3.

152. See *id.* Instead of lifting the access restrictions under the court's discretion, the judge instead chose to direct the clerk of court to recode the case as “Other Statutory Actions” such that it was no longer coded as an immigration case and remote access became available by default. *Id.* at *3.

153. *Kidd v. Noem*, No. 20-cv-03512, 2025 WL 1715514, at *1 (C.D. Cal. May 7, 2025).

154. Complaint for Damages, Declaratory and Injunctive Relief paras. 27–28, 151, *Kidd*, 2025 WL 1715514 (No. 20-cv-03512).

155. *Id.* at 8–9.

156. Request for Removing Erroneous Limited Access Case Designation at 7, *Kidd*, 2025 WL 1715514 (No. 20-cv-03512); *Kidd*, 2025 WL 1715514, at *1.

redesignation.¹⁵⁷ The court conducted a substantive analysis under Rule 5.2(c).¹⁵⁸ The court pointed to several reasons why Rule 5.2(c)'s purpose did not support maintaining the access restriction: both parties had filed sensitive information under seal, individual defendants were allowed to remain anonymous, and the volume of filings was not the "typical immigration case that receives a limited-access designation."¹⁵⁹ Additionally, the court believed that class members bound by the settlement should be able to review the docket without going to the courthouse in person, asking plaintiffs' counsel, or asking for the court's permission.¹⁶⁰

The lifting of Rule 5.2(c) remote access restrictions shows that many courts value the public's right to access judicial records.¹⁶¹ Even though there is no explicit discussion on the constitutionality of Rule 5.2(c), courts are recognizing that the blanket access restrictions can impede the public's interest in judicial transparency.¹⁶²

However, the more recent instances of courts lifting Rule 5.2(c) access restrictions have occurred in cases that already garnered public attention or in which the plaintiffs themselves requested to lift the restrictions.¹⁶³ In other cases, courts either take weeks to grant requests or deny them as moot or requests are simply not filed because journalists did not know a story existed.¹⁶⁴ The time elapsed between the motion and an order granting the motion can range from a few days to nearly a month.¹⁶⁵ For example,

157. Defendants' Opposition to Plaintiffs' Request for Removing Limited Access Case Designation at 2, *Kidd*, 2025 WL 1715514 (No. 20-cv-03512).

158. See *Kidd*, 2025 WL 1715514, at *2.

159. *Id.*

160. *Id.*

161. See, e.g., *id.*; Asylum Seeker Advoc. Project v. Barr, No. 19-CV-6443, 2019 U.S. Dist. LEXIS 119101, at *2–3 (S.D.N.Y. July 17, 2019).

162. See *Kidd*, 2025 WL 1715514, at *2; *Asylum Seeker Advoc. Project*, 2019 U.S. Dist. LEXIS 119101, at *2–3.

163. See Musgrave, *supra* note 13.

164. See *infra* note 165; Endorsed Order Mooting Motion to Intervene, *Tham v. U.S. Immigr. & Customs Enf't*, Field Off. Dir., No. 19-cv-00037 (D.N.H. Feb. 7, 2019).

165. See, e.g., Motion for Order to Permit Remote Access to Electronic Court Filings by John A. Hawkinson, *Devitri v. Cronen*, No. 17-cv-11842 (D. Mass. Feb. 1, 2018), Dkt. No. 26, <https://www.courtlistener.com/docket/6158782/devitri-v-cronen/> [<https://perma.cc/D9BX-EQU4>] (filing motion on September 28, 2017); Endorsed Order, *Devitri v. Cronen*, No. 17-cv-11842 (D. Mass. Feb. 1, 2018), Dkt. No. 43, <https://www.courtlistener.com/docket/6158782/devitri-v-cronen/> [<https://perma.cc/D9BX-EQU4>] (granting motion on October 6 to be effective starting October 13, 2017); Motion for an Order to Permit Remote Access to Electronic Court Filings ("Open the Docket"), *Reid v. Donelan*, No. 13-cv-30125 (D. Mass. July 9, 2019), Dkt. No. 394, <https://www.courtlistener.com/docket/5044064/reid-v-donelan/?page=3> [<https://perma.cc/6XY6-GW2Q>] (filing motion on July 11, 2018); Order, *Reid v. Donelan*, No. 13-cv-30125 (D. Mass. July 9, 2019), Dkt. No. 408, <https://www.courtlistener.com/docket/5044064/reid-v-donelan/?page=3> [<https://perma.cc/6XY6-GW2Q>] (granting motion on August 1, 2018); Motion for Order to permit remote access to Electronic Court Filings by John A. Hawkinson, *Alvarez Figueroa v. Warden Plymouth Corr. Facility*, No. 18-cv-10097 (D. Mass. May 14, 2018), Dkt. No. 37, <https://www.courtlistener.com/docket/6375418/alvarez-figueroa-v-warden-plymouth-correct> ional-facility/ [<https://perma.cc/W29K-DT7Q>] (filing motion for remote access on April 26, 2018); Order, *Alvarez Figueroa v. Warden Plymouth Corr. Facility*, No. 18-cv-10097 (D. Mass. May 14, 2018), Dkt. No. 49, <https://www.courtlistener.com/docket/6375418/alvarez-fi>

Massachusetts-based freelance journalist John Hawkinson has been filing motions to lift Rule 5.2(c) remote access restrictions since 2017.¹⁶⁶ Motions for access in the cases in which Hawkinson sought remote access were much lower profile compared to the student activist cases in which *The Intercept* sought access in 2025.¹⁶⁷ Although Hawkinson was successful in gaining access in many cases, one case closed before the remote access motion was granted.¹⁶⁸ In that case, the judge found Hawkinson's motion for remote access moot, leaving the public unable to access those records remotely.¹⁶⁹

Even with the District of Massachusetts's general order in place, its execution can be inconsistent. For example, in *Bollat Vasquez v. Mayorkas*,¹⁷⁰ the district court noted, nearly two years after the case was first filed, that access restrictions were never lifted per the general order.¹⁷¹ The court then decided that because the restrictions were never lifted, the parties' prior filings would remain restricted, with only past court orders and future party filings available for remote public access.¹⁷²

Finally, in some cases, reporters may not know the importance of the case and that a motion to lift Rule 5.2(c) is warranted. In the case of Xiu Ping Jiang, a reporter only found the story because her habeas petition was misfiled.¹⁷³ Without the misfiling, even though her case records would have been available in person at the courthouse, no reporter would likely have gone looking for them, and her story would not have been reported.¹⁷⁴

gueroa-v-warden-plymouth-correctional-facility/ [https://perma.cc/W29K-DT7Q] (providing the plaintiff with an opportunity to inform the court of his stance on the remote access motion); Order, *Alvarez Figueroa v. Warden Plymouth Corr. Facility*, No. 18-cv-10097 (D. Mass. May 14, 2018), Dkt. No. 56, <https://www.courtlistener.com/docket/6375418/alvarez-figueroa-v-warden-plymouth-correctional-facility/> [https://perma.cc/W29K-DT7Q] (granting remote access motion on May 25, 2018).

166. Motion for Order to Permit Remote Access to Electronic Court Filings by John A. Hawkinson, *supra* note 165. Some of the cases in which Hawkinson sought access, therefore, precede the District of Massachusetts's general order automatically lifting remote access restrictions after thirty days absent party objections. See D. Mass. Gen. Ord. 19-02 (June 1, 2019), <https://www.mad.uscourts.gov/caseinfo/pdf/general/General%20Order%2019-2%20w%20Electronic%20Signaure.pdf> [https://perma.cc/NW8H-WPG8].

167. Compare *supra* note 166 and accompanying text (collecting lesser known cases where a journalist sought remote access to records), with *Musgrave*, *supra* note 13 (recounting *The Intercept*'s efforts to gain remote access in high-profile cases).

168. Endorsed Order Mooting Motion to Intervene, *supra* note 164.

169. *Id.* In finding the motion for remote access moot, the court contravenes multiple other courts' findings that the public's right and interest in court records do not end when the underlying case is dismissed. See, e.g., *Seren Fashion Art & Interiors, LLC v. B.S.D. Cap., Inc.*, No. 23-CV-2349, 2025 WL 343666 at *2 (S.D.N.Y. Jan. 30, 2025) ("Documents do not cease to be judicial documents merely because a case has been closed or settled, and the need for the public to be able to evaluate a case does not end with its closure."); *Moore v. Smith*, No. CV 17-5219, 2018 WL 6510730 at *2 (E.D. La. Dec. 11, 2018).

170. No. 20-cv-10566 (D. Mass. Jan. 10, 2022).

171. Electronic Clerk's Notes for Proceedings Held Before Judge Indira Talwani, *Bollat Vasquez v. Mayorkas*, No. 20-cv-10566 (D. Mass. Jan. 10, 2022), Dkt. No. 129, <https://www.courtlistener.com/docket/16998936/bollat-vasquez-v-mayorkas/> [https://perma.cc/2FG2-ARH9].

172. *Id.*

173. See *supra* notes 1–3 and accompanying text.

174. See *Hinkle et al.*, *supra* note 1, at 27.

*C. Privacy Implications of Lifting Remote
Access Restrictions*

As discussed in Part I.C, the government's justification for Rule 5.2(c)'s exclusion of immigration cases from remote access is to protect the privacy interests of immigrants whose cases often contain sensitive personal information. However, experts have disagreed on Rule 5.2(c)'s efficacy in protecting privacy interests.

Experts supporting Rule 5.2(c)'s remote access limitation emphasize the private nature of the administrative records that are incorporated into case filings.¹⁷⁵ For example, administrative records in asylum cases can be particularly sensitive.¹⁷⁶ In asylum cases, federal regulations provide that information included in the asylum application "shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the [Secretary of Homeland Security]."¹⁷⁷ However, the bar on disclosure does not apply to any U.S. court in a case arising from the asylum application.¹⁷⁸ Asylum application forms also assure applicants that any information disclosed in the application would not be shared with the government or country from which one fears persecution.¹⁷⁹ Despite being permitted by the letter of the law, refugee law specialist Eleanor Acer argues that the personal and sensitive nature of asylum applications makes maintaining confidentiality crucial: some applications may include information about other people who had "participated in prohibited political activity with the asylum seeker" or had helped the asylum seeker escape.¹⁸⁰ Acer argues that the release of this type of information may endanger the asylum seeker themselves if they are repatriated or other associates who still reside in the country of origin.¹⁸¹ In other types of immigration cases, personal information is similarly woven throughout the administrative record, including passport photos, past addresses, and detailed medical records.¹⁸²

A DOJ lawyer and proponent of Rule 5.2(c) restrictions argues that redacting personal information from the administrative record before

175. See *id.* at 34–35. When an immigration case is appealed from the Board of Immigration Appeals to a federal circuit court, the parties must file the administrative record, which then becomes part of the case records. See AM. IMMIGR. COUNCIL, PRACTICE ADVISORY: HOW TO FILE A PETITION FOR REVIEW 11 (2015), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/how_to_file_a_petition_for_review_2015_update.pdf [<https://perma.cc/D3ED-9ZW5>]. In some circuits, the court's review is limited to information found in the administrative record. JURISDICTION OVER IMMIGRATION PETITIONS, PROCEDURAL RULES, AND STANDARDS OF REVIEW § X.A.9, https://cdn.ca9.uscourts.gov/datastore/uploads/immigration/immig_west/A.%20Jurisdiction%20and%20Standard%20of%20Review.htm#bookmark226 [<https://perma.cc/GY46-6858>].

176. See Hinkle et al., *supra* note 1, at 34–35.

177. *Id.* at 33 (quoting 8 C.F.R. § 208.6(a) (2021)).

178. See 8 C.F.R. § 208.6(c)(2).

179. Hinkle et al., *supra* note 1, at 33.

180. *Id.* at 31, 34–35.

181. *Id.* at 34.

182. *Id.* at 38.

allowing remote access is impractical given the volume of immigration cases.¹⁸³ Thousands of immigration cases are appealed each year from the Board of Immigration Appeals (BIA) to a circuit court.¹⁸⁴ The administrative record in an asylum case averages four inches thick when printed, which takes an experienced Freedom of Information Act¹⁸⁵ officer eight hours to redact.¹⁸⁶ Asking petitioners to redact the records themselves would be unwise, the DOJ lawyer argues, because a majority of immigrant litigants are unrepresented and requiring lawyers to redact personal details would discourage them from taking immigration cases pro bono.¹⁸⁷ Given the prevalence of sensitive information in these records and the difficulty of redaction, proponents of Rule 5.2(c) see it as the best way to protect immigrants' privacy.

Some immigration plaintiffs and their lawyers have explicitly requested that Rule 5.2(c) restrictions apply to their case, demonstrating that at least some litigants rely on the rule for privacy protections. In one case challenging the removal of an immigrant, the case was filed in a way that did not automatically trigger Rule 5.2(c) access restrictions.¹⁸⁸ The plaintiff moved to impose Rule 5.2(c) remote access restrictions, reasoning that the nature of the case brought it under the purview of Rule 5.2(c).¹⁸⁹ The government defendant did not oppose the motion, and it was later granted by the judge.¹⁹⁰ Additionally, in the District of Massachusetts, where a general order provides that remote access restrictions are lifted after thirty days absent party objections, a group of pseudonymous plaintiffs objected to lifting restrictions.¹⁹¹ The plaintiffs had earlier filed a motion to redact their complaint because they had held “prominent positions . . . in the U.S.-backed Afghan government and Afghan civil society,” for which they feared retaliation if personally identifying information was made publicly

183. *Id.* at 39–40.

184. *U.S. Courts of Appeals—Judicial Business 2024*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-courts-appeals-judicial-business-2024> [<https://perma.cc/T4X2-NQSL>] (last visited Feb. 27, 2026). The appeals are not evenly distributed—in 2024, the Ninth Circuit saw 58 percent of all BIA appeals (around 2,200) and the Second Circuit saw 16 percent (around 600). *Id.*

185. 5 U.S.C. § 552.

186. Hinkle et al., *supra* note 1, at 40.

187. *See id.* at 40–41.

188. *See generally* Complaint, *R.R.M.C. v. U.S. Dep’t of Homeland Sec.*, No. 23-cv-07946 (S.D.N.Y. Sep. 7, 2023), Dkt. No. 1, <https://www.courtlistener.com/docket/67773918/rrmc-v-us-department-of-homeland-security/> [<https://perma.cc/65GS-3QBR>]. The case was filed as an action under the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706, which is likely why it was not automatically subject to Rule 5.2(c) restrictions. *See generally id.*

189. Order on Motion for Miscellaneous Relief at 1, *R.R.M.C.*, No. 23-cv-07946 (Nov. 20, 2023). The motion, however, does not explain why the plaintiffs sought the access restriction. *See id.*

190. *Id.* at 2.

191. Plaintiffs’ Notice of Objection to Removal of Remote-Access Restrictions, *Roe v. Mayorkas*, No. 22-cv-10808 (D. Mass. June 8, 2022), Dkt. No. 33, <https://www.courtlistener.com/docket/63337966/roe-v-mayorkas/> [<https://perma.cc/3YLG-AFNG>]; *see supra* note 145 and accompanying text.

available.¹⁹² The plaintiffs argued that maintaining Rule 5.2(c) restrictions was important in case either party accidentally disclosed sensitive information in filings.¹⁹³ The judge found, pursuant to the general order, that maintaining remote access restrictions was appropriate because it was “in the interest of justice.”¹⁹⁴

However, Professor Nancy Morawetz has argued that Rule 5.2(c) in its current form does not sufficiently accomplish its purported goals.¹⁹⁵ For civil cases in general, Rule 5.2(a) establishes redaction requirements that parties must follow when filing with a court.¹⁹⁶ Rule 5.2(b) exempts from redaction “administrative or agency proceeding[s]” records, motivated at least in part by the sheer volume of administrative records.¹⁹⁷ For immigration cases on appeal from an agency action, the court records may include no redactions of sensitive personal information.¹⁹⁸ While members of the public have no way to access litigants’ sensitive information in non-5.2(c) cases, any member of the public who visits the courthouse in person can obtain unredacted personal information about the immigrant litigant.¹⁹⁹ Thus, Professor Morawetz argues, immigrant litigants lack the same “basic protections that other litigants receive” in the face of a motivated, malicious actor.²⁰⁰ The risk of identity theft is particularly pronounced given the “prominent role of social security numbers.”²⁰¹

In addition to court records, the lack of redaction also extends to the information included in judicial opinions, which must be made available

192. Plaintiffs’ Motion to Redact Complaint and File Unredacted Copy Under Seal at 1, *Roe*, No. 22-cv-10808 (May 25, 2022), Dkt. No. 3.

193. Plaintiffs’ Notice of Objection to Removal of Remote-Access Restrictions at 2, *Roe*, No. 22-cv-10808 (June 8, 2022), Dkt. No. 33. The government defendants had no objection. *Id.* at 1 n.1. Simultaneously, the plaintiffs’ lawyers, which included the American Civil Liberties Union of Massachusetts, stated their intention to make some case files available on the organization’s website after internal review. *Id.* at 3 n.2. As of publication, the organization’s website includes a select number of documents through October 2023. *See Court Cases: Roe v. Mayorkas*, ACLU OF MASS. (May 25, 2022), <https://aclum.org/en/cases/roe-v-mayorkas> [<https://perma.cc/EB4Y-5D9L>]. Judgment was not entered for the defendants until June 2025. Judgment, *Roe*, No. 22-cv-10808 (June 9, 2025), Dkt. No. 196, <https://www.courtlistener.com/docket/63337966/roe-v-mayorkas/> [<https://perma.cc/3YLG-AFNG>].

194. Order, *Roe*, No. 22-cv-10808 (Feb. 2, 2023), Dkt. No. 66, <https://www.courtlistener.com/docket/63337966/roe-v-mayorkas/> [<https://perma.cc/3YLG-AFNG>].

195. *See* Nancy Morawetz, *A Better Balance for Federal Rules Governing Public Access to Appeal Records in Immigration Cases*, 69 HASTINGS L.J. 1271, 1288 (2018).

196. FED. R. CIV. P. 5.2(a). The rule provides that filings may only include the last four digits of social security numbers and financial account numbers, the initials of a minor (not their full name), and an individual’s birth year (not a full birthdate). *Id.* Rule 5.2(b), however, exempts cases falling under 5.2(c) from the 5.2(a) redaction requirements. FED. R. CIV. P. 5.2(b). Thus, parties litigating immigration cases, including the government, may choose to, but are not required to, redact any of the aforementioned sensitive information from their court filings. *Id.*

197. FED. R. CIV. P. 5.2(a); CIV. RULES ADVISORY COMM., *supra* note 97, at 22.

198. *See* Morawetz, *supra* note 195, at 1293.

199. *See id.*; FED. R. CIV. P. 5.2(b)–(c).

200. Morawetz, *supra* note 195, at 1294.

201. *Id.*

online pursuant to the E-Government Act.²⁰² Because the record in the case is unredacted and not under seal, Professor Morawetz argues that the published opinion may accordingly include more sensitive personal information than in other types of civil cases.²⁰³ For example, one court opinion included the full name of a minor who applied for asylum for fear of being subject to female genital mutilation alongside the history of persecution the minor had faced.²⁰⁴ By contrast, in a case involving a minor's challenge to their school district's disability accommodations, the court allowed both the minor and their parent to be referenced only by their initials, pursuant to Rule 5.2(a).²⁰⁵ For cases that fall under Rule 5.2(c), then, the remote availability of certain sensitive information is only a matter of time—none of the information is available during the judicial proceedings, but once the court renders a decision, more sensitive information may be available remotely compared to a non-5.2(c) civil case.²⁰⁶

A wide range of immigration-related cases fall under the Rule 5.2(c) exemption.²⁰⁷ The cases may range from an immigrant's appeal from an administrative agency decision to a challenge to an immigration enforcement-related government policy.²⁰⁸ The difference in the types of immigration cases leads to different levels of privacy concerns not accounted for in the operation of Rule 5.2(c). For example, an individual's asylum appeal case can include sensitive information whose publicity may risk significant harm to the asylum-seeker.²⁰⁹ An asylum application may include information about an individual's experience with torture, others who had helped the individual escape, or details about those who participated in prohibited political activities with the applicant in their home country.²¹⁰ In the wrong hands, this type of information no doubt could threaten the safety of the asylum seeker and others around them.²¹¹

202. See *id.* at 1291 n.85; E-Government Act of 2002, Pub. L. No. 107-347, § 205(a), 116 Stat. 2899, 2913. The E-Government Act mandates that all federal courts' websites provide "[a]ccess to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format." *Id.* § 205(a)(5).

203. See Morawetz, *supra* note 195, at 1288–89.

204. *A. v. Ashcroft*, 368 F.3d 634, 636 (6th Cir. 2004). Following Professor Morawetz's practice, this Note also departs from the standard practice of listing the full name of the party here to minimize the searchability of the name on the internet. See Morawetz, *supra* note 195, at 1289 n.84.

205. *P.M. v. Evans-Brant Cent. Sch. Dist.*, No. 08-CV-168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sep. 22, 2008).

206. See Morawetz, *supra* note 195, at 1289. Compare *Ashcroft*, 368 F.3d at 636 (including full name of a minor who applied for asylum), with *P.M.*, 2008 WL 4379490, at *3 (allowing a minor and parent to proceed by initials in disability accommodations case).

207. See *supra* Part II.B.

208. See, e.g., *Ashcroft*, 368 F.3d at 635–36 (reversing a decision from the Board of Immigration Appeals in the case of two asylum-seeking petitioners); *Asylum Seeker Advoc. Project v. Barr*, 409 F. Supp. 3d 221, 227–28 (S.D.N.Y. 2019) (dismissing a challenge of government policy for lack of subject matter jurisdiction).

209. See Hinkle et al., *supra* note 1, at 34–35.

210. *Id.*

211. See *id.*

On the other hand, in a class action lawsuit challenging the government's immigration enforcement tactics, as in *Kidd v. Noem*,²¹² there is minimal, if any, sensitive private information.²¹³ That case focused on the alleged constitutional violations by the government and did not include the type of sensitive information that would be of high risk to the plaintiffs if publicized.²¹⁴ The plaintiffs' diminished privacy interests in preserving the secrecy of the court records is further seen through plaintiffs' counsel's request that the records be made accessible remotely.²¹⁵

More recently, challenges to immigration detention have increasingly taken the form of petitions for writs of habeas corpus, which some advocates say is the only option when immigrants do not have access to a statutory judicial review mechanism.²¹⁶ Unlike appeals of agency immigration decisions that are brought directly to a court of appeals, habeas petitions are made directly to district courts.²¹⁷ In terms of the content of court records, appeals from agency decisions include the agency administrative record, whereas habeas petitions are stand-alone cases that do not necessarily include an administrative record.²¹⁸ Additionally, because the premise of a habeas petition is to "review[] the legality of Executive detention," it is focused on challenging the government's alleged illegal action rather than justifying the immigrant's ability to remain in this country.²¹⁹ The nature of these cases makes it less likely that records will contain sensitive information compared to asylum cases.

Habeas petitions are also common in the recent high-profile cases involving claims of governmental retaliation against pro-Palestinian student activists for exercising their First Amendment rights. In the cases of Rümeysa Öztürk, Mahmoud Khalil, and Mohsen Mahdawi, among others,

212. No. 20-cv-03512, 2025 WL 1715514 (C.D. Cal. May 7, 2025).

213. See, e.g., Complaint for Damages, Declaratory and Injunctive Relief at 19–21, *Kidd*, 2025 WL 1715514 (No. 20-cv-03512) (focusing on alleged misconduct by immigration officials with no discussion regarding the immigrants' personal backgrounds and related sensitive information).

214. See *id.*

215. Request for Removing Erroneous Limited Access Case Designation at 7, *Kidd*, 2025 WL 1715514 (No. 20-cv-03512).

216. See NAT'L IMMIGR. LITIG. ALL., PRACTICE ADVISORY: HABEAS CORPUS PETITIONS 1 (2025), <https://immigrationlitigation.org/wp-content/uploads/2025/11/25.01.15-Habeasx.pdf> [<https://perma.cc/2J2Y-2S36>]; Press Release, Benjamin N. Cardozo Sch. of L., Cardozo Law Launches the National Immigration Habeas Institute, as Part of its New Center for Immigration Innovation (Aug. 21, 2025), <https://cardozo.yu.edu/news/cardozo-law-launches-national-immigration-habeas-institute-part-its-new-center-immigration> [<https://perma.cc/HQ U5-BM8R>].

217. See AM. IMMIGR. COUNCIL, *supra* note 175, at 1–2; NAT'L IMMIGR. LITIG. ALL., *supra* note 216, at 1.

218. Compare Administrative Record, *Sebastian-Sebastian v. Garland*, No. 23-3059 (6th Cir. Feb. 8, 2023), Dkt. No. 5, <https://www.courtlistener.com/docket/66981220/ana-sebastian-sebastian-v-merrick-garland/> [<https://perma.cc/Y6KR-6JHA>] (filing of 535-page administrative record), with *Ercelik v. Hyde*, No. 25-cv-11007 (D. Mass. May 23, 2025), <https://www.courtlistener.com/docket/69903924/ercelik-v-hyde/> [<https://perma.cc/G72D-DV TV>] (no administrative record filed).

219. NAT'L IMMIGR. LITIG. ALL., *supra* note 216, at 2 (quoting *Rasul v. Bush*, 542 U.S. 466, 474 (2004)).

the noncitizen petitioners challenged their detention through habeas petitions alleging unconstitutional retaliation for their protected speech.²²⁰ In these cases, the petitioners' privacy interests in maintaining secrecy around court records are especially low: the cases do not incorporate previous administrative records and the petitioners' activism was already publicly known.²²¹ In fact, the petitioners often did not object to requests to lift Rule 5.2(c) restrictions, and some petitioners represented by the American Civil Liberties Union have even affirmatively shared case files on the internet.²²²

Although the privacy implications in immigration cases can vary widely depending on the case, the range is not accounted for by Rule 5.2(c).²²³ Many immigration cases involve significant privacy interests.²²⁴ However, even when journalists or the public wish to remotely access court records in a low-privacy-interest case, they are still required to ask the court for special permission.²²⁵ Scholars and practitioners therefore have divergent views on whether Rule 5.2(c) is necessary and whether it is the best way to protect privacy interests.

III. NARROWING RULE 5.2(C) REMOTE ACCESS RESTRICTIONS

Rule 5.2(c) drafters wrote the rule with good intentions, aiming to protect sensitive information that is likely to make its way into the records of an immigration case.²²⁶ However, the rule's drafters did not consider the carve-out's constitutional implications or the effectiveness of its privacy

220. See Petition for Habeas Corpus at 1, *Mahdawi v. Trump*, No. 25-cv-00389 (D. Vt. Apr. 14, 2025), Dkt. No. 1; Respondents' Opposition to Petitioner's Amended Petition for Writ of Habeas Corpus at 19, *Ozturk v. Trump*, No. 25-cv-00374 (D. Mass. Apr. 1, 2025), Dkt. No. 19; Khalil v. Joyce, 771 F. Supp. 3d 268, 272 (S.D.N.Y. 2025).

221. See, e.g., Rumeysa Ozturk, Fatima Rahman, Genesis Perez & Nicholas Ambeliotis, *Op-ed: Try Again, President Kumar: Renewing Calls for Tufts to Adopt March 4 TCU Senate Resolutions*, TUFTS DAILY (Mar. 26, 2024), <https://www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj> [<https://perma.cc/EQM2-QGGF>]; Manuela Silva & Miranda Lu, *'I Am the Jewish Future': Detained Jewish Columbia Students Hold Press Conference Outside President's House*, COLUM. SPECTATOR (Apr. 24, 2024, at 22:30 ET), <https://www.columbia-spectator.com/city-news/2024/04/24/i-am-the-jewish-future-detained-jewish-columbia-students-hold-press-conference-outside-presidents-house/> [<https://perma.cc/3P4G-2FKS>]; Sarah Huddleston, Chris Mendell & Shea Vance, *Students Walk Out in 'Emergency Protest' Following Alleged Chemical Spray at Friday Demonstration*, COLUM. SPECTATOR (Jan. 25, 2024, at 01:04 ET), <https://www.columbiaspectator.com/news/2024/01/24/students-walk-out-in-emergency-protest-following-alleged-chemical-spray-at-friday-demonstration/> [<https://perma.cc/8K9M-Z5JR>].

222. See Musgrave, *supra* note 13; see, e.g., *Mahdawi v. Trump*, ACLU (Apr. 30, 2025), <https://www.aclu.org/cases/mahdawi-v-trump> [<https://perma.cc/J3KW-R5T5>]; *Suri v. Trump*, ACLU (June 10, 2025), <https://www.aclu.org/cases/suri-v-trump> [<https://perma.cc/36XB-Q72X>]; *Khalil v. Trump*, ACLU (Mar. 11, 2025), <https://www.aclu.org/cases/khalil-v-trump> [<https://perma.cc/9WQ2-XTMU>].

223. FED. R. CIV. P. 5.2(c).

224. See, e.g., *supra* notes 183–86 and accompanying text.

225. See, e.g., *supra* notes 183–86 and accompanying text.

226. See CIV. RULES ADVISORY COMM., *supra* note 97, at 22.

protections. Part III argues that the immigration exception in Rule 5.2(c) should be narrowed. First, Part III.A argues that the 5.2(c) remote access restriction violates the First Amendment because it is a content-based rule that fails strict scrutiny. Part III.B argues that as a matter of policy, Rule 5.2(c)'s sweeping restriction burdens reporting on immigration cases contrary to the public interest. Finally, Part III.C proposes changes to Rule 5.2(c) that enable greater access to case records while preserving important privacy interests.

*A. Rule 5.2(c) Remote Access
Restrictions Are Unconstitutional*

As a general matter, Rule 5.2 allows remote access to judicial records in civil cases consistent with Congress's intent to make judicial records more easily accessible via the internet, as outlined in the E-Government Act.²²⁷ Rule 5.2(c) singles out Social Security and immigration cases as the only types of cases whose records are not remotely accessible by default.²²⁸ Subsection (c) is therefore facially discriminatory based on content.

Part III.A.1 argues that Rule 5.2(c) is a content-based rule subject to strict scrutiny. Parts III.A.2 and III.A.3, respectively, make the case that the rule does not advance a compelling government interest and is not narrowly tailored to serve any such interest.

1. Rule 5.2(c) Is Content Based

Rule 5.2(c)'s default access restrictions more closely resemble the content-based restriction in *Reed* than the content-neutral law found in *Reagan National Advertising*.²²⁹ In *Reed*, the town code first categorized the signs by content and then imposed various restrictions on different sign categories.²³⁰ Similarly, Rule 5.2 creates two categories of civil cases filed in federal courts: (1) Social Security and immigration cases and (2) all other civil cases.²³¹ In determining the default level of remote access available to the public, the court first determines which category the case falls under and then designates the case files to the corresponding remote access level.²³² Rule 5.2(c) closely resembles the facially content-based categorization and restriction that the Supreme Court in *Reed* subjected to strict scrutiny, as the access makes certain types of content less accessible than others. The Advisory Committee on Civil Rules' bona fide privacy protection argument in support of the 5.2(c) exemption, however well-intentioned, cannot exempt the rule from strict scrutiny analysis.

227. FED. R. CIV. P. 5.2 advisory committee's note to 2007 amendment.

228. *See* FED. R. CIV. P. 5.2(c).

229. *See supra* Part I.C.

230. *Reed v. Town of Gilbert*, 576 U.S. 155, 159 (2015).

231. FED. R. CIV. P. 5.2(c).

232. *See id.*

Unlike the on-/off-premises distinction found in *Reagan National Advertising*,²³³ examination of the content of a case pursuant to Rule 5.2(c) is not merely in service of drawing neutral location-based lines. When a billboard is examined under *Reagan National Advertising*, the focus is on where the billboard can be displayed; when the subject matter of a case is examined under Rule 5.2(c), the focus is on whether any nonparties may remotely access the filings by default. Whereas the Austin city ordinance does not categorically bar the display of any billboards based on their content, Rule 5.2(c) categorically exempts immigration and Social Security cases from default remote access.

Some may view Rule 5.2(c) as different from the preceding cases in one significant way: assuming there is no freestanding First Amendment right of remote access,²³⁴ Rule 5.2(c) does not, on its face, implicate a recognized First Amendment right like *Reed* and *Reagan National Advertising* do. Instead, some may perceive the default allowance for remote access in nonimmigration and non-Social Security cases as a discretionary government benefit. Under this reading, the government has no affirmative obligation to extend this benefit to people seeking remote access to immigration and Social Security cases. However, this reading is incorrect.

Although there is no case directly on point, the access restriction in Rule 5.2(c) is in many ways analogous to *Bullfrog Films, Inc. v. Wick*, where the Ninth Circuit struck down the content limitations under the unconstitutional conditions doctrine.²³⁵ There, the government conferred a benefits scheme to film companies while categorically excluding films based only on their content.²³⁶ Similarly, in Rule 5.2(c), the government is categorically excluding nonparties from remotely accessing a subset of civil court records based solely on their content—the benefit of remote access is denied to members of the public only when they wish to access immigration and Social Security case records.

The similarity between Rules 5.2(c) and the scheme in *Bullfrog Films* is particularly salient when journalists seek to access records remotely. When accessing court records, journalists are rarely seeking such access as an end in and of itself. Instead, they seek the records with the goal of reporting on the case to inform the public. Thus, just as the filmmakers in *Bullfrog Films* had to forgo government benefits unless they restricted their film's content,²³⁷ journalists must forgo the government benefit of default remote access unless they restrict the content of their coverage. A journalist covering a sexual misconduct case, for example, can access all court records remotely.

233. *City of Austin v. Reagan Nat'l Advert. of Aus., LLC*, 142 S. Ct. 1464, 1471 (2022).

234. This Note assumes for argument that there is no freestanding First Amendment right of remote access to court records under the current doctrine. For a general discussion on a freestanding right of remote access, see generally Rachel Kalson, Note, *Considering a First Amendment Right of Remote Access to Court Records*, 94 *FORDHAM L. REV.* (forthcoming 2026).

235. 847 F.2d 502, 511 (9th Cir. 1988).

236. *Id.*

237. *See id.*

Meanwhile, a journalist covering the deportation habeas case of an immigrant must either (1) go to the courthouse in person, even if they are located across the country; (2) hire someone locally to obtain records from the courthouse; or (3) persuade the judge to lift the access restrictions in the case.²³⁸ Any journalist would need to take one of the above actions every time they cover a new case.

Rule 5.2(c) is fundamentally different from the type of “time, place, and manner” access restriction found to exempt the government from strict scrutiny under *Smith*.²³⁹ The OCRA remote access restrictions in *Smith* apply to *all* civil cases heard in Virginia’s civil courts—the public’s ability to access these records remotely does not depend on the content of individual cases.²⁴⁰ As previously discussed, Rule 5.2(c)’s selective access restriction is about more than just time, place, and manner: it is not about *how* civil case records can be accessed generally but rather *which* records are more difficult to access than others.

2. Rule 5.2(c) Does Not Advance a Compelling Interest

Because the Rule 5.2(c) access restriction is content based, it is subject to strict scrutiny analysis, which requires “the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.”²⁴¹ The government does not have a compelling interest in specifically providing immigrants elevated privacy protections that are not available to other civil litigants whose courts records similarly include sensitive personal information.

First, it is necessary to precisely define the potential compelling interest at issue. The question is not whether there is a compelling government interest in instituting privacy protections at all. Rather, the question is whether there is a compelling interest in having the content-based “increased” privacy protections of Rule 5.2(c) compared to the other privacy protections provided in other subsections of Rule 5.2.²⁴² Additionally, some sensitive information about immigrant litigants will inevitably make it into a court’s opinion, which is remotely accessible by statute.²⁴³ The question is whether there is a compelling interest in rendering the information that is included in court records but not germane to the court’s final decision remotely inaccessible.

A case that does not fall under Rule 5.2(c) may contain sensitive personal information comparable to the information found in immigration court

238. See *supra* Part II.C.

239. *Courthouse News Serv. v. Smith*, 126 F.4th 899, 908 (4th Cir. 2025).

240. *Id.*

241. See *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015) (quoting *Arizona Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)).

242. See FED. R. CIV. P. 5.2. As discussed in Part II.C, the effects of Rule 5.2(c) may not, in practice, provide immigration litigants increased privacy protections compared to other civil litigants. However, this section assumes, *arguendo*, some increase in privacy protections from Rule 5.2(c).

243. See *supra* notes 202–04 and accompanying text.

records. For example, a woman who sued her employer for sexual harassment included in her complaint detailed descriptions of the harassing messages she received from male colleagues.²⁴⁴ Her complaint was remotely accessible and was even later published on a document-hosting website where any member of the public, not just PACER users, could view the complaint.²⁴⁵ The implications of the spread of these details are significant—potential plaintiffs in sexual harassment suits may be deterred from filing suit for fear of sensitive information spreading and being portrayed as “the slut who allegedly slept with the boss.”²⁴⁶ The consequences may be even worse for potential plaintiffs who may sue after their nude pictures were posted online.²⁴⁷

As discussed in Part II.C, the amount of sensitive information in an immigration case may vary widely. While cases involving asylum may include information whose wide circulation carries physical risks for the immigrant litigant not frequently seen in other types of civil litigation, some habeas cases include no sensitive information that would cause increased risk for the litigant.²⁴⁸ Just like non-5.2(c) cases, there are no categorical privacy implications that apply equally to all immigration cases that justify an assertion of a compelling interest for heightened privacy protections.

3. Rule 5.2(c) Is Not Sufficiently Narrowly Tailored

Even if Rule 5.2(c) advanced a compelling government interest in protecting privacy interests, the rule is insufficiently narrowly tailored to satisfy strict scrutiny analysis. Because Rule 5.2(c)’s remote access restrictions are based on broad categorizations, the restrictions do not closely align with the privacy interests that motivate them. When the First Amendment right of access has been implicated, courts have scrutinized the narrow tailoring of the policy, striking down policies that provide sweeping access restrictions for limited privacy interests. Rule 5.2(c) would fail such scrutiny.

The Supreme Court has required that alternatives to closure be considered in the court access context.²⁴⁹ In *Press-Enterprise Co. v. Superior Court*²⁵⁰ (*Press-Enterprise I*), the trial judge had closed six weeks of voir dire because

244. See Complaint at 3–5, *Kremer v. Zillow, Inc.*, No. 14-cv-01889, 2015 WL 438418 (C.D. Cal. Feb. 3, 2015).

245. See *Kremer v. Zillow: Sexual Harassment Case*, SCRIBD, <https://www.scribd.com/document/248961433/Zillow-Sexual-Harassment-Suit> (on file with the *Fordham Law Review*) (last visited Mar. 2, 2026).

246. Jodi Kantor, *Lawsuits’ Lurid Details Draw an Online Crowd*, N.Y. TIMES (Feb. 22, 2015), <https://www.nytimes.com/2015/02/23/us/lawsuits-lurid-details-draw-an-online-crowd.html> (on file with the *Fordham Law Review*).

247. See *id.*

248. See *supra* notes 209–22 and accompanying text.

249. See *Press-Enterprise I*, 464 U.S. 501, 513 (1984).

250. 464 U.S. 501 (1984); *id.* at 513.

of juror privacy concerns.²⁵¹ The Court held that even if the facts supported closure to protect the jurors' privacy, the trial court could not close the proceedings without first considering alternatives to protect that privacy interest.²⁵²

As discussed in Part I.C, the Rule 5.2(c) drafters considered alternatives: subjecting immigration proceedings to the same privacy protections as all other civil cases or including a "compromise provision" that would increase the allowance for access as redaction technology advanced.²⁵³ The DOJ even found the "compromise provision" acceptable.²⁵⁴ However, the drafters' rejection of these alternatives was largely unexplained—the drafters did not consider the First Amendment implications of Rule 5.2(c)'s categorical access exclusions. They therefore did not discuss whether the inclusion of immigration cases to Rule 5.2(c) was sufficiently narrow to pass constitutional muster.²⁵⁵ Considering the alternatives anew, Rule 5.2(c) as it is currently written is not sufficiently narrowly tailored.

In *Globe Newspaper Co. v. Superior Court*,²⁵⁶ the Supreme Court found that protecting the "physical and psychological well-being of a minor" was a compelling state interest.²⁵⁷ However, the Court struck down the rule mandating court closure in all cases involving sexual misconduct against minors, reasoning that "the circumstances of the particular case may affect the significance of the [state] interest."²⁵⁸ The Court also noted that the rule did not take into account whether the minor witness sought to exclude the press as a precondition of their testimony.²⁵⁹ Like this rule, Rule 5.2(c) also applies regardless of the wishes of the party whose privacy the government was attempting to protect.²⁶⁰

For example, in some cases where The Intercept obtained access, the immigrant plaintiffs themselves had filed motions requesting that the court lift the access restrictions.²⁶¹ These plaintiffs, who were engaged in high-profile litigation and making national headlines, did not have privacy concerns that needed protection through remote access restrictions.²⁶² Yet these plaintiffs needed to take an extra step to ask the court to lift access restrictions if they wanted journalists to be able to easily track the developments in their cases.

Rule 5.2(c) also fails to protect the immigrant parties' privacy because the information is fully accessible by any member of the public at the

251. *Id.* at 513.

252. *Id.* at 511.

253. *See supra* notes 99–102 and accompanying text.

254. *See supra* notes 99–102 and accompanying text.

255. *See* CIV. RULES ADVISORY COMM., *supra* note 97, at 22.

256. 457 U.S. 596 (1982).

257. *Id.* at 607.

258. *Id.* at 608.

259. *Id.* at 608–09.

260. *See supra* note 140 and accompanying text.

261. Musgrave, *supra* note 13.

262. *See id.*

courthouse.²⁶³ The combination of remote access restrictions and unlimited in-person access may be perilous—the practical obscurity afforded by the remote access restrictions may disincentivize parties from undertaking redaction efforts allowed—and sometimes even required—under other sections of Rule 5.2. Under the current scheme, a responsible journalist living far away from a courthouse cannot access the type of information that a malicious neighbor could obtain by simply visiting the courthouse. Rule 5.2(c) is simultaneously sweeping in its scope yet provides limited privacy protections to immigrant plaintiffs.

Moreover, Rule 5.2(c)'s broad restrictions may, in some cases, undermine the interests of immigrant plaintiffs. Even if the rule sometimes effectively protects privacy, the risk of other harms suggests that Rule 5.2(c) is not narrow tailored. As Professor Morawetz argues, the rule creates an information asymmetry between immigrant litigants and the government.²⁶⁴ Because Rule 5.2(c) by default allows remote access to only the parties (often the immigrant plaintiff and the government defendant), immigration lawyers are not able to see what types of arguments the government is advancing in similar cases and how those arguments are faring in court.²⁶⁵ Meanwhile, the defending party is a single entity—the federal government—which can share resources internally and consult a much larger database of trial outcomes and legal arguments. Thus, in addition to harming the press and the public's right to information, the rule also harms the very people it purports to protect. Considering the limited benefits that Rule 5.2(c) may offer and the potential harms it could cause to immigrants, the press, and the public, it is clear that the rule is insufficiently narrowly tailored and therefore violates the First Amendment.

Even if Rule 5.2(c) is not subject to strict scrutiny analysis, laws that restrict speech constituting time, place, and manner restrictions do not automatically pass constitutional scrutiny. Rather, the laws still need to satisfy intermediate scrutiny, which requires them to be “narrowly tailored to serve the government’s legitimate, content neutral interests.”²⁶⁶ Rule 5.2(c) does not do that. As previously discussed in this section, the rule’s sweeping categorical access restrictions are not narrowly tailored to serve the government’s interest in privacy protection. Multiple plaintiffs’ lack of objection to journalists seeking remote access, and courts’ willingness to lift these access restrictions, demonstrate that there are many circumstances in which the rule bears little or no relationship to important privacy interests. And even when certain parts of the record, such as the administrative records in an immigration case, contain sensitive information, the court can maintain access restrictions on those specific files while lifting restrictions for the other files.

263. See FED. R. CIV. P. 5.2(c).

264. Morawetz, *supra* note 195, at 1299.

265. See *id.*; FED. R. CIV. P. 5.2(c).

266. Ward v. Rock Against Racism, 491 U.S. 781, 798 (1989).

*B. Rule 5.2(c) Burdens
Reporting on Immigration*

The immigration judge's misconduct in Xiu Ping Jiang's case would not have come to light if not for the subsequent misfiling of her case records.²⁶⁷ In part, the *New York Times* story was a result of happenstance—reporters were following a story of another litigant with a similar name and stumbled upon Jiang's case files.²⁶⁸ However, when similar cases are filed properly, the public is deprived of these critical news stories. Even if a reporter was curious about the habeas case they stumbled upon, they would be unable to remotely access the complaint and therefore would not know its importance. A journalist is much more likely to open case files on PACER out of curiosity than to visit the courthouse when they have no way of knowing if a case may be of interest to the public.

Rule 5.2(c) also creates a system that *New York Times* lawyer David McCraw terms “elite access,” where access to information is restricted to those who have the resources and know-how to obtain records from the courthouse.²⁶⁹ Although some journalists have successfully convinced courts to lift access restrictions in specific cases, such an endeavor may be labor-intensive. The Intercept, for example, in filing its motions to lift access restrictions, had representation from a law school clinic, a law firm, and the Reporters Committee for Freedom of the Press.²⁷⁰ With thousands of immigration appeals cases going through the federal courts each year, coupled with an increasing number of habeas cases, journalists cannot file access motions in every case of unknown news value.²⁷¹

The resource intensity of making repeated remote access requests is particularly burdensome to local and independent newsrooms that are strapped for staff and funds. Despite 85 percent of Americans saying local news outlets are at least somewhat important to their community, the number of local journalists has been in sharp decline.²⁷² In 2025, the United States averaged only 8.2 local journalists per 100,000 residents, compared to the average forty journalists in 2002.²⁷³ And in some rural areas, a “single hyper-dedicated reporter[]” is producing essential coverage for the community.²⁷⁴ Local news outlets also often have limited financial

267. See *supra* notes 1–10 and accompanying text.

268. Hinkle et al., *supra* note 1, at 27.

269. *Id.* at 26.

270. See Musgrave, *supra* note 13.

271. See *supra* note 184 and accompanying text.

272. Elisa Shearer, Katerina Eva Matsa, Michael Lipka, Kirsten Eddy & Naomi Forman-Katz, *Americans' Changing Relationship with Local News*, PEW RSCH. CTR. (May 7, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/04/PJ_2024.05.07_local-news-trends_report.pdf [<https://perma.cc/XLN8-KTDA>]; *New Report Reveals Alarming and Widespread Shortage of Local Journalists Across the U.S.*, REBUILD LOC. NEWS (July 10, 2025), <https://www.rebuildlocalnews.org/new-report-reveals-alarming-and-widespread-shortage-of-local-journalists-across-the-u-s/> [<https://perma.cc/SM22-BYT2>].

273. REBUILD LOC. NEWS, *supra* note 272.

274. *Id.*

resources.²⁷⁵ These local outlets, which may lack the same resources as *The New York Times* or even *The Intercept*, are most disadvantaged by Rule 5.2(c)'s default remote access prohibition: not every reporter will have the time and resources to go to the courthouse or navigate motion practice.

C. Proposed Changes to Rule 5.2(c)

Because of the rule's unconstitutionality and the burdens on journalists stemming from Rule 5.2(c)'s overbroad inclusion of all immigration-related cases, there should not be a blanket remote access restriction on immigration cases.²⁷⁶ Instead, only the administrative records, whose volume makes redaction impracticable, should have access restrictions by default, a regime to which even the government has agreed.²⁷⁷ For all other records, the default should be the same as for all other civil cases—complete remote public access to the same records that are available in person.

Changing default restrictions to only apply to administrative records is a scheme that both satisfies constitutional scrutiny and does not overburden journalists. Proponents of the current Rule 5.2(c) restrictions have identified the administrative record as the primary source of privacy concerns, given the likely inclusion of unredacted identifying information and personal details.²⁷⁸ In having default access restrictions apply solely to the administrative record, the solution to the articulated privacy concerns is more narrowly tailored to the problem and therefore more likely to pass constitutional muster. This change would also make all records in habeas cases remotely available because there is no administrative record. As seen in the Trump administration's efforts to deport student activists and the mistreatment of Xiu Ping Jiang in the immigration court system, immigration-related habeas cases can carry significant news value to the public.²⁷⁹ Having these records remotely available by default would allow the press to more efficiently find important stories and for the public, in turn, to supervise the work of the government and the courts.²⁸⁰

In cases where litigants have privacy concerns beyond the administrative record, Rule 5.2(e) would apply the necessary protections on a case-by-case basis.²⁸¹ Subsection (e) provides that a court may, for "good cause," either require additional redaction or "limit or prohibit a nonparty's remote

275. Amaris Castillo, *As Local News Faces Mounting Challenges, a New Report Spotlights Reasons for Optimism*, POYNTER (Aug. 21, 2025), <https://www.poynter.org/reporting-editing/2025/good-news-local-journalism-asu-report-len-downie/> [<https://perma.cc/EJ2T-FJNL>].

276. *See supra* Part II.

277. *See supra* notes 98–100, 186–87 and accompanying text.

278. *See supra* Part II.C.

279. *See supra* Part II.B.

280. *Cf. Press-Enterprise I*, 464 U.S. 501, 508 (1984) ("The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.").

281. *See* FED. R. CIV. P. 5.2(e).

electronic access to a document.”²⁸² For example, litigants like the aforementioned Afghan family seeking humanitarian parole could ask the court for restrictions without relying on a blanket access restriction that applies regardless of the privacy interests at issue.²⁸³ Narrowing the scope of remote access restrictions under Rule 5.2(c) would better serve the interests of the public while preserving litigants’ privacy interests as needed.

CONCLUSION

Rule 5.2(c) was written with good intentions—to protect the privacy interests of immigrant litigants whose safety may be at risk if sensitive information about them gets out.²⁸⁴ In practice, however, the blanket access restriction is not necessary in all immigration-related cases.²⁸⁵ The rule has instead hindered the press and the public’s right to supervise the federal government and judiciary.²⁸⁶ When an immigration judge treats an immigrant unfairly or when an administration attempts to deport students in retaliation for their activism, the public deserves to hear about these urgent stories in real time.

This Note concludes that Rule 5.2(c), as currently written, is flawed in its privacy protections and poses a constitutional issue. Thus, the rule should be changed to only restrict remote access to administrative records. This change would protect immigrants’ most sensitive and hard-to-redact information while preserving access to other court records where there are lower privacy interests and redaction is more feasible.²⁸⁷ For litigants whose court records may contain particularly private information, those parties may still ask the court to seal or restrict access to the records on a case-by-case basis. As this Note illustrates, this more tailored approach to protecting privacy satisfies strict scrutiny under the First Amendment. Narrowing Rule 5.2(c)’s remote access restrictions would ease the burden on journalists when reporting on immigration cases, allowing them to better serve as the watchdogs that the Supreme Court always envisioned them to be.²⁸⁸

282. *Id.*

283. *See supra* notes 194–97 and accompanying text.

284. *See* CIV. RULES ADVISORY COMM., *supra* note 97, at 22.

285. *See supra* Part II.C.

286. *See supra* Part III.B.

287. *See supra* Part III.C.

288. *See supra* note 280 and accompanying text.

TAB 6C

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: August 31, 2026
RE: **Rule 29 Amicus Disclosures Suggestion
(26-AP-3)**

The U.S. Chamber of Commerce has submitted a rules suggestion concerning the proposed amendments to Rule 29 (21-AP-C) on amicus disclosures. The Chamber endorses the approach taken in the proposal approved by the Standing Committee in June.

I recommend that this suggestion be consolidated on the agenda with 21-AP-C.



U.S. Chamber of Commerce
Litigation Center

April 2, 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, DC 20544

Re: Amendments to Federal Rule of Appellate Procedure 29

Dear Ms. Dubay:

On behalf of the Chamber of Commerce of the United States of America (“Chamber”), I write to urge the Advisory Committee on Appellate Rules (“Committee”) to preserve the privacy and First Amendment interests of amicus organizations and their members as the Committee reconsiders amendments to Rule 29 of the Federal Rules of Appellate Procedure. The Chamber supports the proposed revisions set forth by Professor Stephen Sachs in his March 25, 2026 memorandum to the Committee. Those revisions would retain the approach of the current rules, which provide that an amicus organization need not disclose the contributions of its members to an amicus brief when members are not a party to the case. *See* Fed. R. App. P. 29(a)(4)(E)(ii)–(iii).

The Chamber agrees with the concerns of the Executive Committee of the Judicial Conference that requiring disclosure of member contributions to an amicus brief “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.” Letter from Hon. James C. Dever III and Hon. Allison E. Eid to Scott S. Harris (March 10, 2026), at 1. Those concerns reflect a bedrock First Amendment principle: there is a “vital relationship between [the] freedom to associate and privacy in one’s associations,” and compelled disclosure of an association’s members “inevitably exerts a deterrent effect on the exercise of First Amendment rights.” *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 606 (2021).

The proposed amendment, which the Committee recently withdrew, would have significantly narrowed the longstanding member exclusion by requiring an organization to disclose contributions from members who joined the organization within the past twelve months and contributed more than \$100 toward a particular brief. *See* Sachs Memorandum to the Advisory Committee on Appellate Rules (March 25, 2026), at 1–2.

But First Amendment associational rights do not turn on how an organization finances its activities or when a member chooses to join. Organizations that collect supplemental member contributions to budget for an amicus brief have every right to be heard on an equal basis as those that do not. Likewise, the First Amendment affirmatively encourages the public to privately associate for purposes of collective expression, regardless of whether those associations span decades or are newly formed. Absent a member's participation in a case *as a party*, there is no threat that a member's contribution to an amicus brief would serve an improper purpose. As it stands, Rule 29 already addresses that concern without drawing arbitrary distinctions that intrude on the privacy of the relationships between organizations and their members.

For these reasons, and in line with the Committee's decision to withdraw the proposed amendments, the Chamber respectfully urges the Committee to preserve Rule 29's existing member exclusion. The Chamber appreciates the careful and deliberate manner in which the Committee has approached this issue and is grateful for the opportunity to comment on the Committee's important work. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tara Morrissey', is placed over a light gray rectangular background.

Tara Morrissey
Senior Vice President and Deputy Chief
Counsel
U.S. Chamber Litigation Center

TAB 6D

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: August 31, 2026
RE: **Automatic Administrative Stays (26-AP-4)**

Prof. Garrett West has submitted a suggestion to require automatic, short-term administrative stays of a class of judgments or orders that block the enforcement of statewide or nationwide policies.

“Nationwide” or “universal” injunctions were severely limited under *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025). State or federal policies may still be blocked on a wholesale basis, however, through class-action suits, through APA vacatur, or through litigation on behalf of a state or the United States. Such wholesale remedies, West argues, can share some of the disadvantages of universal injunctions: they may encourage forum-shopping by plaintiffs and may force appellate courts to hear highly consequential stay motions with inadequate time and on inadequate briefing.

West proposes that the filing of a stay motion in a court of appeals by a state or by the United States trigger an automatic stay (for 14 days, by default) of certain adverse judgments or orders, so that the merits of the stay motion may be adequately considered without disrupting the status quo ante. The proposal would apply only to judgments or orders entering prospective relief or setting aside agency action in favor of a plaintiff class, an associational plaintiff, or a state or the United States. West argues that this design would target the most common and disruptive forms of wholesale relief, while enabling any individual plaintiff faced with imminent illegal action to structure his or her claims so as to avoid the automatic-stay provision and to secure tailored relief.

A subcommittee was previously formed to consider another suggestion (24-AP-L) on administrative stay practice. While the issues involved are not identical—the earlier suggestion objected to a surplus of administrative stays, the present one to a shortage of them—there is a substantial degree of subject-matter overlap, and it seems appropriate for the subcommittee to consider both issues at once. I recommend that this rules suggestion be referred to the Administrative Stays subcommittee and be consolidated on the agenda with 24-AP-L.



Yale Law School

GARRETT WEST · Associate Professor of Law

BY ELECTRONIC MAIL

May 11, 2026

The Hon. Allison H. Eid, Chair
 Prof. Stephen Sachs, Reporter
 Advisory Committee on Appellate Rules

RE: Automatic Administrative Stays

Dear Judge Eid and Prof. Sachs:

During the past few presidential administrations, federal district courts have repeatedly blocked major national policies from coming into effect. Until the Supreme Court’s decision in *Trump v. CASA, Inc.*, courts often blocked such policies with “universal injunctions.” See 145 S. Ct. 2540 (2025); Cong. Research Serv., *Nationwide Injunctions in the First Hundred Days of the Second Trump Administration* (May 16, 2025); Cong. Research Serv., *Nationwide Injunctions Under the First Trump Administration and the Biden Administration* (Mar. 20, 2025). But district courts still have power to enter effectively universal relief. Specifically, current law permits aggregate litigation brought by governments, associations, and putative classes of plaintiffs; pre-enforcement review of many government policies; and remedies in which courts declare policies illegal, vacate administrative action entirely, or broadly enjoin the application of a policy. Forum-shopping also ensures that any district court considering a challenge to a government policy is likely to be favorable to the plaintiffs’ arguments. While such a system empowers district courts to respond effectively to unlawful government activity, it also permits federal district courts to block legitimate government policies. Judicial orders blocking major government policies may pressure the courts of appeals and the Supreme Court to intervene with limited briefing and without adequate time to consider the legal issues presented.

I suggest that the Committee consider rulemaking to address one limited aspect of this problem. In particular, I propose that the Federal Rules of Appellate Procedure (FRAP) provide for automatic, short-term administrative stays for a limited class of judgments and orders that effectively block statewide or national policies. Automatic administrative stays would postpone the effective date of certain district court orders while the court of appeals considers the underlying motion for a stay pending

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appeal. Such automatic stays could reduce the conflict between federal district courts and the political branches and ensure that the courts of appeals have adequate time to adjudicate motions to stay in consequential cases. At the same time, the amendment should ensure that district courts may issue timely relief to specific plaintiffs threatened by imminent illegality.

While drafting precise language would be premature, a proposed amendment will clarify the recommendation. I thus propose amending FRAP 8 substantially as follows, with a new subsection (d):

RULE 8. STAY OR INJUNCTION PENDING APPEAL.

....

(d) STAYS IN CASES AGAINST A STATE OR THE UNITED STATES.

(1) The circuit clerk must enter an administrative stay of a judgment or order upon the filing of a motion for a stay pending appeal under Rule 8(a) if the movant is a State (or any officer or agency thereof) or the United States (or any officer or agency thereof) and the movant certifies that:

(A) the judgment or order enters prospective relief, including a preliminary or final injunction or temporary restraining order, a declaratory judgment, or an order setting aside agency action (whether entered pursuant to the Administrative Procedure Act, see 5 U.S.C. §§ 701-706, or otherwise);

(B) such judgment or order is entered against a State (or any officer or agency thereof) or the United States (or any officer or agency thereof); and

(C) such judgment or order is entered on behalf of:

(i) a class or putative class of plaintiffs under Rule 23 of the Federal Rules of Civil Procedure;

(ii) an associational plaintiff alleging injuries to its members;
or

(iii) a State (or any officer or agency thereof) or the United States (or any officer or agency thereof).

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(2) The administrative stay entered under subsection (1) will remain in effect for 14 days, unless the court extends or terminates the stay.

Generally, the proposed amendment would switch the default rule for certain orders or judgments that effectively block statewide or national policies. Instead of going into effect when the district court enters the order or judgment *unless* the district court or court of appeals enters a stay, *see* FED. R. CIV. P. 62(c); FED. R. APP. P. 8, the order or judgment would be automatically administratively stayed once the appellant files a motion for a stay pending appeal.

That approach ensures that the court of appeals can review an order blocking a government policy before the district court's order becomes effective. It thus allows the government defendant to seek appellate review before its policy is blocked, and it provides the court of appeals with a brief window to make an intelligent decision on the motion for a stay. But the amendment does not stop district courts from entering tailored relief for individuals threatened with imminent illegality, and it thus allows a prospective plaintiff to structure her claims to avoid the automatic-stay provision.

The proposed automatic administrative stay has analogues in current practice:

- First, an administrative stay is “a flexible, short-term tool” designed to “minimize harm while the court deliberates.” *See United States v. Texas*, 144 S. Ct. 797, 798-799 (2024) (Barrett, J., concurring); *see also* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 NOTRE DAME L. REV. 1941 (2022). Courts of appeals already make case-by-case determinations about whether to enter such administrative stays, and this proposed amendment substitutes a bright-line rule for case-by-case discretion—though the court of appeals retains authority to modify the administrative stay in any given case.
- Second, in the immigration context, some courts of appeals enter automatic stays of removal if a noncitizen files a petition for review and a motion to stay an order of removal. *See* American Immigration Council, Practice Advisory: Stays of Removal at 14 (Jan. 17, 2025), <https://tinyurl.com/muewumbd>. The default rule for the automatic stay proposed above would be similar to those automatic stays, because some circuits impose no time limit for such stays, while others impose time limits of 10 or 14 days. *See id.* (noting that the Second, Third,

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and Ninth Circuits permit indefinite automatic stays, while the First and Fourth Circuits impose time limits).

- Third, the Federal Rules of Civil Procedure (FRCP) automatically stay some judgments entered by district courts. Currently, the “execution on a judgment” is automatically stayed for 30 days, but that provision expressly excludes injunctions from the automatic-stay provision. *See* FED. R. CIV. P. 62(a), (c). Thus, although the amendment would require automatic administrative stays in additional circumstances, similar administrative stays—including automatic ones—are a standard tool in the federal courts.

The proposed amendment alters the default rule only in the limited set of cases in which there is a serious risk of conflict between the federal courts and the political branches.

- **Subsections (d)(1)(A) and (B)** of the proposed amendment limit the automatic administrative stay to cases seeking prospective relief against States or the United States (and their officers or agencies). Only prospective relief threatens to interfere with legitimate government policies, and any automatic-stay amendment should therefore be limited to such cases. The proposed amendment also references “officers or agencies” to ensure that it covers suits brought under the Administrative Procedure Act and suits for equitable relief against government officials (whether brought under *Ex parte Young*, 42 U.S.C. § 1983, or an implied constitutional cause of action).
- **Subsection (d)(1)(C)** likewise limits the amendment to relief that is broad enough to effectively block state or national policies. The Supreme Court has barred “universal injunctions” that once allowed district courts to “prohibit enforcement of a law or policy against *anyone*,” *CASA*, 145 S. Ct. at 2548, but district courts have other procedural and remedial tools that effectively replicate universal injunctions. In particular, class actions, claims brought by associations representing the interests of many members, and claims brought by the United States and the States all permit plaintiffs to obtain relief that sometimes functionally approximates a universal injunction.¹ Though these tools might be

¹ For example, after the Supreme Court’s decision in *CASA*, lower courts enjoined (or affirmed injunctions against) enforcement of the same policy at issue in *CASA* in class actions and in suits brought by States. *See Washington v. Trump*, 145 F.4th 1013, 1038 (9th Cir. 2025); *Barbara v. Trump*, 790 F. Supp. 3d 80 (D.N.H. 2025). For the argument that these avenues provide relief similar in effect to a nationwide injunction, see, for example, Mila Sohoni, *In CASA You Missed It*, 78 STAN. L. REV. at 3 (forthcoming 2026) (“*CASA* left open

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lawful after CASA, they risk perpetuating “a state of affairs where almost every major presidential act is immediately frozen by a federal district court.” William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 HARV. L. REV. 153, 174 (2023).

- At the same time, **subsection (d)(1)(C)** preserves the capacity of district courts to enter tailored relief on behalf of individual plaintiffs. The amendment does not apply to an individual plaintiff, or even a group of individuals joined as plaintiffs, seeking prospective relief to prevent threatened illegality. What is more, potential plaintiffs who need immediate judicial relief may structure their lawsuits to avoid the automatic-stay provision by proceeding individually rather than as a class (or by seeking a targeted preliminary injunction while still proceeding as a class), and the proposed amendment thus incentivizes plaintiffs to seek narrower relief when the threat of harm is imminent.
- **Subsection (d)(2)** ensures that the automatic administrative stay applies only long enough for the court of appeals to rule on the underlying motion for a stay pending appeal. The automatic 14-day stay is no “longer than necessary to make an intelligent decision on the motion for a stay pending appeal,” *United States v. Texas*, 144 S. Ct. 797, 799 (2024) (Barrett, J., concurring), though a court of appeals that needs more or less time may extend the stay or terminate it early.

The Committee should consider several potential concerns about the amendment, which I raise and briefly address here:

- *Circuit shopping*. One factor that contributes to judicial orders blocking major government policies is forum shopping. This amendment might marginally reduce the incentive for litigants to select a favorable district court, but litigants will still have an incentive to select a favorable circuit. But shifting decision-making responsibility from district courts to the courts of appeals should still reduce the benefits of forum-shopping, because the issues will be resolved by randomly selected panels of judges. Although the incentive to select a favorable district and circuit will remain, it would not be possible to eliminate that incentive without more radical changes to the federal system.
- *Automatic stays in the district court*. The amendment contemplates that the automatic stay will be entered by the court of appeals instead of the

other avenues to the same endpoint, including ‘complete relief’ injunctions, universal remedies under the APA and other statutes, class actions, and relief based on associational and state standing.”).

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district court. One concern might be that the automatic stay should be issued, if at all, by the district court instead. But there are several reasons to consider an amendment to FRAP. First, the amendment to FRAP requires an administrative stay only if the government defendant chooses to appeal and to file a motion for a stay pending appeal, thus ensuring that the automatic-stay provision applies only if the matter is significant enough that the defendant chooses to seek appellate review. Second, one of the amendment's aims is to ensure that the court of appeals has adequate time to resolve the underlying motion for a stay. As written, the timeline for this administrative stay begins when a motion for a stay pending appeal has been filed. Third, the automatic-stay provision also permits the court of appeals to terminate the stay by order, which couples a bright-line rule imposing an administrative stay with case-by-case discretion for the court of appeals. A district court that has just entered an order blocking a government policy, and which has authority to terminate an automatic stay on a case-by-case basis, might be particularly inclined to terminate that administrative stay—which would defeat the purpose of the amendment. Thus, an amendment to FRAP seems preferable.

- *Erroneous automatic stays.* **Subsection (d)(1)** would require the circuit clerk to enter an administrative stay if the “movant certifies” that the conditions have been met. An automatic stay conditioned upon the movant’s certification implements the bright-line default rule requiring automatic stays. One risk of this mandatory approach is that movants will erroneously certify that the district court’s order should be stayed. But the risk is low. First, the automatic stay is designed to expire automatically in relatively short order. Second, if the automatic stay has been entered erroneously, the court of appeals may terminate the administrative stay by order. Third, the court of appeals may sanction lawyers or parties for flagrant abuses of the automatic-stay provision. *See Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).
- *The APA “set aside” remedy.* The proposed amendment applies to the remedy of vacatur under the APA, but only if vacatur is entered on behalf of plaintiffs identified in **subsection (d)(1)(C)**. Under the current understanding of the APA, however, courts may vacate agency action entirely even for individual plaintiffs. *See Corner Post v. Board of Governors*, 144 S. Ct. 2440, 2462-2463 (2024) (Kavanaugh, J., concurring). Accordingly, some vacatur orders will effectively block agency rules but will not fall within the scope of the proposed amendment. A potential alternative, which the Committee might consider, would be to apply the automatic-stay provision to all APA remedies—irrespective of the limitations in **subsection (d)(1)(C)**.

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Though that approach could arguably make the amendment over-inclusive, the amendment would still apply only to claims brought in federal district court – not to agency action challenged first in the courts of appeals.

- *Multidistrict litigation.* The amendment could encourage plaintiffs who would have sought relief as a class or in a claim brought by an association to proceed instead as individual plaintiffs. If so, parties might seek to consolidate the claims using the multidistrict litigation statute. See 28 U.S.C. § 1407; Andrew D. Bradt & Zachary D. Clopton, *MDL v. Trump: The Puzzle of Public Law in Multidistrict Litigation*, 112 NW. U. L. REV. 905 (2018). The decision whether to consolidate would fall to the Judicial Panel on Multidistrict Litigation, but consolidation would also ameliorate the problem of forum-shopping, because the JPML selects the district where consolidated proceedings will occur.

* * *

The proposed amendment to FRAP 8 would ensure that the courts of appeals could review most district court orders that block major government policies before those orders go into effect. The automatic administrative stay, however, would operate only long enough for the court of appeals to review the underlying motion for a stay pending appeal. And the proposed amendment would allow district courts to immediately enter relief that is tailored to protect individuals (or groups of individuals) threatened with imminent harm from illegal government action.

I hope this is helpful to you. Please do not hesitate to contact me if there is more information that I can provide, and thank you for your time and attention.

Respectfully,



E. Garrett West

cc: Carolyn A. Dubay, Secretary
 Committee on Rules of Practice and Procedure

TAB 7

TAB 7A

MEMORANDUM

TO: Advisory Committee on Appellate Rules
FROM: Stephen E. Sachs
DATE: September 11, 2026
RE: **Improving Appendices**

For many years now, the committee has repeatedly considered and then postponed an agenda item on improving appendices. At one point a subcommittee was formed to address the concern that appendices tended to be too long and to include too much irrelevant information.

At the April 2018 meeting, the hope was expressed that the problem might one day be solved by changing technology, with briefs citing to an electronic appendix or to the electronic record of the district court. The Committee decided to revisit the matter in three years.

In April 2021, the Committee again discussed the issue, choosing again to revisit it three years later. See Meeting Minutes 19 (Apr. 2021).

When the issue arose again in April 2024, see Agenda Book 248 (Apr. 2024), it was resolved that a survey of circuit practice ought to be conducted before the issue were discussed again. See Meeting Minutes 18 (Apr. 2024). Amid the transition of chairs and clerk representatives, the survey plan may have been lost in the shuffle. (Relevant portions of the minutes of the April 2021 and 2024 meetings, together with the April 2024 memorandum, are attached.)

“Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried,” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) (Scalia, J., concurring in the judgment), the issue has now returned. See Agenda Book 18 (Apr. 2026) (“To be discussed F26”).

As in 2024, it seems that the committee might choose to:

- (1) form another subcommittee to address the issue;
- (2) return to the issue at a future meeting; or
- (3) remove the issue from the agenda.

~~to Civil Rule 60 that would require Rule 60 motions to be made within 28 days to toll the time to appeal and deleting the 28-day provision from Appellate Rule 4(a)(4).~~

~~The Reporter recommended that this suggestion be removed from the agenda. Some time limits run from the date of service, but other time limits run from some other event. The extra three-day provision applies only to the former. The time to file motions that toll the time to appeal runs from the date of entry of the judgment, not the date of service. Changing any of the deadlines that run from entry of judgment to deadlines that run from service would be a major shift and require considerable reworking of various rules, and there does not seem to be reason to do so. The provision in Rule 4(a)(4) for Rule 60 motions is not designed to encourage Rule 60 motions to be brought within 28 days of judgment, but to treat Rule 60 motions filed within 28 days of judgment like other post-judgment motions.~~

~~The Committee agreed unanimously to remove this suggestion from the agenda.~~

~~C. IFP Forms (21-AP-B)~~

~~The Reporter introduced Sai's response to the IFP subcommittee's September 2020 report; the response has been docketed as a new suggestion. (Agenda book page 233). The Reporter suggested that it be referred to the IFP subcommittee, and this was done without objection.~~

VIII. Old Business

The Reporter stated that in April of 2018 the Committee had decided to table consideration of possible changes to appendices but revisit the matter in three years. (Agenda book page 245). The concern was that appendices were too long and included much irrelevant information. The hope was that technology would solve the problem. He suggested that the Committee had three options at this point: 1) Re-form a subcommittee to address the issue; 2) Wait longer to return to the issue, perhaps on the theory that it is better addressed once a new post-pandemic normal is reached; or 3) Remove the issue from the agenda.

An academic member reported that the frustration that practicing lawyers have with appendices has been raised on Twitter. Mr. Byron stated that he had advocated change in this area in the past but been dissuaded by the prior Clerk's representative on the Committee. Ms. Dwyer stated that the circuits have struggled with this for years. Some judges want an electronic brief; others want paper. The practice in the Fifth Circuit may be best. There, the district court produces an enormous PDF that is placed on a site at the court of appeals; parties are required to cite to that location with hyperlinks. It requires lots of cooperation by district courts.

In response to a question by a judge member, Ms. Dwyer said that the PDF is searchable.

A judge member stated that he loves electronic briefs with hyperlinks. It's a lot easier to carry his iPad than 45 pounds of paper. He has bench memos prepared with hyperlinks to the record. Older judges resist, but it's a matter of time.

Mr. Byron raised a slightly different issue: procedures for designating and producing the appendix. Well before electronic filing, practice in the Fifth Circuit involved a literal box of papers with deferred designation of the appendix. In the Sixth Circuit, citation is directly to the district court electronic record. There is a disuniformity problem; there will be resistance to changing from one's own way of doing things until we can abandon designation and simply use the electronic record. A technological fix can let us abandon the old ways. He suggested revisiting the issue in another three years.

Ms. Dwyer added that upgrades to ECF are being discussed. The practical problem is wild over-designation. The designation task should not be given to the lowest paid person in the office.

A judge member stated that in the Eleventh Circuit there is a full electronic record on appeal. One problem is getting the district courts to scan everything; things are missing, such as trial exhibits. And the different approaches by judges is not only age-based. Two new judges want paper versions.

A judge member stated that the transition to electronic records has been seamless in the Sixth Circuit. Judges who want paper were given printers and told to print.

Mr. Byron suggested that this should be considered with CACM, IT, and district judges.

The Committee agreed to revisit the issue again in another three years.

~~IX. Review of Impact and Effectiveness of Recent Rule Changes~~

~~The issue we have been watching is whether courts of appeals are still requiring proof of service despite the 2019 amendment to Rule 25(d) to no longer require proof of service for documents that are electronically filed. Mr. Byron stated that it is still happening. We will get a list from Mr. Byron of which courts continue to do so and figure out a course of action.~~

~~X. New Business~~

~~No member of the Committee presented any new business.~~

To: Advisory Committee on the Federal Rules of Appellate Procedure

From: Edward Hartnett, Reporter

Re: Improving Appendices

Date: March 6, 2024

The minutes of the April 2018 meeting of the Committee reflect that a subcommittee had previously been formed to investigate the problem of appendices being too long and including much irrelevant information. At that meeting, the Committee decided that, with changing technology, the problem might be solved by electronic appendices and briefs that cite to the electronic record of the district court.

Accordingly, the Committee decided to remove this matter from the agenda but revisit the matter in three years.

In the spring of 2021, the Committee discussed the issue, focusing on the range of practices across the circuits and the likely resistance to any change until there is no need to designate items for inclusion in an appendix because briefs could simply link to the electronic record. The Committee agreed to revisit the issue again in another three years. The relevant minutes follow this memo.

Three more years have now elapsed. I suggest that the question for the Committee is largely the same as it was three years ago, that is, whether to:

- 1) Re-form a subcommittee to address the issue;
- 2) Wait still longer to return to the issue; or
- 3) Remove the issue from the agenda.

~~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. Old Business

The Reporter stated that in the spring of 2018, the Committee had decided not to act on a concern that appendices were too long and contained irrelevant information and to put the matter off for three years in the hope that changing technology might solve the problem with briefs that cite to the electronic record of the district court. In the spring of 2021, the Committee again put the matter off for three years for similar reasons. Three more years have gone by. The Reporter suggested that the Committee decide whether to form a subcommittee to address the issue, put it off again, or remove the matter from the agenda, leaving it to anyone who chooses to raise the issue again in the future.

Ms. Dwyer stated that the easily produced electronic record isn't easily produced. The Fifth Circuit appears to be most successful. There, district courts are required to create an electronic record and store it on SharePoint so the parties have access to it. But district courts in the Ninth Circuit have been less cooperative. In the Second and Ninth Circuits, there may be a new case management system built that could help. A modern cloud-based system is in the works at the AO, but it is still a couple of years off.

A judge member noted his great appreciation for the level of professionalism of Ms. Dwyer and the Clerk of his court. He's been a federal judge for 20 years and has never worked on paper. With a new filing system coming, this might be premature. He suggested that he speak to them and report back at a future meeting. Ms. Dwyer noted the resistance of solo practitioners.

A lawyer member noted differences in the practices in different circuits. When creating an appendix in the Seventh Circuit, think about what you would want the judges to have with them on the train to read. In the Second Circuit, an appendix might take up an entire shelf in an office. Risk averse lawyers over include, making it useless. If it's a substitute for the entire record, it's large and unwieldy. Just cite the ECF number. Having to create hyperlinks is a tremendous headache and very costly because of the time needed to check them. That would be a real barrier for self-represented litigants. A judge member suggested keeping an eye on the issue; maybe in the future we can just use the district court docket. Bookmarks in a PDF let him get to significant documents.

Ms. Dwyer stated that a major issue is who creates the electronic record: the lawyer, the district court, the court of appeals? There is too much divergence if done by lawyers. The Fifth Circuit does it best, with district courts doing it, enabling the briefs to link to the record.

A judge member stated that until we are further along electronically, the circuits will vary. The Court of Appeals for the Fifth Circuit bludgeoned the district courts. Mr. Freeman added that in the Fifth Circuit, so long as one uses the precisely specified citation format, software generates the hyperlinks. In the Sixth Circuit, one cites directly to the ECF; he wonders what that is like on the user end.

Judge Bybee asked Ms. Dwyer to do a survey of the circuits for the next meeting. A judge member offered his help. At a future meeting, we may create a subcommittee or postpone it again for a few more years, but for now, let's get a little bit more information.

~~IX. New Business~~

~~No member of the Committee raised new business.~~

~~X. Adjournment~~

~~Judge Bybee announced that the next meeting will be held on October 9, 2024, in Washington, D.C.~~

~~Judge Bates thanked Judge Bybee, noting that it would probably be Judge Bybee's last meeting. Judge Bates added that Judge Bybee had done a fantastic job and urged him to stay in touch.~~

~~Judge Bybee said that it was an honor to be a part of this Committee. He said that he would give his standard closing this one last time. He thanked everyone, noting that these are expensive meetings in that people put in a lot of time that they could use to do other things. But it is important. Litigation can impose great costs. If we can save some of those costs, then every minute we spend with this Committee is well worth it.~~

~~The Committee adjourned at approximately 1:30 p.m., with applause for Judge Bybee.~~