
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 29, 2002, 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. 1124. 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, 514 U. S. 1137, 517 U. S. 1255, and 523 U. S. 1147.

LETTER OF TRANSMITTAL

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

APRIL 29, 2002

*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
Committee Notes submitted to the Court for its considera-
tion 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 29, 2002

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 1, 4, 5, 21, 24, 25, 26, 26.1, 27, 28, 31, 32, 36, 41, 44, and 45 and new Form 6.

[See *infra*, pp. 1127–1137.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2002, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings 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 1. Scope of rules; title.

(b) *[Abrogated.]*

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 the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(4) *Effect of a motion on a notice of appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(5) *Motion for extension of time.*

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(7) *Entry defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

(b) *Appeal in a criminal case.*

(5) *Jurisdiction.*—The filing of a notice of appeal under this Rule 4(b) does not divest a district court of

jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

Rule 5. Appeal by permission.

(c) *Form of papers; number of copies.*—All papers must conform to Rule 32(c)(2). Except by the court’s permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). 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.

Rule 21. Writs of mandamus and prohibition, and other extraordinary writs.

(d) *Form of papers; number of copies.*—All papers must conform to Rule 32(c)(2). Except by the court’s permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Rule 24. Proceeding in forma pauperis.

(a) *Leave to proceed in forma pauperis.*

(1) *Motion in the district court.*—Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in

the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the motion.*—If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior approval.*—A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Rule 25. Filing and service.

(c) *Manner of service.*

(1) 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

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) 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.

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

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 local rule, court order, 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 stated in calendar days.

(c) *Additional time after service.*—When a party is required or permitted to act within a prescribed period after

a paper is served on 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. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

Rule 26.1. Corporate disclosure statement.

(a) *Who must file.*—Any nongovernmental corporate 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.

(b) *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 the court of appeals, whichever occurs first, unless a local rule requires earlier filing. 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.

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

Rule 27. Motions.

(a) *In general.*

(3) *Response.*

(A) *Time to file.*—Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 8 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be

granted before the 8-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(4) *Reply to response*.—Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(d) *Form of papers; page limits; and number of copies.*

(1) *Format.*

(B) *Cover*.—A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

Rule 28. Briefs.

(j) *Citation of supplemental authorities*.—If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 31. Serving and filing briefs.

(b) *Number of copies*.—Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on

each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

Rule 32. Form of briefs, appendices, and other papers.

(a) Form of a brief.

(2) *Cover.*—Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case (see Rule 12(a));
- (D) the nature of the proceeding (*e. g.*, Appeal, Petition for Review) and the name of the court, agency, or board below;
- (E) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(7) Length.

(C) Certificate of compliance.

- (i) A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the

word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rule 32(a)(7)(C)(i).

(c) *Form of other papers.*

(1) *Motion*.—The form of a motion is governed by Rule 27(d).

(2) *Other papers*.—Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) *Signature*.—Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) *Local variation*.—Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

Rule 36. Entry of judgment; notice.

(b) *Notice*.—On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion—or

the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

Rule 41. Mandate: contents; issuance and effective date; stay.

(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 panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

Rule 44. Case involving a constitutional question when the United States or the relevant state is not a party.

(a) *Constitutional challenge to federal statute.*—If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) *Constitutional challenge to state statute.*—If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

Rule 45. Clerk’s duties.

(c) *Notice of an order or judgment.*—Upon the entry of an order or judgment, the circuit 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.

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APPENDIX OF FORMS

FORM 6. CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

- ☐ this brief contains *[state the number of]* words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or
- ☐ this brief uses a monospaced typeface and contains *[state the number of]* lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

- ☐ this brief has been prepared in a proportionally spaced typeface using *[state name and version of word processing program]* in *[state font size and name of type style]*, or
- ☐ this brief has been prepared in a monospaced typeface using *[state name and version of word processing program]* with *[state number of characters per inch and name of type style]*.

(s) _____

Attorney for _____

Dated: _____