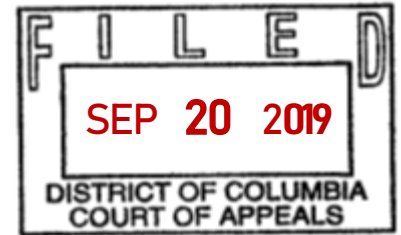


**District of Columbia  
Court of Appeals**



No. M-265-19

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, Thompson,  
Beckwith, Easterly, and McLeese, Associate Judges.

**ORDER and NOTICE**  
(FILED – September 20, 2019)

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, 2019. 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 2019 FRAP amendments in this court 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 October 22, 2019. 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.

The 2019 FRAP amendments reflect a series of minor revisions to make the FRAP more compatible with e filing. The court is considering adopting some, but not all, of those minor revisions. The court also is considering incorporating the court's current e filing administrative order into the court's rules, as D.C. App. R. 25(a)(2)(B), with some minor formatting revisions. Finally, the court is considering requiring that all filings in Bar discipline matters be e filed.

The court also is considering adopting the amendment to FRAP 26.1 regarding disclosure of organizational victims.

The court is considering not adopting the remaining 2019 FRAP amendments.

Clean and red-line versions of the 2019 FRAP amendments are attached, as are clean and red-line versions of the amendments the court is considering making to D.C. App. R. 3, 25, and 26.1.

### **Rule 3. Appeal as of Right — How taken.**

\*\*\*\*\*

(d) Serving the Notice of Appeal.

(1) The Clerk of the Superior Court must serve notice of the filing of a notice of appeal by ~~mailing~~sending a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the Clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail or email addressed to the defendant at the defendant's last known address. The Clerk must promptly send a copy of the notice of appeal and of the docket entries to the Clerk of the Court of Appeals. The Clerk of the Superior Court must note, on each copy, the date when the notice was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4 (d), the Clerk of the Superior Court must also note the date when the Clerk docketed the notice.

(3) The failure of the Clerk of the Superior Court to serve notice does not affect the validity of the appeal. That Clerk must transmit to the Clerk of the Court of Appeals the names of the parties to whom copies have been ~~sentmailed~~ and the date of sendingmailing. Service is sufficient despite the death of a party or of the party's counsel.

### **Rule 3. Appeal as of Right — How taken.**

\*\*\*\*\*

#### **(d) Serving the Notice of Appeal.**

(1) The Clerk of the Superior Court must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the Clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail or email addressed to the defendant at the defendant's last known address. The Clerk must promptly send a copy of the notice of appeal and of the docket entries to the Clerk of the Court of Appeals. The Clerk of the Superior Court must note, on each copy, the date when the notice was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4 (d), the Clerk of the Superior Court must also note the date when the Clerk docketed the notice.

(3) The failure of the Clerk of the Superior Court to serve notice does not affect the validity of the appeal. That Clerk must transmit to the Clerk of the Court of Appeals the names of the parties to whom copies have been sent and the date of sending. Service is sufficient despite the death of a party or of the party's counsel.

## **Rule 25. Filing and Service.**

### **(a) ~~Filing~~FILING.**

(1) *Filing with the Clerk.* A paper required or permitted to be filed in this court must be filed with the ~~C~~clerk.

(2) *Filing: Method and Timeliness.*

#### ~~(A) Nonelectronic Filing.~~

~~(iA) In gGeneral.~~ For a paper not filed electronically, filing may be accomplished by mail addressed to the ~~C~~clerk, but filing is not timely unless the ~~C~~clerk receives the papers within the time fixed for filing.

~~(iiB) Inmate filing.~~ If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25-(a)(2)(B). A paper filed by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- ~~(+)~~ it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- ~~(+)~~ the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25-(a)(2)(~~AB~~)(ii).

~~(BC) Electronic Filing and Signing.~~ The following rules apply to electronic filing in this court.

~~(i) In General.~~ Except as otherwise provided by court rule or order, all documents filed in this court must be filed electronically under procedures established by the court. This requirement does not apply to case-initiating documents filed in this court, including notices of appeal, applications for allowance of an appeal, applications for permission to appeal, petitions for reinstatement, petitions for review, and petitions for writs, which all must be filed in paper form. Upon request of the court, the party filing a case-initiating document must promptly provide an electronic copy of the document, unless the party is not subject to efile requirements. All Bar discipline filings must be efiled.

~~(ii) Registration Requirement.~~ Except as provided in Rule 25(a)(2)(B)(iii), all attorneys making an appearance in a case in this court must register for the court's efile system under procedures established by the court.

~~(iii) Self-represented Parties Not Required to File Electronically.~~ A party who is representing himself or herself in a case, and who has not otherwise registered for the court's efile system, is not required to file documents electronically in that case. Such a party may choose to register for the court's efile system. A party who has registered for the court's efile system must file documents electronically.

~~(iv) Materials as to Which Electronic Filing Is Not Reasonably Feasible.~~ Exhibits, attachments, or appendix materials that are of a size, shape, or format that does not reasonably permit electronic filing, or that are illegible when put into an electronic format, may be filed in paper or other appropriate form.

~~(v) Format.~~ Documents filed electronically must be in a format approved by the court. Approved formats include PDF, RTF, TIFF, DOC, and DOCX. The court discourages (but does not prohibit) the submission of electronic files created by the scanning of paper documents. For reasons of image quality, the court prefers electronic files originating from word-processing software.

(vi) Signatures. The person under whose name and password a document is electronically filed must sign the document. A document may be signed either typographically, in the format “s/attorney’s name,” or by means of a scanned handwritten signature. All other necessary signatures must be provided either in one of the preceding formats or through a representation by the filer that other signatories have authorized the filer to sign on their behalf.

(vii) Same as a Written Paper. ~~A document~~paper filed by electronic means in compliance with this court’s rules and administrative orders constitutes electronically is a written paper for the purposes of ~~applying~~ these rules.

(viii) When Filed. An electronically filed document that was timely submitted and is accepted for filing will be deemed to have been filed at the time the document was submitted to the e filing system. Unless the court has set a different time for filing, a filed document that is submitted before midnight Eastern Time will be deemed timely filed on the date of filing. A document that is filed on a day when the court is closed will be deemed to have been filed on the next day on which the court is open.

(ix) Paper Copies. Except for expedited and emergency filings, only two paper copies of documents filed electronically must be submitted. The paper copies may, within two business days of filing, be either hand-delivered to the court or deposited in the mail for delivery to the court. Although emergency and expedited filings may be filed electronically, paper copies of emergency and expedited filings must also be submitted and served on the date of filing, as required by Rules 4(c), 25(c)(3), 27, and 28, except that the electronic filing shall be treated as the original for purposes of determining the number of copies that must be submitted.

(x) Consent to Electronic Service and Notice. Registration for the court’s e filing system constitutes consent to electronic service and notice of case-related documents and orders. For all parties who have consented to electronic service and notice, the corresponding electronic notice generated by the court’s e filing system constitutes personal service of a filed document or notice of a ruling. For any party who has not consented to electronic service, or for documents that are not filed electronically, service or notice must be effected in accordance with Rules 25, 31, and 36.

(xi) Exemption by Court. Upon showing of good cause, the court may exempt a party from otherwise applicable e filing requirements.

(xii) Technical Errors. A party whose document is not filed as a result of technical error may seek appropriate relief from the court. If the e filing system is unavailable for a substantial period on a given day so as to prevent filing on that day, any document filed the next available day will be deemed to have been filed on the day that the e filing system became unavailable.

(xiii) Proper Use of E filing System. The court’s e filing system may be used only for case-related purposes. All users of the court’s e filing system must comply with the procedures established by the court in this administrative order and in the terms and conditions for use of the e filing system.

(xiii) Ex Parte, Sealed, Expedited, and Emergency Filings. Any document being filed ex parte shall be so designated, shall be filed by paper copy in the Public Office of the court, and shall not be filed electronically. Other documents that are filed under seal may be filed electronically, but must be designated as being filed under seal, both when submitting the document to the e filing system and on the cover of the document itself. An expedited or emergency filing must be so designated, both when submitting the document to the e filing system and on the cover of the document itself.

(b) ~~Service of All Papers Required~~SERVICE OF ALL PAPERS REQUIRED. Unless a rule requires service by the ~~C~~clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) ~~Manner of Service~~MANNER OF SERVICE.

(1) ~~Nonelectronic~~Nonelectronic service may be any of the following:

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

(B) by mail;

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

~~(2D) Electronic. Electronic service of a paper may be made by sending it to a registered user through the court's electronic filing system or sending it by other~~ electronic means; ~~if that the party person to be being~~ served ~~consented~~s in writing.

~~(32) Request for Expedited or Emergency Consideration. A R~~requests for expedited or emergency consideration by this court must be personally served on all counsel and any party not represented by counsel.

~~(43) Expeditious Manner.~~ When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

~~(54) By Mail or Commercial Carrier.~~ Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

~~(5) When authorized to do so under this court's rules and administrative orders, a party may use the court's transmission equipment to make electronic service under Rule 25 (e)(1)(D).~~

(d) ~~Proof of Service~~PROOF OF SERVICE.

(1) In General. A paper presented for filing must contain either of the following:

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

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

(i) the date and manner of service;

(ii) the names of the persons served; and

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

(2) On or Affixed to the Paper Filed. Proof of service may appear on or be affixed to the papers filed.

(e) ~~Non-acceptance of Papers by Clerk~~NON-ACCEPTANCE OF PAPERS BY CLERK. If any paper is not accepted by the ~~C~~clerk for filing, the ~~C~~clerk must promptly notify the persons named in the certificate of service.

## **Rule 25. Filing and Service.**

### **(a) FILING.**

(1) *Filing with the Clerk.* A paper required or permitted to be filed in this court must be filed with the clerk.

(2) *Filing: Method and Timeliness.*

#### **(A) Nonelectronic Filing.**

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

(ii) *Inmate filing.* If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(B). A paper filed by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

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

(B) *Electronic Filing and Signing.* The following rules apply to electronic filing in this court.

(i) *In General.* Except as otherwise provided by court rule or order, all documents filed in this court must be filed electronically under procedures established by the court. This requirement does not apply to case-initiating documents filed in this court, including notices of appeal, applications for allowance of an appeal, applications for permission to appeal, petitions for reinstatement, petitions for review, and petitions for writs, which all must be filed in paper form. Upon request of the court, the party filing a case-initiating document must promptly provide an electronic copy of the document, unless the party is not subject to efilings requirements. All Bar discipline filings must be efiled.

(ii) *Registration Requirement.* Except as provided in Rule 25(a)(2)(B)(iii), all attorneys making an appearance in a case in this court must register for the court's efilings system under procedures established by the court.

(iii) *Self-represented Parties Not Required to File Electronically.* A party who is representing himself or herself in a case, and who has not otherwise registered for the court's efilings system, is not required to file documents electronically in that case. Such a party may choose to register for the court's efilings system. A party who has registered for the court's efilings system must file documents electronically.

(iv) *Materials as to Which Electronic Filing Is Not Reasonably Feasible.* Exhibits, attachments, or appendix materials that are of a size, shape, or format that does not reasonably permit electronic filing, or that are illegible when put into an electronic format, may be filed in paper or other appropriate form.

(v) *Format.* Documents filed electronically must be in a format approved by the court. Approved formats include PDF, RTF, TIFF, DOC, and DOCX. The court discourages (but does not prohibit) the submission of electronic files created by the scanning of paper documents. For reasons of image quality, the court prefers electronic files originating from word-processing software.



(vi) *Signatures*. The person under whose name and password a document is electronically filed must sign the document. A document may be signed either typographically, in the format “s/attorney’s name,” or by means of a scanned handwritten signature. All other necessary signatures must be provided either in one of the preceding formats or through a representation by the filer that other signatories have authorized the filer to sign on their behalf.

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

(viii) *When Filed*. An electronically filed document that was timely submitted and is accepted for filing will be deemed to have been filed at the time the document was submitted to the efilings system. Unless the court has set a different time for filing, a filed document that is submitted before midnight Eastern Time will be deemed timely filed on the date of filing. A document that is filed on a day when the court is closed will be deemed to have been filed on the next day on which the court is open.

(ix) *Paper Copies*. Except for expedited and emergency filings, only two paper copies of documents filed electronically must be submitted. The paper copies may, within two business days of filing, be either hand-delivered to the court or deposited in the mail for delivery to the court. Although emergency and expedited filings may be filed electronically, paper copies of emergency and expedited filings must also be submitted and served on the date of filing, as required by Rules 4(c), 25(c)(3), 27, and 28, except that the electronic filing shall be treated as the original for purposes of determining the number of copies that must be submitted.

(x) *Consent to Electronic Service and Notice*. Registration for the court’s efilings system constitutes consent to electronic service and notice of case-related documents and orders. For all parties who have consented to electronic service and notice, the corresponding electronic notice generated by the court’s efilings system constitutes personal service of a filed document or notice of a ruling. For any party who has not consented to electronic service, or for documents that are not filed electronically, service or notice must be effected in accordance with Rules 25, 31, and 36.

(xi) *Exemption by Court*. Upon showing of good cause, the court may exempt a party from otherwise applicable efilings requirements.

(xii) *Technical Errors*. A party whose document is not filed as a result of technical error may seek appropriate relief from the court. If the efilings system is unavailable for a substantial period on a given day so as to prevent filing on that day, any document filed the next available day will be deemed to have been filed on the day that the efilings system became unavailable.

(xiii) *Proper Use of Efilings System*. The court’s efilings system may be used only for case-related purposes. All users of the court’s efilings system must comply with the procedures established by the court in this administrative order and in the terms and conditions for use of the efilings system.

(xiv) *Ex Parte, Sealed, Expedited, and Emergency Filings*. Any document being filed ex parte shall be so designated, shall be filed by paper copy in the Public Office of the court, and shall not be filed electronically. Other documents that are filed under seal may be filed electronically, but must be designated as being filed under seal, both when submitting the document to the efilings system and on the cover of the document itself. An expedited or emergency filing must be so designated, both when submitting the document to the efilings system and on the cover of the document itself.

(b) **SERVICE OF ALL PAPERS REQUIRED.** Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) **MANNER OF SERVICE.**

(1) *Nonelectronic.* Nonelectronic service may be any of the following:

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

(B) by mail;

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

(2) *Electronic.* Electronic service of a paper may be made by sending it to a registered user through the court's electronic filing system or sending it by other electronic means that the person to be served consented in writing.

(3) *Request for Expedited or Emergency Consideration.* A request for expedited or emergency consideration by this court must be personally served on all counsel and any party not represented by counsel.

(4) *Expeditious Manner.* When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(5) *By Mail or Commercial Carrier.* Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) **PROOF OF SERVICE.**

(1) *In General.* A paper presented for filing must contain either of the following:

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

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

(i) the date and manner of service;

(ii) the names of the persons served; and

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

(2) *On or Affixed to the Paper Filed.* Proof of service may appear on or be affixed to the papers filed.

(e) **NON-ACCEPTANCE OF PAPERS BY CLERK.** If any paper is not accepted by the clerk for filing, the clerk must promptly notify the persons named in the certificate of service.

**Rule 26.1. Corporate Disclosure Statement.**

(a) ~~Who Must File~~NONGOVERNMENTAL CORPORATION OR PARTNERSHIP. Any nongovernmental corporate party to a proceeding in this court 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. If a party is a partnership, the party must file a statement listing all partners, including silent partners. The same requirement applies to a partnership or nongovernmental corporation that seeks to intervene.

(b) ORGANIZATIONAL VICTIMS IN CRIMINAL CASES. In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation or partnership, the statement must also disclose the information required by Rule 26.1(a) to the extent that it can be obtained through due diligence.

(c) ~~Time for Filing; Supplemental Filing~~TIME FOR FILING; SUPPLEMENTAL FILING. A party must file the Rule 26.1-(a) statement with the principal brief or upon filing a motion, response, petition, or answer in this court, whichever occurs first. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1-(a) changes.

**Rule 26.1. Corporate Disclosure Statement.**

(a) **NONGOVERNMENTAL CORPORATION OR PARTNERSHIP.** Any nongovernmental corporate party to a proceeding in this court 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. If a party is a partnership, the party must file a statement listing all partners, including silent partners. The same requirement applies to a partnership or nongovernmental corporation that seeks to intervene.

(b) **ORGANIZATIONAL VICTIMS IN CRIMINAL CASES.** In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation or partnership, the statement must also disclose the information required by Rule 26.1(a) to the extent that it can be obtained through due diligence.

(c) **TIME FOR FILING; SUPPLEMENTAL FILING.** A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in this court, whichever occurs first. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

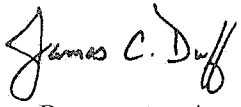
THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

October 24, 2018

## MEMORANDUM

To: Chief Justice of the United States  
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 3, 5, 13, 21, 25, 26, 26.1, 28, 32, and 39 of the Federal Rules of Appellate Procedure, which were approved by the Judicial Conference at its September 2018 session. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the May 2018 Report of the Advisory Committee on Appellate Rules.

Attachments

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

**Rule 3. Appeal as of Right—How Taken**

\* \* \* \* \*

**(d) Serving the Notice of Appeal.**

- (1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

**Rule 5. Appeal by Permission**

**(a) Petition for Permission to Appeal.**

- (1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.

\* \* \* \* \*

**Committee Note**

Subdivision (a)(1) is amended to delete the reference to "proof of service" to reflect amendments to Rule 25(d) that eliminate the requirement of a proof of service when service is completed using a court's electronic filing system.

**Rule 13. Appeals from the Tax Court**

**(a) Appeal as of Right.**

\* \* \* \* \*

- (2) **Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by sending it to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

\* \* \* \* \*

**Committee Note**

The amendment to subdivision (a)(2) will allow an appellant to send a notice of appeal to the Tax Court clerk by means other than mail. Other rules determine when a party must send a notice electronically or non-electronically.



**Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs**

**(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.**

- (1) A party petitioning for a writ of mandamus or prohibition directed to a court must file the petition with the circuit clerk and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

\* \* \* \* \*

- (c) Other Extraordinary Writs.** An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk and serving it on the respondents. Proceedings on the application must conform, so far as

is practicable, to the procedures prescribed in Rule 21(a) and (b).

\* \* \* \* \*

**Committee Note**

The term “proof of service” in subdivisions (a)(1) and (c) is deleted to reflect amendments to Rule 25(d) that eliminate the requirement of a proof of service when service is completed using a court’s electronic filing system.

**Rule 25. Filing and Service**

\* \* \* \* \*

**(d) Proof of Service.**

- (1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:
  - (A) an acknowledgment of service by the person served; or
  - (B) proof of service consisting of a statement by the person who made service certifying:
    - (i) the date and manner of service;
    - (ii) the names of the persons served; and
    - (iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

- (2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii)\*, the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.
- (3) Proof of service may appear on or be affixed to the papers filed.

\* \* \* \* \*

#### **Committee Note**

The amendment conforms Rule 25 to other federal rules regarding proof of service. As amended, subdivision (d) eliminates the requirement of proof of service or acknowledgment of service when service is made through a court's electronic-filing system. The notice of electronic filing generated by the court's system serves that purpose.

---

\* This anticipates adoption of the proposed amendment transmitted to Congress on April 26, 2018.

**Rule 26. Computing and Extending Time**

\* \* \* \* \*

**(c) Additional Time After Certain Kinds of Service.**

When a party may or must act within a specified time after being served, and the paper is not served electronically on the party or delivered to the party on the date stated in the proof of service, 3 days are added after the period would otherwise expire under Rule 26(a).

**Committee Note**

The amendment in subdivision (c) simplifies the expression of the current rules for when three days are added. In addition, the amendment revises the subdivision to conform to the amendments to Rule 25(d).

**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.
- (b) **Organizational Victims in Criminal Cases.** In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) **Bankruptcy Cases.** In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

- (1) identifies each debtor not named in the caption;
- and
- (2) for each debtor that is a corporation, discloses the information required by Rule 26.1(a).

(d) **Time for Filing; Supplemental Filing.** The Rule 26.1 statement must:

- (1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing;
- (2) be included before the table of contents in the principal brief; and
- (3) be supplemented whenever the information required under Rule 26.1 changes.

- (e) **Number of Copies.** If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, an original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

#### **Committee Note**

These amendments are designed to help judges determine whether they must recuse themselves because of an “interest that could be affected substantially by the outcome of the proceeding.” Code of Judicial Conduct, Canon 3(C)(1)(c) (2009).

Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene on appeal.

New subdivision (b) corresponds to the disclosure requirement in Criminal Rule 12.4(a)(2). Like Criminal Rule 12.4(a)(2), subdivision (b) requires the government to identify organizational victims to help judges comply with their obligations under the Code of Judicial Conduct. In some cases, there are many organizational victims, but the effect of the crime on each one is relatively small. In such cases, the amendment allows the government to show good cause to be relieved of making the disclosure statements because the organizations’ interests could not be “affected substantially by the outcome of the proceedings.”



New subdivision (c) requires disclosure of the names of all the debtors in bankruptcy cases, because the names of the debtors are not always included in the caption in appeals. Subdivision (c) also imposes disclosure requirements concerning the ownership of corporate debtors.

Subdivisions (d) and (e) (formerly subdivisions (b) and (c)) apply to all the disclosure requirements in Rule 26.1.

**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;

\* \* \* \* \*

**Committee Note**

The phrase "corporate disclosure statement" is changed to "disclosure statement" to reflect the revision of Rule 26.1.

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

\* \* \* \* \*

**(f) Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- cover page;
- disclosure statement;
- table of contents;
- table of citations;
- statement regarding oral argument;
- addendum containing statutes, rules, or regulations;
- certificate of counsel;
- signature block;
- proof of service; and
- any item specifically excluded by these rules or by local rule.

\* \* \* \* \*

### **Committee Note**

The phrase “corporate disclosure statement” is changed to “disclosure statement” to reflect the revision of Rule 26.1. The other amendment to subdivision (f) does not change the substance of the current rule, but removes the articles before each item because a document will not always include these items.

**Rule 39. Costs**

\* \* \* \* \*

**(d) Bill of Costs: Objections; Insertion in Mandate.**

- (1) A party who wants costs taxed must—within 14 days after entry of judgment—file with the circuit clerk and serve an itemized and verified bill of costs.

\* \* \* \* \*

**Committee Note**

In subdivision (d)(1) the words “with proof of service” are deleted and replaced with “and serve” to conform with amendments to Rule 25(d) regarding when proof of service or acknowledgement of service is required for filed papers.

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF APPELLATE PROCEDURE<sup>1</sup>**

1 **Rule 3. Appeal as of Right—How Taken**

2 \* \* \* \* \*

3 **(d) Serving the Notice of Appeal.**

4 (1) The district clerk must serve notice of the filing of  
5 a notice of appeal by ~~mailing~~sending a copy to  
6 each party's counsel of record—excluding the  
7 appellant's—or, if a party is proceeding pro se, to  
8 the party's last known address. When a defendant  
9 in a criminal case appeals, the clerk must also  
10 serve a copy of the notice of appeal on the  
11 defendant, ~~either by personal service or by mail~~  
12 ~~addressed to the defendant.~~ The clerk must  
13 promptly send a copy of the notice of appeal and

---

<sup>1</sup> New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF APPELLATE PROCEDURE

14 of the docket entries—and any later docket  
15 entries—to the clerk of the court of appeals named  
16 in the notice. The district clerk must note, on each  
17 copy, the date when the notice of appeal was filed.

18 (2) If an inmate confined in an institution files a  
19 notice of appeal in the manner provided by  
20 Rule 4(c), the district clerk must also note the date  
21 when the clerk docketed the notice.

22 (3) The district clerk’s failure to serve notice does not  
23 affect the validity of the appeal. The clerk must  
24 note on the docket the names of the parties to  
25 whom the clerk ~~mail~~sends copies, with the date  
26 of ~~mailing~~sending. Service is sufficient despite  
27 the death of a party or the party’s counsel.

28 \* \* \* \* \*

**Committee Note**

Amendments to Subdivision (d) change the words “mailing” and “mails” to “sending” and “sends,” and delete language requiring certain forms of service, to allow for electronic service. Other rules determine when a party or the clerk may or must send a notice electronically or non-electronically.



1 **Rule 5. Appeal by Permission**

2 **(a) Petition for Permission to Appeal.**

3 (1) To request permission to appeal when an appeal  
4 is within the court of appeals' discretion, a party  
5 must file a petition for permission to appeal. The  
6 ~~petition must be filed~~ with the circuit clerk with  
7 ~~proof of service~~ and serve it on all other parties to  
8 the district-court action.

9 \* \* \* \* \*

**Committee Note**

Subdivision (a)(1) is amended to delete the reference to "proof of service" to reflect amendments to Rule 25(d) that eliminate the requirement of a proof of service when service is completed using a court's electronic filing system.

1 **Rule 13. Appeals from the Tax Court**

2 (a) **Appeal as of Right.**

3 \* \* \* \* \*

4 (2) **Notice of Appeal; How Filed.** The notice of  
5 appeal may be filed either at the Tax Court clerk's  
6 office in the District of Columbia or by ~~mail~~  
7 ~~addressed~~sending it to the clerk. If sent by mail  
8 the notice is considered filed on the postmark  
9 date, subject to § 7502 of the Internal Revenue  
10 Code, as amended, and the applicable regulations.

11 \* \* \* \* \*

**Committee Note**

The amendment to subdivision (a)(2) will allow an appellant to send a notice of appeal to the Tax Court clerk by means other than mail. Other rules determine when a party must send a notice electronically or non-electronically.

1 **Rule 21. Writs of Mandamus and Prohibition, and**  
2 **Other Extraordinary Writs**

3 **(a) Mandamus or Prohibition to a Court: Petition,**  
4 **Filing, Service, and Docketing.**

5 (1) A party petitioning for a writ of mandamus or  
6 prohibition directed to a court must file at  
7 the petition with the circuit clerk ~~with proof of service~~  
8 and serve it on all parties to the proceeding in the  
9 trial court. The party must also provide a copy to  
10 the trial-court judge. All parties to the proceeding  
11 in the trial court other than the petitioner are  
12 respondents for all purposes.

13 \* \* \* \* \*

14 **(c) Other Extraordinary Writs.** An application for an  
15 extraordinary writ other than one provided for in  
16 Rule 21(a) must be made by filing a petition with the  
17 circuit clerk ~~with proof of service~~ and serving it on the  
18 respondents. Proceedings on the application must

19 conform, so far as is practicable, to the procedures  
20 prescribed in Rule 21(a) and (b).

21 \* \* \* \* \*

**Committee Note**

The term “proof of service” in subdivisions (a)(1) and (c) is deleted to reflect amendments to Rule 25(d) that eliminate the requirement of a proof of service when service is completed using a court’s electronic filing system.

1 **Rule 25. Filing and Service**

2 \* \* \* \* \*

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

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

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

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

11 (i) the date and manner of service;

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

13 (iii) their mail or electronic addresses,  
14 facsimile numbers, or the addresses of  
15 the places of delivery, as appropriate  
16 for the manner of service.

17 (2) When a brief or appendix is filed by mailing or  
18 dispatch in accordance with Rule 25(a)(2)(A)(ii)\*,  
19 the proof of service must also state the date and  
20 manner by which the document was mailed or  
21 dispatched to the clerk.

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

24 \* \* \* \* \*

**Committee Note**

The amendment conforms Rule 25 to other federal rules regarding proof of service. As amended, subdivision (d) eliminates the requirement of proof of service or acknowledgment of service when service is made through a court's electronic-filing system. The notice of electronic filing generated by the court's system serves that purpose.

---

\* This anticipates adoption of the proposed amendment transmitted to Congress on April 26, 2018.

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

2 \* \* \* \* \*

3 **(c) Additional Time aAfter Certain Kinds of Service.**

4 When a party may or must act within a specified time  
5 after being served, and the paper is not served  
6 electronically on the party or delivered to the party on  
7 the date stated in the proof of service, 3 days are added  
8 after the period would otherwise expire under  
9 Rule 26(a), ~~unless the paper is delivered on the date of~~  
10 ~~service stated in the proof of service.~~ For purposes of  
11 ~~this Rule 26(c)~~, a paper that is served electronically is  
12 ~~treated as delivered on the date of service stated in the~~  
13 ~~proof of service.~~

**Committee Note**

The amendment in subdivision (c) simplifies the expression of the current rules for when three days are added. In addition, the amendment revises the subdivision to conform to the amendments to Rule 25(d).

1 **Rule 26.1. ~~Corporate~~-Disclosure Statement**

2 (a) ~~Who Must File~~ Nongovernmental Corporations.

3 Any nongovernmental ~~corporate~~corporation that is a  
4 party to a proceeding in a court of appeals must file a  
5 statement that identifies any parent corporation and any  
6 publicly held corporation that owns 10% or more of its  
7 stock or states that there is no such corporation. The  
8 same requirement applies to a nongovernmental  
9 corporation that seeks to intervene.

10 (b) Organizational Victims in Criminal Cases. In a  
11 criminal case, unless the government shows good  
12 cause, it must file a statement that identifies any  
13 organizational victim of the alleged criminal activity.  
14 If the organizational victim is a corporation, the  
15 statement must also disclose the information required  
16 by Rule 26.1(a) to the extent it can be obtained through  
17 due diligence.



18 **(c) Bankruptcy Cases.** In a bankruptcy case, the debtor,  
19 the trustee, or, if neither is a party, the appellant must  
20 file a statement that:

21 (1) identifies each debtor not named in the caption;

22 and

23 (2) for each debtor that is a corporation, discloses the  
24 information required by Rule 26.1(a).

25 **(b)(d)Time for Filing; Supplemental Filing.** ~~A party must~~  
26 ~~file~~The Rule 26.1(a) statement must:

27 (1) be filed with the principal brief or upon filing a  
28 motion, response, petition, or answer in the court  
29 of appeals, whichever occurs first, unless a local  
30 rule requires earlier filing;

31 (2) ~~Even if the statement has already been filed, the~~  
32 party's principal brief must include the statement  
33 be included before the table of contents; in the  
34 principal brief; and

35        ~~(3)~~ A party must supplement its statement  
 36                    supplemented whenever the information ~~that must~~  
 37                    ~~be disclosed~~ required under Rule 26.1~~(a)~~ changes.  
 38        ~~(e)~~ **(e) Number of Copies.** If the Rule 26.1~~(a)~~ statement is  
 39                    filed before the principal brief, or if a supplemental  
 40                    statement is filed, ~~the party must file~~ an original and 3  
 41                    copies must be filed unless the court requires a different  
 42                    number by local rule or by order in a particular case.

**Committee Note**

These amendments are designed to help judges determine whether they must recuse themselves because of an “interest that could be affected substantially by the outcome of the proceeding.” Code of Judicial Conduct, Canon 3(C)(1)(c) (2009).

Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene on appeal.

New subdivision (b) corresponds to the disclosure requirement in Criminal Rule 12.4(a)(2). Like Criminal Rule 12.4(a)(2), subdivision (b) requires the government to identify organizational victims to help judges comply with their obligations under the Code of Judicial Conduct. In some cases, there are many organizational victims, but the

effect of the crime on each one is relatively small. In such cases, the amendment allows the government to show good cause to be relieved of making the disclosure statements because the organizations' interests could not be "affected substantially by the outcome of the proceedings."

New subdivision (c) requires disclosure of the names of all the debtors in bankruptcy cases, because the names of the debtors are not always included in the caption in appeals. Subdivision (c) also imposes disclosure requirements concerning the ownership of corporate debtors.

Subdivisions (d) and (e) (formerly subdivisions (b) and (c)) apply to all the disclosure requirements in Rule 26.1.

1 **Rule 28. Briefs**

- 2 (a) **Appellant's Brief.** The appellant's brief must contain,  
3 under appropriate headings and in the order indicated:  
4 (1) a ~~corporated~~ disclosure statement if required by  
5 Rule 26.1;

6 \* \* \* \* \*

**Committee Note**

The phrase "corporate disclosure statement" is changed to "disclosure statement" to reflect the revision of Rule 26.1.

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

2 \* \* \* \* \*

3 **(f) Items Excluded from Length.** In computing any  
4 length limit, headings, footnotes, and quotations count  
5 toward the limit but the following items do not:

- 6 • ~~the~~cover page;
- 7 • ~~a~~~~corporated~~disclosure statement;
- 8 • ~~a~~table of contents;
- 9 • ~~a~~table of citations;
- 10 • ~~a~~statement regarding oral argument;
- 11 • ~~a~~naddendum containing statutes, rules, or  
12 regulations;
- 13 • certificates of counsel;
- 14 • ~~the~~signature block;
- 15 • ~~the~~proof of service; and
- 16 • any item specifically excluded by these rules or  
17 by local rule.

\* \* \* \* \*

**Committee Note**

The phrase “corporate disclosure statement” is changed to “disclosure statement” to reflect the revision of Rule 26.1. The other amendment to subdivision (f) does not change the substance of the current rule, but removes the articles before each item because a document will not always include these items.

1 **Rule 39. Costs**

2 \* \* \* \* \*

3 **(d) Bill of Costs: Objections; Insertion in Mandate.**

4 (1) A party who wants costs taxed must—within 14  
5 days after entry of judgment—file with the circuit  
6 clerk, ~~with proof of service,~~ and serve an itemized  
7 and verified bill of costs.

8 \* \* \* \* \*

**Committee Note**

In subdivision (d)(1) the words “with proof of service” are deleted and replaced with “and serve” to conform with amendments to Rule 25(d) regarding when proof of service or acknowledgement of service is required for filed papers.