

March 4, 2026

Carolyn A. Dubay, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, D.C. 20544

Re: Suggestion concerning pending proposal to amend Federal Rule of Appellate Procedure 4.

Dear Ms. Dubay:

I am a law student at the University of Pennsylvania Carey Law school, and I write to provide a recommendation for the committee regarding the Rule 4 draft language set out in the December 12, 2025, report by the Advisory Committee on Appellate Rules to the Committee on Rules of Practice and Procedure.

Recently, the Advisory Committee considered a suggestion to look into reopening the time to appeal under Rule 4(a)(6). Following that suggestion, the Supreme Court decided *Parrish v. United States*, 145 S. Ct. 1664 (2025), holding that:

A notice of appeal filed after the original deadline but before reopening is late with respect to the original appeal period, but merely early with respect to the reopened one. Precedent teaches that a premature notice of appeal, if otherwise adequate, relates forward to the date of the order making the appeal possible. So, a notice filed before reopening relates forward to the date reopening is granted, making a second notice unnecessary.

I agree with the Advisory Committee that all would benefit from clarity regarding both parts of *Parrish*'s holding.

The language currently under consideration reads as follows:

If the court grants the motion to reopen, a party who has already filed an otherwise-adequate notice of appeal need not file a new notice of appeal. A document—even if it serves other purposes—may be construed as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court.

Putting aside the question of whether the second portion of the proposed language belongs in Rule 3 or 4, the language itself elegantly captures the holding of *Parrish* while providing clarity for everyday litigants.

That said, absent from the proposed language is a discussion of when the notice of appeal becomes effective. I therefore think the proposed rule would benefit from language that clarifies the point at which the previously-filed notice of appeal becomes effective. Rule 4(a) already addresses the question of the notice's effective date in two other contexts: Rule

4(a)(2) provides that “[a] notice of appeal filed after the court announces a decision or order—but before the entry of the judgement or order—is treated as filed on the date of and after the entry,” and Rule 4(a)(4)(B) provides that “[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” Clarity concerning the time when the notice becomes effective is important because it marks the transfer of jurisdiction from the district court to the court of appeals.

For example:

The previously-filed notice of appeal becomes effective [on the date of and after] [upon] entry of the order granting reopening.

Language to this effect would further codify the *Parrish* holding. Absent this language, litigants—unsophisticated and sophisticated alike—may begin to wonder when the document, construed as a notice of appeal, becomes effective. Amending the rule to note the point at which the document becomes effective would bring litigants clarity and put the matter to bed.

Further, to the extent that it’s helpful, the *Parrish* holding consists of two parts: 1) an interpretive rule that allows a document serving other functions to be construed as a notice of appeal; and 2) a relation forward rule, finding that such a document relates forward to the order that reopens the time to file an appeal.

In my view, the second sentence of the language under consideration (“A document—even if it serves other purposes—may be construed as a notice of appeal if it makes clear who is appealing, from what judgment, and to which appellate court.”), or the first part of the *Parrish* holding set out above, is a matter of content. That is, it addresses whether and to what extent a document satisfies notice of appeal requirements. To that end, the second sentence of the proposed language is textbook for Rule 3, but foreign as to Rule 4. As such, I believe the second sentence is more properly placed in Rule 3.

That in turn raises the question of how to amend Rule 4. After putting the second sentence in Rule 3. I think a precise and apt solution would be a cross reference. Observe:

If the court grants the motion to reopen, a party who has already filed a notice of appeal that complies with Rule 3(c) need not file a new notice of appeal. The previously-filed notice of appeal becomes effective [on the date of and after] [upon] entry of the order granting reopening.

An amendment of this nature would both codify the *Parrish* holding and recognize that there are many situations outside of reopening in which a document may functionally serve as a notice of appeal even if not filed as such in the first instance.

Ultimately, I urge the Committee to endorse an amendment to Rule 4 that codifies the *Parrish* holding. In particular, the Committee should consider adding language that codifies the relation forward part of the holding and language that informs litigants of the point at which the document that relates forward becomes effective. Such a change would further support the principle that technical defects should not prejudice an otherwise adequate notice of appeal and would be more accessible than Supreme Court opinions. Thank you for taking the time to consider my views.

Respectfully submitted,

Devin N. Wesenberg