

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

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

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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

¹ 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.**

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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 the~~
7 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).

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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.

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

2 * * * * *

3 **(c) Additional Time ~~a~~After 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 ~~corporate~~ 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**

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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 • ~~an~~addendum 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.