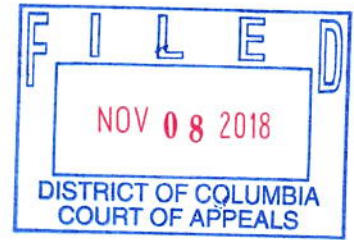


**District of Columbia
Court of Appeals**



No. M-262-18

ORDER and NOTICE
(FILED – November 8, 2018)

Pursuant to D.C. Code § 11-743 (2012 Repl.), this court must conduct its business according to the Federal Rules of Appellate Procedure (FRAP), unless the court adopts or prescribes modifications of those rules. The Supreme Court has approved a number of amendments to the FRAP effective December 1, 2018. This court has reviewed those amendments. As a result of that review, the court now sends out the following proposed amendments for public notice and comment. The court also hereby stays the effect of the 2018 FRAP amendments pending further order of the court.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Comments must be submitted by December 8, 2018. Comments may be submitted electronically to 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.

The amendments to FRAP 8, 11, and 39 eliminate the use of the term *supersedeas*, apparently because that term has been eliminated from the Federal Rules. The Superior Court Rules still use the term. *See* Super. Ct. Civ. R. 62-I. This court therefore proposes to not adopt these FRAP amendments.

The amendments to FRAP 25 and 26 relate to e-filing, to conform to Fed. R. Civ. P. 5 on that topic. This court has its own administrative order on e-filing, so the court proposes not to adopt these FRAP amendments.

The court also proposes not to adopt the amendment to FRAP 28.1, both because this court does not have a Rule 28.1 and because the court already grants 21 days to file a reply brief. D.C. App. R. 31 (a).

With a slight wording change to reflect the fact that we are a single court rather than one of the federal courts of appeals, the court proposes to adopt the amendment

to FRAP 29, which grants courts the authority to refuse to permit the filing of an amicus brief that would cause the disqualification of a judge.

The amendment to FRAP 31 extends the time period to file a reply brief to 21 days. As noted previously, that is already our rule, so the court proposes not to adopt this amendment.

Finally, the amendments to FRAP 41 make four changes: (1) clarifying that a stay of the mandate requires an order of the court; (2) eliminating Rule 41(d)(1) as redundant; (3) providing that a stay of the mandate pending a petition for writ of certiorari is extended automatically if the time within which to file the petition is extended; and (4) providing that if certiorari is denied the mandate must issue immediately upon receipt of the order denying certiorari, barring extraordinary circumstances. The court proposes to adopt three of these proposed amendments. The court does not propose to eliminate D.C. App. R. 41 (d)(1), which is not redundant given the difference between the Federal Rules of Appellate Procedure and the rules of this court.

The proposed amendments to D.C. App. R. 29 and 41 also reflect a number of stylistic and formatting changes.

Clean and red-line versions of the FRAP amendments are attached, as are clean and red-line versions of the amendments the court proposes to make to D.C. App. R. 29 and 41.

Rule 29. Brief of an Amicus Curiae

(a) DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS.

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

(2) *When Permitted.* The United States or the District of Columbia, or an officer or agency of either, or a state, territory, commonwealth, or political subdivision thereof, 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, but the court may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

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

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) *Contents and Form.* An amicus brief must comply with Rule 32. Additionally, the title page or cover must contain the information required by Rule 28 (a)(1), identify the party or parties supported, and indicate whether the brief supports affirmance or reversal. An amicus brief need not otherwise comply with Rule 28, but must include the following:

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

(B) a table of contents, with page references;

(C) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited, and with an asterisk designating the cases chiefly relied upon;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review.

(5) *Length.* Except by the court's permission, an amicus brief may not exceed 25 pages.

(6) *Time for Filing.* An amicus curiae must file its brief, accompanied by a motion for filing

when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) *Reply*. Except by the court's permission, an amicus curiae may not file a reply brief.

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

(b) DURING CONSIDERATION OF WHETHER TO GRANT REHEARING.

(1) *Applicability*. Rule 29 (b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc.

(2) *When Permitted*. The United States or the District of Columbia, or an officer or agency of either, or a state, territory, commonwealth, or political subdivision thereof, 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.

(3) *Motion for Leave to File*. Rule 29 (a)(3) applies to a motion for leave.

(4) *Contents, Form, and Length*. Rule 29 (a)(4) applies to the amicus brief. The brief must not exceed 10 pages.

(5) *Time for Filing*. An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

Rule 29. Brief of an Amicus Curiae.

(a) ~~During Initial Consideration of a Case on the Merits~~ DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS.

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

(2) *When Permitted.* The United States or the District of Columbia, or an officer or agency ~~thereof~~ either, or a ~~S~~state, ~~T~~territory, ~~C~~commonwealth, or political subdivision thereof, may file an amicus ~~curiae~~ 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, but the court may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

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

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) *Contents and Form.* An amicus brief must comply with ~~Rule 28 (a)(1) and~~ Rule 32. Additionally, the title page or cover must contain the information required by Rule 28 (a)(1), identify the party or parties supported, and indicate whether the brief supports affirmance or reversal. ~~If the amicus curiae is a corporation or partnership, the brief must include the disclosure statement required of the parties by Rule 26.1.~~ An amicus brief need not otherwise comply with Rule 28, but must include the following:

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

(B) a table of contents, with page references;

~~(C)~~ a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited, and with an asterisk designating the cases chiefly relied upon;

~~(D)~~ a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

~~(E)~~ an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review.

(5) *Length.* Except by the court's permission, an amicus brief may not exceed 25 pages.

(6) *Time for Filing.* An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) *Reply.* Except by the court's permission, an amicus curiae may not file a reply brief.

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

(b) ~~During Consideration of Whether to Grant Rehearing~~ DURING CONSIDERATION OF WHETHER TO GRANT REHEARING.

(1) *Applicability.* ~~This~~ Rule 29 (b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc.

(2) *When Permitted.* The United States or the District of Columbia, or an officer or agency ~~thereof either,~~ or a ~~S~~state, ~~T~~territory, ~~C~~commonwealth, or political subdivision thereof, may file an amicus ~~curiae~~ brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) *Motion for Leave to File.* Rule 29 (a)(3) applies to a motion for leave.

(4) *Contents, Form, and Length.* Rule 29 (a)(4) applies to the amicus brief. The brief must not exceed 10 pages.

(5) *Time for Filing.* An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay; Remand; Recall; and Disciplinary Matters

(a) CONTENTS. The mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) WHEN ISSUED. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for division rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) EFFECTIVE DATE. The mandate is effective when issued.

(d) STAYING THE MANDATE.

(1) *On Petition for Rehearing or Motion.* The timely filing of a petition for division rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending Petition for Certiorari.*

(A) *Motion to Stay.* A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) *Duration of Stay; Extensions.* The stay must not exceed 90 days, unless the period is extended for good cause or the party who obtained a stay notifies the clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(C) *Security.* The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) *Issuance of Mandate.* The clerk must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

(3) *Consolidated Cases.* In cases consolidated on appeal, a petition filed by one party does not operate to stay the mandate as to any other party.

(e) REMAND. If the record in any case is remanded to the Superior Court or to an agency, this court retains jurisdiction over the case. If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the proceedings conducted on remand.

(f) RECALL OF THE MANDATE. Any motion to recall the mandate must be filed within 180 days from issuance of the mandate.

(g) DISCIPLINARY CASES. A mandate is not issued in a disciplinary case that is initiated in this court by a report and recommendation from the Board on Professional Responsibility. A disbarment or suspension from the practice of law is commenced as provided by the District of Columbia Bar Rules.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay; Remand; Recall; and Disciplinary Matters

(a) ~~Contents~~CONTENTS. The mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) ~~When Issued~~WHEN ISSUED. The court's mandate ~~will~~must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for division rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) ~~Effective Date~~EFFECTIVE DATE. The mandate is effective when issued.

(d) ~~Staying the Mandate~~STAYING THE MANDATE.

(1) *On Petition for Rehearing or Motion*. The timely filing of a petition for division rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending Petition for Certiorari*.

(A) Motion to Stay. A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) Duration of Stay; Extensions. The stay must not exceed 90 days, unless the period is extended for good cause or ~~unless~~ the party who obtained a stay ~~files a petition for the writ and so~~ notifies the ~~C~~clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in ~~that~~ which case, the stay continues until the Supreme Court's final disposition.

(C) Security. The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) Issuance of Mandate. The ~~C~~clerk must issue the mandate immediately ~~when on receiving~~ a copy of a Supreme Court order denying the petition ~~for writ of certiorari is filed, unless~~ extraordinary circumstances exist.

(3) *Consolidated Cases*. In cases consolidated on appeal, a petition filed by one party does not operate to stay the mandate as to any other party.

(e) ~~Remand~~REMAND. If the record in any case is remanded to the Superior Court or to an agency, ~~this~~e court retains jurisdiction over the case. If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the proceedings conducted on remand. ~~See Bell v. United States, 676 A.2d 37 (D.C. 1996).~~

(f) ~~Recall of the Mandate~~RECALL OF THE MANDATE. Any motion to recall the mandate must be filed within 180 days from issuance of the mandate.

(g) ~~Disciplinary Cases~~DISCIPLINARY CASES. ~~No~~A mandate ~~willis not~~is not issued d in ~~any~~any disciplinary case that is initiated in this court by a report and recommendation from the Board on Professional Responsibility. ~~Any~~any disbarment or suspension from the practice of law ~~willis~~is commenced d as provided by the District of Columbia Bar Rules.