
AMENDMENTS TO FEDERAL RULES OF APPELLATE PROCEDURE

The following amendments to the Federal Rules of Appellate Procedure were prescribed by the Supreme Court of the United States on April 23, 1996, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1256. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Appellate Procedure and the amendments thereto, see 389 U. S. 1063, 398 U. S. 971, 401 U. S. 1029, 406 U. S. 1005, 441 U. S. 973, 475 U. S. 1153, 490 U. S. 1125, 500 U. S. 1007, 507 U. S. 1059, 511 U. S. 1155, and 514 U. S. 1137.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 23, 1996

*To the Senate and House of Representatives of the United
States of America in Congress Assembled:*

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) WILLIAM H. REHNQUIST
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 23, 1996

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 21, 25, and 26.

[See *infra*, pp. 1259–1262.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 1996, and shall govern all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings in appellate cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES
OF APPELLATE PROCEDURE

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 shall file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party shall 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.

(2)(A) The petition shall be titled “In re [name of petitioner].”

(B) The petition shall state:

- (i) the relief sought;
- (ii) the issues presented;
- (iii) the facts necessary to understand the issues presented by the petition; and
- (iv) the reasons why the writ should issue.

(C) The petition shall include copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) When the clerk receives the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; order directing answer; briefs; precedence.

(1) The court may deny the petition without an answer. Otherwise, it shall order the respondent, if any, to answer within a fixed time.

(2) The clerk shall serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial court judge to respond or may invite an amicus curiae to do so. The trial court judge may request permission to respond but may not respond unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk shall advise the parties, and when appropriate, the trial court judge or amicus curiae.

(6) The proceeding shall be given preference over ordinary civil cases.

(7) The circuit clerk shall send a copy of the final disposition to the trial court judge.

(c) *Other extraordinary writs.*—Application for an extraordinary writ other than one of those provided for in subdivisions (a) and (b) of this rule shall be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

(d) *Form of papers; number of copies.*—All papers may be typewritten. An original and three copies shall be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Rule 25. Filing, proof of filing, service, and proof of service.

(a) *Filing.*

(1) *Filing with the clerk.*—A paper required or permitted to be filed in a court of appeals shall be filed with the clerk.

(2) *Filing: method and timeliness.*

(A) *In general.*—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.

(B) *A brief or appendix.*—A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to the clerk for delivery within 3 calendar days by a third-party commercial carrier.

(C) *Inmate filing.*—A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U. S. C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid.

(D) *Electronic filing.*—A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a motion with a judge.*—If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge shall note the filing date on the motion and give it to the clerk.

(4) *Clerk's refusal of documents.*—The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rules or practices.

(c) *Manner of service.*—Service may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days. When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service

on a party shall be by a manner at least as expeditious as the manner used to file the paper with the court. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

(d) *Proof of service; filing.*—A paper presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, of the name of the person served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service shall also state the date and manner by which the document was mailed or dispatched to the clerk.

Rule 26. Computation and extension of time.

(c) *Additional time after service.*—When a party is required or permitted to act within a prescribed period after service of a paper upon that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.