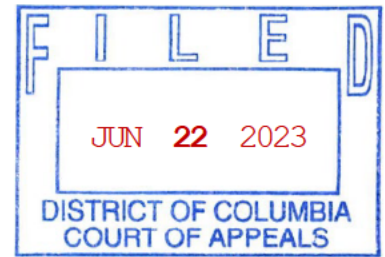


**District of Columbia  
Court of Appeals**



**No. M280-23**

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly, McLeese, Deahl, Howard, AliKhan, and Shanker, Associate Judges.

**NOTICE**

(FILED – June 22, 2023)

Pursuant to D.C. Code § 11-743, this court must conduct its business according to the Federal Rules of Appellate Procedure, unless the court adopts or prescribes modifications of those rules. Amendments to the Federal Rules of Appellate Procedure have been approved and are scheduled to go into effect in December 2023. Once they go into effect, the amendments would become rules of this court, unless this court decides otherwise. The amendments and related materials are attached to this notice.

The first amendment adds language to Fed. R. App. P. 2 to address situations in which the Judicial Conference of the United States declares an appellate rules emergency. In this jurisdiction, the authority to suspend the appellate rules in case of emergency is vested in the Chief Judge of the Court of Appeals and the Joint Committee on Judicial Administration. D.C. Code § 11-745. The court therefore is considering not adopting this amendment.

The second amendment is to Fed. R. App. P. 4 and is intended to make that rule work well with Emergency Civil Rule 6(b)(2). The Superior Court of the District of Columbia does not have such an emergency rule. The court therefore is considering not adopting this amendment.

The final amendment is to Fed. R. App. P. 26(a)(6)(A) and 45(a)(2), to add Juneteenth National Independence Day to the list of holidays. The court is considering adopting this amendment in revised form, to (1) add Juneteenth National Independence Day and D.C. Emancipation Day to the list of legal holidays in D.C. App. R. 26(a)(4); and (2) add a full list of legal holidays to D.C. App. R. 45(a).

Clean and track-changes versions of the rules reflecting those possible amendments are attached.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Comments must be submitted by Monday August 21, 2023. Comments may be submitted electronically to [rules@dcappeals.gov](mailto:rules@dcappeals.gov), or in writing, addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.

**PER CURIAM**

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## **Rule 26. Computing and Extending Time.**

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any order of this court or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless an applicable statute or order of this court expressly provides otherwise, or unless the period is stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or — if the act to be done is the filing of a paper in court — a day on which the weather or other conditions cause the Clerk’s office to be closed.

(4) As used in this rule, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day, [District of Columbia Emancipation Day](#), Memorial Day, [Juneteenth National Independence Day](#), Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time:

(1) to file a notice of appeal (except as authorized in Rule 4) or an application for allowance of appeal; or

(2) to file a petition for review; or

(3) for doing any act when the time for doing the act has been prescribed by statute.

(c) Additional Time After Certain Kinds of Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 5 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26 (c), a paper that is served electronically is treated as delivered on the date of service stated in the proof of service. Rule 26 (c) does not apply when an order of this court prescribes the time in which a party is required or permitted to act.

## **Rule 45. Clerk's Duties.**

(a) When Court is Open. The Clerk's office will be open during business hours on all days except Saturdays, Sundays, and legal holidays, including New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, District of Columbia Emancipation Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia. The Court of Appeals is always open to accept the filing of any paper related to an appeal and to consider and dispose of emergency matters.

### **(b) Records.**

(1) The Docket. The Clerk must make entries in appropriate dockets and records of all papers and documents filed with, and orders issued by, the court, and of all proceedings of the court. Cases must be assigned consecutive docket numbers.

(2) Receipt and Disbursement of Funds. The Clerk must receive and keep proper accounts of all monies deposited or paid into or out of the Clerk's office, and must make all reports concerning these accounts as may be required by law or directed by the court.

(c) Notice of an Order or Judgment. Upon entry of an order or judgment, the Clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The Clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the Clerk must not permit an original record or paper to be taken from the Clerk's office by any person not an employee of the District of Columbia Courts. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The Clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

## **Rule 26. Computing and Extending Time.**

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(4) As used in this rule, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day, District of Columbia Emancipation Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

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(2) to file a petition for review; or

(3) for doing any act when the time for doing the act has been prescribed by statute.

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April 24, 2023

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Appellate Procedure are amended to include amendments to Rules 2, 4, 26, and 45.

[*See infra* pp. — — —.]

2. The foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2023, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

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

**Rule 2. Suspension of Rules**

(a) **In a Particular Case.** On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(b) **In an Appellate Rules Emergency.**

(1) **Conditions for an Emergency.** The Judicial Conference of the United States may declare an Appellate Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

- (2) **Content.** The declaration must:
  - (A) designate the circuit or circuits affected; and
  - (B) be limited to a stated period of no more than 90 days.
- (3) **Early Termination.** The Judicial Conference may terminate a declaration for one or more circuits before the termination date.
- (4) **Additional Declarations.** The Judicial Conference may issue additional declarations under this rule.
- (5) **Proceedings in a Rules Emergency.** When a rules emergency is declared, the court may:
  - (A) suspend in all or part of that circuit any provision of these rules, other than time limits imposed by statute

and described in Rule 26(b)(1)-(2);

and

(B) order proceedings as it directs.

**Rule 4. Appeal as of Right—When Taken****(a) Appeal in a Civil Case.****(1) Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

\* \* \* \* \*

**(4) Effect of a Motion on a Notice of Appeal.**

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the

entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
  - (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
  - (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
  - (iv) to alter or amend the judgment under Rule 59;
  - (v) for a new trial under Rule 59;
- or

- (vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.

\* \* \* \* \*

**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;

\* \* \* \* \*



**Rule 45. Clerk's Duties****(a) General Provisions.**

(1) **Qualifications.** The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than 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, and Christmas Day.

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