

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

MEMORANDUM

Date: November 30, 2018

To: U.S. District Court Practitioners, Litigants, Visitors and Staff

From: Advisory Committee on the Local Rules of Practice

Re: Dec. 1, 2018 Federal Rules Amendments

The Judicial Conference's Committee on Rules of Practice and Procedure submitted a Summary of Proposed Amendments to the Federal Rules to the Supreme Court in October 2017.¹ The proposed amendments affect all federal rules except the rules of evidence. Chief Justice Roberts submitted the U.S. Supreme Court's adoption of the Committee's proposals, with no change, to Congress on April 26, 2018. It is expected that Congress will similarly adopt the proposals without further revisions.

The District Clerks Advisory Group of the Administrative Office of the U.S. Courts issued a guide on May 2, 2018 that assesses how district court's local rules, CM/ECF procedures, general orders, etc., may require revision or rewrite based on the 2018 changes. The Advisory Group's Operational Impact Assessment of Amendments to Select Civil and Criminal Rules provides an effective walk-through of the proposed changes and how they may impact district court's local rules.² The Assessment does not, however, address the appellate and bankruptcy rules – as the Judicial Conference Summary does – and therefore both documents are attached to this memorandum. I have included text commentary to the Summary and the Assessment that offer a more detailed perspective.

Many of the rule changes center on formal recognition of service and filing of case documents through the federal courts' electronic filing system (CM/ECF) which all federal courts have eventually adopted since the introduction of CM/ECF in the mid-2000's. The proposed amendments mirror, but do not duplicate, the electronic service and filing requirements followed in the District of Colorado. This court's local rules in many circumstances reference district-specific practices and standards that can and should remain as they are written. **Therefore, the District of Colorado's Advisory Committee on the Local Rules of Practice has made no change to the court's local rules because no federal rule change has an impact on this court's local rules of practice.** A few of the amendments contain definitional revisions to legal terms – for example, replacement of the word “surety” with the term “security provider” – that *may* prove sensible to conform this court's terminology to the federal rules, but there is no direct conflict between the federal and local rules.³

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¹ The Summary of Proposed Amendments to the Federal Rules is included as **Attachment A**.

² The Operational Impact Assessment is included as **Attachment B**.

³ The District of Colorado's local rules use of the term “surety” however, is in a slightly different context, so a revision may be sensible strictly for style purposes.

The Judicial Conference Summary and the District Court Advisory Group's Assessment are attached, for reference as to the rationale for the changes, and the Assessment also provides the actual textual changes in the rules. The list below identifies the federal rule changes, the corresponding local rule, and the reason why the local rule should remain as-is. The list is provided as a cross-reference for the reader's use.

Proposed Amendments to the Federal Rules, and the Impact on D. Colo. Local Rules

Federal Rule – Civil	Rule Change	Corresponding Local Rule	Impact on Local Rule	Other Potential Court Impact
Fed. R. Civ. P. 5: Rule 5(b)(2)(E) Service: How Made – Service in General	<p>-A party who is a registered CM/ECF user would now be subject to electronic service via CM/ECF without consent, unless the court provides otherwise.</p> <p>-Consent would still be required for service of a party via electronic means other than CM/ECF.</p>	<p>D.C.COLO.LCivR 5.1 - Formatting, Signatures, Filing, and Serving Pleadings and Documents</p> <p>(a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, each pleading and document filed in a civil action shall be formatted, signed, and filed electronically in CM/ECF as prescribed by the Electronic Case Filing Procedures, incorporated in these rules and available HERE.</p> <p>*****</p> <p>(d) Electronic Service. When a pleading or document is filed in CM/ECF, it is served electronically under Fed. R. Civ. P. 5.</p> <p>*****</p> <p>Registration in CM/ECF shall constitute consent to</p>	<p>None. Local rule goes beyond the minimal text of rule change and its use of the phrase “court’s electronic filing system” – the local rule specifically requires that documents <u>shall</u> be filed in CM/ECF, and the registered user in CM/ECF shall follow the court’s procedures set forth in the Electronic Case Filing Procedures.</p> <p>Regarding consent to service, LCivR 5.1(d) details the procedural mechanism of how CM/ECF registration – mandatory in this District for counsel – operates as</p>	<p>None.</p> <p><u>ECF Procedures</u>, 2.2, Court Registration Required for ECF:</p> <p>(c) Consent to Electronic Service. Registration as a participant in ECF shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil Procedure.</p> <p>ECF participants shall verify that any security filtering software on the user’s electronic mail system will not inhibit electronic service from the court.</p>

		electronic service of all pleadings or documents.	consent to service, and specifically names CM/ECF as the system, which the federal rule does not.	
Rule 5(d)(1)(B) Filing – Certificate of Service	-Eliminates the requirement for a certificate of service where service is made via CM/ECF.	<p>(d) Electronic Service. When a pleading or document is filed in CM/ECF, it is served electronically under Fed. R. Civ. P. 5. *****</p> <p>The Notice of Electronic Filing (NEF) generated by CM/ECF constitutes a certificate of service. Registration in CM/ECF shall constitute consent to electronic service of all pleadings or documents.</p>	No change. The Local Rule specifically references the Notice of Electronic Filing (NEF), which is the tool used by counsel and unrepresented parties to prove completion of service.	No change. The <u>ECF Procedures – Civil</u> already provide that an NEF constitutes a certificate of service for registered users, and that all other non e-filers must continue to use Certificates of Service.
Rule 5(d)(3)(A) Filing – Electronic Filing, and Signing – By a Represented Person— Generally Required; Exceptions	-Makes electronic filing generally mandatory for a person represented by an attorney with exceptions for good cause or by local rule.	<p>D.C.COLO.LCivR 5.1 - Formatting, Signatures, Filing, and Serving Pleadings and Documents</p> <p>(a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, each pleading and document filed in a civil action shall be formatted, signed, and filed electronically in CM/ECF as prescribed by the Electronic Case Filing Procedures, incorporated in these rules and available HERE.</p>	<p>No change. LCivR 5.1(a) points to the Electronic Case Filing procedures, that registration and use of CM/ECF is mandatory for attorneys, and sets forth the details of signing documents electronically and e-filing. It also sets forth the exceptions to e-filing.</p> <p>LCivR 5.1(a) requires <u>all</u> documents to be filed electronically, then sets out</p>	No change. The <u>ECF Procedures – Civil</u> describe the specific details and procedures for registering and e-filing.

			<p>specific exceptions, which include that documents filed by non-represented parties must be filed in paper, so non-electronic filing for good cause is allowed in this District, as is contemplated in the federal rules.</p> <p>Therefore, LCivR 5.1 <u>adds</u> to Fed. R. Civ. P. 5(d)(3)(A).</p>	
<p>Rule 5(d)(3)(A) Filing – Electronic Filing, and Signing – By an Unrepresented Person— When Allowed or Required</p>	<p>-Electronic filing by pro se litigants governed by local rules or court order; mandatory electronic filing by pro se persons must be subject to “reasonable exceptions.”</p>	<p>D.C.COLO.LCivR 5.1 - Formatting, Signatures, Filing, and Serving Pleadings and Documents</p> <p>(a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, each pleading and document filed in a civil action shall be formatted, signed, and filed electronically in CM/ECF as prescribed by the Electronic Case Filing Procedures, incorporated in these rules and available HERE.</p> <p>(b) Exceptions to Electronic Formatting and Filing. *****</p>	<p>None. The local rule permits unrepresented parties to use the court's e-filing procedures when authorized to do so - upon completion of a specifically - tailored written request - see <u>Unrepresented Party Form</u> on the USDC website here.</p> <p>The default rule permits pro se litigants the ease of submitting filings in paper by hand delivery or by mail. This allows those litigants who may</p>	<p>None. The ECF Procedures contain numerous examples and instructions for unrepresented parties to file in paper, as the federal rule contemplates.</p>

		<p>(2) Pleadings and Documents by Unrepresented Prisoners. These shall be filed in paper.</p> <p>(3) Pleadings and Documents by Other Unrepresented Parties. These shall be filed in paper unless the filing party obtains authorization to use electronic filing under the Electronic Case Filing Procedures HERE.</p>	<p>lack the expertise to e-file or lack computer access to use the standard process of filing court documents, by means of submitting papers through the clerk's office.</p>	
<p>Rule 5(d)(3)(A) Filing – Electronic Filing, and Signing – Signing</p>	<p>-Person's name on a signature block along with CM/ECF user name/password serves as signature.</p>	<p>D.C.COLO.LCivR 5.1 - Formatting, Signatures, Filing, and Serving Pleadings and Documents</p> <p>(a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, each pleading and document filed in a civil action shall be formatted, signed, and filed electronically in CM/ECF as prescribed by the Electronic Case Filing Procedures, incorporated in these rules and available HERE.</p>	<p>None. As described in LCivR 5.1(a), the court's ECF Procedures set forth the details for the requirements to electronically sign a court pleading or document.</p> <p>Local Civil Rule 5.1(a) refers to and incorporates the court's ECF Procedures.</p>	<p>None. The court's ECF Procedures set forth many details and requirements for electronic signatures (ECF e-mail address, actual text to use, requirements for the signature block, etc.).</p>
<p>Rule 5(d)(3)(A) Filing – Electronic Filing, and Signing – Same as a Written Paper</p>	<p>-Removes reference to local rule requirements for electronic filing in light of the new national rules.</p>	<p>D.C.COLO.LCivR 5.1 - Formatting, Signatures, Filing, and Serving Pleadings and Documents</p>	<p>No change. The District of Colorado's rule mandates that all case documents must be electronically</p>	<p>No change. ECF Procedures, 1.3 - Official Files and Records, provides for the following:</p>

		<p>(a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, <i>each pleading and document filed in a civil action shall be formatted, signed, and filed electronically</i> in CM/ECF as prescribed by the Electronic Case Filing Procedures, incorporated in these rules and available HERE.</p>	<p>filed, with certain exceptions. There is no distinct discussion on what constitutes a written paper or not, and leaves it to the <u>ECF Procedures</u> to define it.</p>	<p>Official Record.</p> <p>The official court record from June 20, 2005, forward shall be the electronic file maintained on the court's servers and any documents or exhibits which these procedures allow to be filed by delivery to the clerk's office and are not scanned and posted to ECF.</p>
Rule 23 – Class Actions				
<p>Rule 23(e)(5)(A) Settlement, Voluntary Dismissal, or Compromise – Class-Member Objections – In General</p>	<ul style="list-style-type: none"> - Removes the requirement that a class member obtain court approval before withdrawing an objection to a settlement/voluntary dismissal. - Provides specific requirements for the contents of an objection. 	<p>No corresponding local rule.</p>	<p>No impact.</p>	<p>No impact.</p>
Rule 62 – Stay of Proceedings				
<p>Rule 62(a) - Automatic Stay</p>	<p>-Extends the period of the automatic stay</p>	<p>No corresponding local rule.</p>	<p>No impact.</p>	<p>No impact.</p>

	<p>from 14 to 30 days</p> <ul style="list-style-type: none"> - expressly recognizes the court's authority to dissolve the automatic stay or supersede it by a court-ordered stay - as part of a consolidation (with no change in meaning) of the provisions for staying an injunction, receivership, or order for a patent accounting, the contents of current section (a)(1) and (2) were moved to new section (c)(1) and (2). 			
<p>Rule 62(b) Stay by Bond or Other Security</p>	<p>- former Rule 62(d), which required a party to provide a "supersedeas bond" to obtain a stay, has been replaced with new section 62(b), which allows a party to obtain a stay by providing a "bond or other security." The amendment eliminates the antiquated term "supersedeas." A letter of credit is one possible example of security other than a bond.</p>	<p>D.C.COLO.LCivR 67.1 BONDS AND OTHER SURETIES</p> <p>(a) Prohibition. A party (individual or entity), a spouse of a party, or an attorney for a party in a civil action, shall not serve as a personal surety on any bond in that civil action.</p> <p>(b) Surety Company; Power of Attorney. If the surety on a bond is a surety company approved by the United States Department of the Treasury, a power of attorney evidencing the authority of the</p>	<p>The local rules do not refer to the term "supersedeas" bond.</p> <p>Subdivision (b) references the term <u>surety</u> in the title and in the text. The replacement of the word "surety" with the term "security provider" in Federal <i>Appellate</i> Rule 8 implies that "surety" in LCivR 67.1 may be necessary; but the context of LCivR 67.1(b) concerns</p>	<p>The <u>ECF Procedures -Civil</u> do refer to the term "Supersedeas Bond":</p> <p>4.17 Supersedeas Bond. A supersedeas bond requires court approval and shall be filed and transmitted as a proposed order under Section 4.12. (See D.C.COLO.LCivR 67.1).</p>

		agent signing the bond shall be filed with the clerk.	registration of a company and its agent with the clerk's office, for approval of the "security provider" company to issue bonds. In that context, revision of the local rule to match use of the term as used in an appellate rule will be unnecessary, at least until the 2019 rules cycle.	
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Federal Rule – Criminal	Rule Change	Corresponding Local Rule	Impact on Local Rule	Other Potential Court Impact
Rule 12.4: Disclosure Statement				
Rule 12.4(a)(2) Who Must File – Organizational Victim	- Adds an opportunity for the government to request relief from disclosure requirement for good cause.	No corresponding local rule.	No Impact.	No Impact.
Rule 12.4(b) Time to File; Later Filing	- Provides for a period of 28 days after the initial appearance for making the disclosures (changed from "upon initial appearance") - requires later disclosures to be	No corresponding local rule.	No Impact.	No Impact.

	made not only for changed information but also new information.			
Rule 49: Serving and Filing Papers General Note: Currently, the Criminal Rules incorporate by reference the Civil Rules provisions on filing and service (i.e., requiring service and filing in the “manner provided for a civil action”). The amendments to Criminal Rule 49 set out stand-alone rules on filing and service that are more tailored to criminal cases. The amendments are intended to carry over the applicable existing law on filing and service from the Civil Rules as well as the related amendments to Civil Rule 5 discussed above. • These changes will be further examined with some tailoring of the USDC - Colorado local rules, standing/administrative orders, policies, procedures, training materials, forms, etc., in 2019 to replace Civil Rule references with references to the new Criminal Rules.				
Rule 49(a)(1) Service on a Party – What is Required And (a)(2) Serving a Party’s Attorney		(Corresponding Local Rule): D.C.COLO.LCrR 49.1 FORMATTING, SIGNATURES, FILING, AND SERVING PLEADINGS AND DOCUMENTS	(Impact on Local Rule): See responses to civil rules, service and filing.	(Other Potential Court Impact): See responses to civil rules, service and filing.
Rule 49(a)(3) Service on a Party – Service by Electronic Means				
Rule 49(a)(4) Service on a Party – Service by Nonelectronic Means				
Rule 49(b)(1) Filing – When Required;				

Certificate of Service				
Rule 49(b)(3)(A) Filing – Means Used by Represented and Unrepresented Parties – Represented Party				
Rule 49(b)(3)(B) Filing – Means Used by Represented and Unrepresented Parties – Unrepresented Party				
Rule 49(b)(4) Filing – Signature	Brings over Civil Rule 11(a).	D.C.COLO.LCrR 49.1 FORMATTING, SIGNATURES, FILING, AND SERVING PLEADINGS AND DOCUMENTS (a) Electronic Formatting, Signatures, and Filing. Unless otherwise provided in this rule or otherwise ordered, each pleading and document filed in a criminal case shall be formatted, signed ,	-No Impact on the court's criminal local rules. -Practitioners should be aware of this new provision.	The court's <u>Electronic Filing Procedures - Criminal</u> have no reference to Rule 11, but provide directions regarding signature requirements.

		and filed electronically in CM/ECF as prescribed by the Electronic Case Filing Procedures , incorporated in these rules and available HERE .		
Rule 49(b)(5) Filing – Acceptance by the Clerk	Brings over Civil Rule 5(d) (4).	D.C.COLO.LCrR 49.1 FORMATTING, SIGNATURES, FILING, AND SERVING PLEADINGS AND DOCUMENTS	<p>-No Impact on the court's criminal local rules.</p> <p>-Practitioners should be aware of this new provision.</p>	<p>I.Electronic Case Filing Systems, 1.2 Exceptions:</p> <p>g) Prisoner and Non-Prisoner Pro Se. Prisoner and non-prisoner pro se parties must file their documents in paper. Their documents will be scanned and uploaded into ECF by court staff. [Staff have no leeway to reject pro se filings.]</p>
Rule 49(c) Filing – Service and Filing by Nonparties	<p>-Adds new language to expressly permit nonparties to file in a criminal case when required or permitted by law.</p> <p>-Requires nonparties to serve a filing on every party.</p> <p>-Allows nonparties to file with CM/ECF when permitted by order or local rule.</p> <p>-Examples of nonparties who</p>	D.C.COLO.LCrR 49.1 FORMATTING, SIGNATURES, FILING, AND SERVING PLEADINGS AND DOCUMENTS	The District of Colorado's CM/ECF system allows third parties to make appearances as "Interested Parties."	<p>From <i>District of Colorado ECF User Manual, Version 6.1</i>:</p> <p>After clicking on the "Select Party" button, the right pane displays the information for John Doe 1. Make sure the "role" type is correctly designated (i.e., plaintiff, defendant, Interested Party, Petitioner, etc.)</p>

	might file in a criminal case include: media, material witnesses, and victims.			
Rule 49(d) Filing – Notice of Court Order	Moves language formerly in paragraph (c) to a new paragraph (d) and changes the general cross-reference to the Civil Rules to Criminal Rule 49(a).	No corresponding local rule.	No change.	<u>ECF Procedures, Criminal:</u> 4.13 Notice of Court Orders and Judgments. Immediately upon the entry of an order or judgment on the docket in ECF, a Notice of Electronic Filing will be sent which constitutes the notice required under Fed.R.Crim.P. 32 and 49. The clerk shall give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Criminal Procedure.

Federal Rule – Appellate	Rule Change	Corresponding Local Rule	Impact on Local Rule	Other Potential Court Impact
(No local rule or operational impact from the Appellate Rule amendments.)				

Comparable amendments as to electronic filing and service are proposed for **Appellate Rule 25** (Filing and Service), with a conforming amendment to **Appellate Rule 26** (Computing and Extending Time).

Rules 8, 11, and 39

The proposed amendments to Rules 8(a) and (b) (Stay or Injunction Pending Appeal), 11(g) (Forwarding the Record), and 39(e) (Costs) conform the Appellate Rules to a proposed change to Civil Rule 62(b) that eliminates the antiquated term “supersedeas bond” and states that an appellant may provide a bond or other security.

Rules 28.1 and 31

The proposed amendments to Rules 28.1(f)(4) (Cross-Appeals) and 31(a)(1) (Serving and Filing Briefs) respond to the shortened time to file a reply brief resulting from elimination of the “3-day rule” for papers filed electronically. To maintain consistency across the rules in measuring time periods in increments of seven days when possible, the Advisory Committee proposes that the time to file a reply be extended to 21 days.

Rule 29

Rule 29(a) (Brief of an Amicus Curiae) currently provides that an amicus curiae may file a brief with leave of the court or without leave of the court “if the brief states that all parties have consented to its filing.” The proposed amendments to Rule 29(a) would add an exception providing that a court of appeals may prohibit the filing of or strike an amicus brief that would result in a judge’s disqualification.

Rule 41

The proposed amendments to Rule 41 (Mandate: Contents; Issuance and Effective Date; Stay) would revise subdivision (b) to clarify that an order is required for a stay of the mandate – the court of appeals cannot delay issuance of the mandate by mere inaction.

Federal Rule – Bankruptcy	Rule Change	Corresponding Local Rule	Impact on Local Rule	Other Potential Court Impact
(No <u>immediate</u> local rule impact from the Bankruptcy Rule amendments, though LCivR 84.1(b) may see amendment in the 2019 cycle.)				
Bankruptcy Rules 5005 and 8011				
Comparable amendments are proposed for Bankruptcy Rules 5005 (Filing and Transmittal of Papers) and 8011 (Filing and Service; Signature). Rule 5005(a)(2) addresses electronic filing and signing in bankruptcy cases, and Rule 8011 addresses filing, service, and signatures in bankruptcy appeals.				
Rule 3002.1				
Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence) applies to home mortgage claims in chapter 13 cases.				
Rule 7004				
Rule 7004 (Summons; Service; Proof of Service) incorporates by reference certain components of Civil Rule 4, including the provision addressing a defendant’s waiver of service of a summons.				
Rules 7062, 8007, 8010, 8021, and 9025				
The amendments to Rules 7062, 8007, 8010, 8021, and 9025 conform these rules with pending amendments to Civil Rules 62 and 65.1, which lengthen the period of the automatic stay of a judgment and modernize the terminology “supersedeas bond” and “surety” by using “bond or other security.”				

. . . . Because the deadline for post-judgment motions in bankruptcy is 14 days, the proposed amendment to Rule 7062 would maintain the current 14-day duration of the automatic stay of judgment.

Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, and new Part VIII

Appendix

Amendments to Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, and the Bankruptcy Rules Part VIII Appellate Rules Appendix bring the Bankruptcy Rules into conformity with amendments to the Appellate Rules that went into effect on December 1, 2016, as well as some pending amendments to the Appellate Rules.

Rule 8002

A new subdivision (a)(5) is added to Rule 8002 (Time for Filing Notice of Appeal) defining entry of judgment. The amendment clarifies that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and either (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

Rule 8006

The amendment to Rule 8006 (Certifying a Direct Appeal to the Court of Appeals) adds a new subdivision (c)(2) that authorizes the bankruptcy judge or the court where the appeal is then pending to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all the parties to the appeal.

Rule 8018.1

New Rule 8018.1 (District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter) **authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment.** The procedure would eliminate the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.

Federal Advisory Committee Notes to Fed. R. Bankr. P. 8018:

This rule is new. It is added to prevent a district court from having to remand an appeal whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. *Consistent with the Supreme Court's decision in Executive Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165 (2014), the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law.* Upon making the determination to proceed in that manner, the district court may choose to allow the parties to file written objections to specific proposed findings and conclusions and to respond to another party's objections, see Rule 9033; treat the parties' briefs as objections and responses; or prescribe other procedures for the review of the proposed findings of fact and conclusions of law.

NOTE: New federal Bankruptcy Rule 8018.1 was foreshadowed by local civil rule LCivR 84.1(b), which was drafted and adopted in the 2014 local rules cycle in reaction to the Executive Benefits decision:⁴

(b) Final Order in a Core Matter.

⁴ See Advisory Committee Meeting Minutes, August 12, 2014.

- (1) In a proceeding referred under this rule and determined to be a core matter, if a bankruptcy or district judge determines that entry of a final order or judgment by a bankruptcy judge would be inconsistent with Article III of the United States Constitution, the bankruptcy judge, unless otherwise ordered by the district judge, shall hear the proceeding and submit proposed findings of fact and conclusions of law to the district judge.
- (2) **A final order or judgment of the bankruptcy judge may be treated by the district judge as proposed findings of fact and conclusions of law when the district judge concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III.**

Accordingly, in the 2019 rules cycle, paragraph (2) will be reexamined in order to ensure compliance with with Fed. R. Civ. P. 83(a)(1) – “A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.”



JAMES C. DUFF
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

REBECCA A. WOMELDORF
Rules Committee Chief Counsel

LEE ANN BENNETT
Deputy Director


WASHINGTON, D.C. 20544

Office of the General Counsel

October 4, 2017

MEMORANDUM

TO: Scott S. Harris, Clerk of the Supreme Court of the United States

FROM: Rebecca A. Womeldorf 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES

The enclosed memorandum from Judge David G. Campbell summarizes proposed amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure approved by the Judicial Conference at its September 2017 session.

In addition to the memorandum from Judge Campbell, each set of proposed amendments comes to the Court under a transmittal memorandum from Director Duff that provides: (i) a copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) the relevant excerpts from the September 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) excerpts from the reports from the Advisory Committee that recommended the proposed amendments.

I am sending eighteen copies of these materials to you for distribution to the Chief Justice, the Associate Justices, the Counselor to the Chief Justice, and anyone else you feel appropriate. Please call me if I can be of further assistance.

Enclosures

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR

REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

MICHAEL A. CHAGARES
APPELLATE RULES

SANDRA SEGAL IKUTA
BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

DEBRA ANN LIVINGSTON
EVIDENCE RULES

October 4, 2017

M E M O R A N D U M

TO: Scott S. Harris, Clerk of the Supreme Court of the United States

FROM: David G. Campbell

SUBJECT: Summary of Proposed Amendments to the Federal Rules

This memorandum summarizes proposed amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure approved by the Judicial Conference of the United States on September 12, 2017, and now submitted to the Supreme Court for review. If the Court adopts these proposed amendments and transmits them to Congress by May 1, 2018, they will take effect on December 1, 2018, absent congressional intervention.

This memorandum first discusses amendments updating the rules for electronic filing and service across the federal procedural rules. The memorandum next outlines proposed amendments specific to the Appellate Rules, Bankruptcy Rules, Civil Rules, and Criminal Rules.

I. Federal Rules for Electronic Filing and Service

The Civil Rules Advisory Committee's decision to pursue a national rule mandating electronic filing and service in civil cases led the other rules advisory committees to review their respective rules on filing and service. The resulting proposed amendments to Appellate Rule 25, Bankruptcy Rule 5005, Civil Rule 5, and Criminal Rule 49 were developed with the goal of achieving symmetry among the rules to the extent practicable. The proposed rules amendments were published together, and any changes made following the publication period resulted from consultation among the rules committees. Each of the proposed amendments discussed in this section was unanimously approved by both the relevant advisory committee and the Standing Committee.

A. Civil Rule 5

The proposed amendments to Civil Rule 5 – which addresses the serving and filing of papers after a case has commenced – address electronic service, filing, notice, and signature. Rule 5(b)(2)(E) presently provides that electronic service of a document is effective only if the recipient has consented to such service in writing. The amendment eliminates that requirement for service made by filing with the court’s electronic-filing system on registered users of that system. Service may be made by other electronic means if the recipient consents in writing.

Proposed amendments to Rule 5(d) address electronic filing. Proposed Rule 5(d)(3)(A) establishes a uniform national rule that mandates electronic filing by persons represented by counsel, except when local rules require or allow nonelectronic filing, or for good cause. Under proposed Rule 5(d)(3)(B), courts retain the discretion to permit electronic filing by pro se litigants through court order or local rule. Any order or local rule requiring electronic filing by pro se parties must allow reasonable exceptions. Proposed Rule 5(d)(3)(C) establishes a uniform national signature provision for papers filed with the court’s electronic-filing system – filing through a person’s electronic-filing account and authorized by that person, together with the person’s name on a signature block, constitutes the person’s signature.

The proposed amendments to Rule 5(d)(1) provide that no certificate of service is required when a paper is served by filing it with the court’s electronic-filing system – the system itself creates a record of the service. For a document filed with the court but not served through the court’s system, a certificate of service must be filed, either with the document or within a reasonable time after service. If the document is not filed with the court, a certificate of service is not required unless a local rule or court order provides otherwise.

B. Appellate Rules 25 and 26

Comparable amendments are proposed for Appellate Rule 25 (Filing and Service), with a conforming amendment to Appellate Rule 26 (Computing and Extending Time). Proposed Rule 25(a)(2)(B) requires a person represented by counsel to file papers electronically, but allows exceptions for good cause and by local rule. Courts retain discretion to permit electronic filing by pro se parties through court order or local rule, and any order or local rule requiring electronic filing by pro se parties must allow reasonable exceptions. Proposed subdivision (a)(2)(B)(iii) establishes the same uniform national signature provision as Civil Rule 5. The proposed amendment to subdivision (c)(2) addresses electronic service through the court’s electronic-filing system or by using other electronic means that the recipient consented to in writing. The proposed amendment to subdivision (d)(1) requires proof of service of process only for papers that are not served through the court’s system. Conforming changes are proposed for Rule 26.

C. Bankruptcy Rules 5005 and 8011

Comparable amendments are proposed for Bankruptcy Rules 5005 (Filing and Transmittal of Papers) and 8011 (Filing and Service; Signature). Rule 5005(a)(2) addresses electronic filing and signing in bankruptcy cases, and Rule 8011 addresses filing, service, and

signatures in bankruptcy appeals.

D. Criminal Rules 45 and Rule 49

The Criminal Rules Advisory Committee proposed amendments to Criminal Rule 49 (Serving and Filing Papers), along with a conforming amendment to Rule 45(c) (Computing and Extending Time). Currently, Criminal Rule 49(b) and (d) incorporate Civil Rule 5, providing that service and filing must be accomplished in the “manner provided for” civil actions. The Advisory Committee concluded that the default rule of electronic filing and service proposed by the Civil Rules Advisory Committee could be problematic in criminal cases. It therefore proposed a stand-alone comprehensive criminal rule addressing service and filing by parties and nonparties, notice, and signatures.

Proposed Rule 49 addresses what papers must be served, service through the court’s electronic-filing system and by other electronic means, service by nonelectronic means, and when certificates of service are required. It largely parallels the Civil Rules on each of these subjects. It requires unrepresented parties and nonparties, represented or not, to file and serve nonelectronically in the absence of a court order or local rule to the contrary.

A conforming amendment to Rule 45 eliminates cross-references to Civil Rule 5 and replaces those cross-references with the corresponding new subsections in Rule 49(a).

II. Federal Rules of Appellate Procedure 8, 11, 28.1, 29, 31, 39, and 41, and Forms 4 and 7

Each of the proposed amendments to the Appellate Rules discussed below was unanimously approved by the Appellate Rules Advisory Committee and the Standing Committee.

A. Rules 8, 11, and 39

The proposed amendments to Rules 8(a) and (b) (Stay or Injunction Pending Appeal), 11(g) (Forwarding the Record), and 39(e) (Costs) conform the Appellate Rules to a proposed change to Civil Rule 62(b) that eliminates the antiquated term “supersedeas bond” and states that an appellant may provide a bond or other security. To conform the proposed amendments with Civil Rule 65.1, the heading and the first sentence of Rule 8(b) are amended to refer only to “security” and “security provider.” Also, the word “mail” in Rule 8(b) is changed to “send” to conform Rule 8(b) with the proposed amendments to Rule 25.

B. Rules 28.1 and 31

The proposed amendments to Rules 28.1(f)(4) (Cross-Appeals) and 31(a)(1) (Serving and Filing Briefs) respond to the shortened time to file a reply brief resulting from elimination of the “3-day rule” for papers filed electronically. These rules currently provide 14 days after service of the response brief to file a reply brief, but parties effectively had 17 days because Rule 26(c) formerly gave three additional days. The Advisory Committee concluded that shortening the

period for filing from 17 days to 14 days could adversely affect the preparation of useful reply briefs. To maintain consistency across the rules in measuring time periods in increments of seven days when possible, the Advisory Committee proposes that the time to file a reply be extended to 21 days.

C. Rule 29

Rule 29(a) (Brief of an Amicus Curiae) currently provides that an amicus curiae may file a brief with leave of the court or without leave of the court “if the brief states that all parties have consented to its filing.” Several courts of appeals have adopted local rules that forbid the filing of a brief by an amicus curiae when the filing could cause the recusal of one or more judges. Upon review of the local rules, the Advisory Committee determined that this limitation on amicus filings should be incorporated into the national rules. Accordingly, the proposed amendments to Rule 29(a) would add an exception providing that a court of appeals may prohibit the filing of or strike an amicus brief that would result in a judge’s disqualification.

D. Rule 41

The proposed amendments to Rule 41 (Mandate: Contents; Issuance and Effective Date; Stay) would revise subdivision (b) to clarify that an order is required for a stay of the mandate – the court of appeals cannot delay issuance of the mandate by mere inaction. It would also renumber subdivision (d)(2)(B) to subdivision (d)(2), and would address a potential gap in the rule by amending subdivision (d)(4) (former subdivision (d)(2)(D)). The proposed amendment to subdivision (d)(4) provides that a mandate stayed pending a petition for certiorari must issue immediately once the court of appeals receives a copy of the Supreme Court’s order denying certiorari, unless the court of appeals finds that extraordinary circumstances justify a further stay. Also, the reference in prior subdivision (d)(2)(D) to the filing of the Supreme Court’s order is replaced by a reference to the court of appeal’s receipt of a copy of the order for greater clarity.

E. Form 4

A proposed amendment to Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis) would delete the requirement in Question 12 for litigants to provide the last four digits of their social security numbers. The Advisory Committee undertook an investigation and determined that no current need exists for this information.

F. Form 7

The proposed amendments to Rule 25 require a technical, conforming amendment to Form 7 (Declaration of Inmate Filing) to change a reference from Rule 25(a)(2)(C) to Rule 25(a)(2)(A)(iii).

III. Federal Rules of Bankruptcy Procedure 3002.1, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, new Rule 8018.1, and new Part VIII Appendix

Each of the proposed amendments to the Bankruptcy Rules discussed below was unanimously approved by both the Bankruptcy Rules Advisory Committee and the Standing Committee.

A. Rule 3002.1

Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) applies to home mortgage claims in chapter 13 cases. The amendments to subdivisions (b) and (e) do three things: (1) create flexibility regarding a notice of payment change for home equity lines of credit; (2) create a procedure for objecting to a notice of payment change; and (3) expand the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.

B. Rule 7004

Rule 7004 (Summons; Service; Proof of Service) incorporates by reference certain components of Civil Rule 4, including the provision addressing a defendant's waiver of service of a summons. Civil Rule 4(d) was amended in 2007 to change, among other things, the language and placement of the provision addressing waiver of service of summons. The cross-reference to Civil Rule 4(d)(1) in Rule 7004(a), however, was not changed at that time. The proposed technical amendment to Rule 7004(a) would make the appropriate reference to Civil Rule 4(d)(5).

C. Rules 7062, 8007, 8010, 8021, and 9025

The amendments to Rules 7062, 8007, 8010, 8021, and 9025 conform these rules with pending amendments to Civil Rules 62 and 65.1, which lengthen the period of the automatic stay of a judgment and modernize the terminology "supersedeas bond" and "surety" by using "bond or other security."

Because Bankruptcy Rule 7062 incorporates the whole of Civil Rule 62, the new security terminology will automatically apply in bankruptcy adversary proceedings when the civil rule goes into effect. Rule 62, however, also includes a change that would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days to address a gap between the end of the automatic stay period and the 28-day time period for making certain post-judgment motions in civil practice. Because the deadline for post-judgment motions in bankruptcy is 14 days, the proposed amendment to Rule 7062 would maintain the current 14-day duration of the automatic stay of judgment.

D. Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, and new Part VIII Appendix

Amendments to Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, and the Bankruptcy Rules Part VIII Appellate Rules Appendix bring the Bankruptcy Rules into conformity with amendments to the Appellate Rules that went into effect on December 1, 2016, as well as some pending amendments to the Appellate Rules.

The amendments to Rules 8002(c) and 8011(a)(2)(C) include inmate-filing provisions that are virtually identical to the inmate-filing provisions of Appellate Rules 4(c) and 25(a)(2)(C). These rules treat notices of appeal and other papers as timely filed by inmates if certain requirements are met, including that the documents are deposited in the institution's internal mail system on or before the last day for filing.

Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), set out a list of post-judgment motions that toll the time for filing an appeal. The 2016 amendment to Appellate Rule 4(a)(4) added a requirement that the motion be filed within the time period specified by the rule under which it is made in order for the motion to have a tolling effect. A similar amendment is made to Rule 8002(b).

The amendments to Rules 8013, 8015, 8016, and 8022, and the new Part VIII Appendix conform the bankruptcy appellate rules to the new length limits in the Appellate Rules. Existing page limits are converted to word limits for documents prepared with a computer, and existing word limits are reduced. The new Part VIII Appendix collects all the changes into a single chart, conforming to a similar appendix to the Appellate Rules.

Rule 8017 is the bankruptcy counterpart to Appellate Rule 29. The 2016 amendment to Rule 29 provides a default rule concerning the timing and length of amicus briefs filed in connection with petitions for panel rehearing or rehearing en banc. New Rule 8017(b) sets a similar default rule for amicus filings during a district court's or bankruptcy appellate panel's consideration of whether to grant rehearing. A pending amendment to Appellate Rule 29(a) would authorize a court of appeals to prohibit or strike the filing of an amicus brief if the filing would result in the disqualification of a judge. A similar amendment to Rule 8017 is made to maintain consistency between the two sets of rules.

E. Rule 8002

A new subdivision (a)(5) is added to Rule 8002 (Time for Filing Notice of Appeal) defining entry of judgment. The amendment clarifies that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and either (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

F. Rule 8006

The amendment to Rule 8006 (Certifying a Direct Appeal to the Court of Appeals) adds a new subdivision (c)(2) that authorizes the bankruptcy judge or the court where the appeal is then pending to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all the parties to the appeal.

G. Rule 8018.1

New Rule 8018.1 (District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter) authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment. The procedure would eliminate the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.

IV. Federal Rules of Civil Procedure 23, 62, and 65.1

Each of the proposed amendments to the Civil Rules discussed below was unanimously approved by both the Civil Rules Advisory Committee and the Standing Committee.

A. Rule 23

The proposed amendments to Rule 23 (Class Actions) are the culmination of several years of study and consideration by the Advisory Committee, through its Rule 23 Subcommittee. Members of the Subcommittee attended nearly two dozen meetings and bar conferences with diverse memberships and attendees and held a mini-conference to gather additional input from a variety of stakeholders on potential rule amendments.

The Subcommittee spent considerable effort deciding which of the many class action issues brought to its attention warranted rules amendments. The proposed amendments to Rule 23 published in August 2016 addressed seven issues:

1. Requiring that more information regarding a proposed class settlement be provided to the district court at the point when the court is asked to send notice of the proposed settlement to the class;
2. Clarifying that a decision to send notice of a proposed settlement to the class under Rule 23(e)(1) is not appealable under Rule 23(f);
3. Clarifying in Rule 23(c)(2)(B) that the Rule 23(e)(1) notice triggers the opt-out period in Rule 23(b)(3) class actions;
4. Updating Rule 23(c)(2) regarding individual notice in Rule 23(b)(3) class actions;
5. Establishing procedures for dealing with class action objectors;
6. Refining standards for approval of proposed class settlements; and
7. A proposal by the Department of Justice to include in Rule 23(f) a 45-day period in which to seek permission for an interlocutory appeal when the United States is a party.

Numerous comments were received during the public comment period, both written and in the form of testimony at three public hearings. The comments were largely supportive of the proposed amendments. Despite calls for a variety of additional changes from all sides of the litigation spectrum, the Subcommittee and Advisory Committee determined that these were the changes that would improve class action procedures while preserving the valuable contributions Rule 23 has made to civil litigation.

B. Rules 62 and 65.1

The proposed amendments to Rule 62 (Stay of Proceedings to Enforce a Judgment) make three changes.

First, the period of the automatic stay is extended to 30 days. This change eliminates a gap in the current rule between termination of the automatic stay and the date when post-judgment motions are due. The gap was an unintentional result of the Time Computation Project.

Second, the proposed amendments make clear that a party may obtain a stay by posting a bond or other security. The reference to “supersedeas bond” is eliminated. The stay takes effect when approved by the court and remains in effect for the time specified in the bond or security, including through final disposition on appeal. The former provision for stays pending disposition of a post-judgment motion is eliminated as unnecessary.

Third, subdivisions (a) through (d) are rearranged, with only a minor change to the provisions for staying judgments in an action for an injunction or a receivership, or directing an accounting in an action for patent infringement.

The proposed amendment to Rule 65.1 (Proceedings Against a Surety) is intended to reflect the expansion of Rule 62 to include forms of security other than a bond and to conform the rule with the proposed amendments to Appellate Rule 8(b).

V. Federal Rule of Criminal Procedure 12.4

The proposed amendments to Criminal Rule 12.4 (Disclosure Statement) were unanimously approved by both the Criminal Rules Advisory Committee and the Standing Committee.

When Rule 12.4 was added in 2002, the committee note stated that “[t]he purpose of the rule is to assist judges in determining whether they must recuse themselves because of a ‘financial interest in the subject matter in controversy.’ Code of Judicial Conduct, Canon 3C(1)(c) (1972).” At the time, the Code of Conduct for United States Judges treated all victims entitled to restitution as parties. As amended in 2009, however, the Code no longer treats any victim who may be entitled to restitution as a party and requires disclosure only when the judge has an “interest that could be affected substantially by the outcome of the proceeding.”

The proposed amendment to Rule 12.4(a)(2) – the subdivision that governs when the government is required to identify organizational victims – makes the scope of the required disclosures under Rule 12.4 consistent with the 2009 amendments. The proposed amendment allows the court to relieve the government’s burden of making the required disclosures upon a showing of “good cause.” The amendment will avoid the need for burdensome disclosures when numerous organizational victims exist and the impact of the crime on each is relatively small.

Rule 12.4(b), the subdivision that specifies the time for filing disclosure statements, would also be amended. First, the proposed amendments provide that disclosures must be made within 28 days after the defendant’s initial appearance. Second, the amendments revise the rule to refer to “later” rather than “supplemental” filings. Third, the text is revised for clarity and to parallel Civil Rule 7.1(b)(2) by requiring a party to “promptly file a later statement if any required information changes.”

Thank you for considering these proposed changes. We will be happy to provide any additional information that may be helpful.

Operational Impact Assessment of Amendments to Select Civil and Criminal Rules (on track to become effective December 1, 2018)

At its September 2017 meeting, the Judicial Conference approved amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure. The amendments were adopted by the Supreme Court and transmitted to Congress on April 26, 2018. The amendments are on track to become effective December 1, 2018. A complete set of the amendments is available [here](#).

This document, which was prepared by the District Clerks Advisory Group and the AO Court Services Office, provides a review of select amendments to the Federal Rules of Civil and Criminal Procedure identified as having possible impact on district court operations. This information is not intended to identify all possible operational issues implicated by all of the pending Rule amendments, but rather to provide helpful guidance to a court as it assesses whether local rules/administrative orders, policies, procedures, or forms require conforming modifications. Such modifications may include not only substantive changes, but also the correction of citations or cross references to local rules/administrative orders that have been supplanted by a new national rule.

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 5: Serving and Filing Pleadings and Other Papers (link to current version)			
Rule 5(b)(2)(E) <i>Service: How Made – Service in General</i>	<ul style="list-style-type: none"> a party who is a registered CM/ECF user would now be subject to electronic service via CM/ECF without consent, unless the court provides otherwise consent would still be required for service of a party via electronic means <u>other than</u> CM/ECF 	<p>(b) Service: How Made.</p> <p align="center">* * * * *</p> <p>(2) <i>Service in General.</i> A paper is served under this rule by:</p> <p>(A) handing it to the person;</p> <p align="center">* * * * *</p> <p>(E) sending it <u>to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means if that</u> the person consented <u>to</u> in writing—in <u>either of</u> which events service is complete upon transmission<u>filing or sending</u>, but is not effective if the serving party<u>filer or sender</u> learns that it did not reach the person to be served; or</p> <p align="center">* * * * *</p> <p>(3) <i>Using Court Facilities.</i> If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E). <u>[Abrogated (Apr. __, 2018, eff. Dec. 1, 2018).]</u></p>	<ul style="list-style-type: none"> A local rule is no longer necessary to authorize service via CM/ECF; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials/tutorials references in CM/ECF registration forms regarding consent to service via CM/ECF any other documents that reference the court's local rules or administrative orders on service via CM/ECF <p><u>Added Rules Committee Note</u> During the comment period, concerns were expressed regarding what responsibility the court would have for NEF bounce-backs under the amendment. In other words, could the court via CM/ECF be construed as a “sender” such that it would be required to inform a filer that a NEF failed to reach the party to be served. <i>See Advisory Committee on Civil Rules Meeting Agenda Book (April 25-26, 2017)</i> at 205. To address the concern, the committee added the following clarification to the Committee Notes section of the rule:</p> <p>“The rule does not make the court responsible for notifying a person who filed the paper with the court's electronic filing system that an attempted transmission by the court's system failed.”</p> <ul style="list-style-type: none"> Courts may want to consider reviewing their local policies and practices regarding how NEF bounce-backs are handled in light of this clarification. The Committee Note also does not address the court's obligation to monitor a bounce-back of a court order or notice.

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 5(d)(1)(B) <i>Filing – Certificate of Service</i>	<ul style="list-style-type: none"> eliminates the requirement for a certificate of service where service is made via CM/ECF 	<p><u>(B) Certificate of Service. No certificate of service is required when a paper is served by filing it with the court’s electronic-filing system. When a paper that is required to be served is served by other means:</u></p> <p><u>(i) if the paper is filed, a certificate of service must be included with it or filed within a reasonable time after service, and</u></p> <p><u>(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by local rule or court order.</u></p>	<ul style="list-style-type: none"> The removal of the requirement for a certificate of service (COS) when all parties are served via CM/ECF may necessitate review/revision of: <ul style="list-style-type: none"> local rules that impose additional requirements for a COS case management QC procedures templates for deficiency notices re failure to include COS COS components of fillable forms referencing COS requirements
Rule 5(d)(3)(A) <i>Filing – Electronic Filing, and Signing – By a Represented Person—Generally Required; Exceptions</i>	<ul style="list-style-type: none"> makes electronic filing generally mandatory for a person represented by an attorney with exceptions for good cause or by local rule 	<p><u>(A) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</u></p>	<ul style="list-style-type: none"> Possible changes to local requirements for electronic filing because this requirement will now be addressed in the Rule; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials references to local requirements in CM/ECF registration forms any other documents that reference the local rule or administrative order and must be changed to reference national rule

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 5(d)(3)(B) <i>Filing – Electronic Filing, and Signing – By an Unrepresented Person—When Allowed or Required</i>	<ul style="list-style-type: none"> electronic filing by pro se litigants governed by local rules or court order; mandatory electronic filing by pro se persons must be subject to “reasonable exceptions” 	<p><u>(B) By an Unrepresented Person—When Allowed or Required. A person not represented by an attorney:</u></p> <p><u>(i) may file electronically only if allowed by court order or by local rule;</u></p> <p><u>and</u></p> <p><u>(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.</u></p>	<ul style="list-style-type: none"> Possible changes to local requirements regarding when a pro se party would be allowed or required to file electronically (specifying reasonable exceptions where electronic filing is made mandatory) May also necessitate review/revision of pro se filing guidance/forms and any of the following that relate to pro se filing: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials any other documents that reference a local rule or administrative order and must be changed to reference national rule
Rule 5(d)(3)(C) <i>Filing – Electronic Filing, and Signing – Signing</i>	<ul style="list-style-type: none"> person’s name on a signature block along with CM/ECF user name/password serves as signature 	<p><u>(C) Signing. An authorized filing made through a person’s electronic filing account, together with the person’s name on a signature block, constitutes the person’s signature.</u></p>	<ul style="list-style-type: none"> Possible changes to local requirements for electronic signatures because this requirement will now be addressed in the Rule; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials any other documents that reference a local rule or administrative order and must be changed to reference national rule

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 5(d)(3)(D) <i>Filing – Electronic Filing, and Signing – Same as a Written Paper</i>	<ul style="list-style-type: none"> Removes reference to local rule requirements for electronic filing in light of the new national rules 	<p><u>(D) Same as a Written Paper.</u> A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.</p>	<p>Revision of any other documents that reference a local rule or administrative order to reference national rule, including:</p> <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials
Rule 23: Class Actions (link to current version)			
Rule 23(e)(5)(A) <i>Settlement, Voluntary Dismissal, or Compromise – Class-Member Objections – In General</i>	<ul style="list-style-type: none"> removes the requirement that a class member obtain court approval before withdrawing an objection to a settlement/voluntary dismissal provides specific requirements for the contents of an objection 	<p>(5) <u>Class-Member Objections.</u></p> <p><u>(A) In General.</u> Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval. <u>The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.</u></p>	<ul style="list-style-type: none"> Assess whether new/modified local CM/ECF event needed—<i>i.e.</i>, consider adding a local event to the notices menu for “withdrawal of objection”

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 62: Stay of Proceedings to Enforce a Judgment (link to current version)			
Rule 62(a) <i>Automatic Stay</i>	<ul style="list-style-type: none"> extends the period of the automatic stay from 14 to 30 days expressly recognizes the court's authority to dissolve the automatic stay or supersede it by a court-ordered stay as part of a consolidation (with no change in meaning) of the provisions for staying an injunction, receivership, or order for a patent accounting, the contents of current section (a)(1) and (2) were moved to new section (c)(1) and (2) 	<p>Rule 62. Stay of Proceedings to Enforce a Judgment</p> <p>(a) Automatic Stay; Exceptions for Injunctions, Receiverships, and Patent Accountings. Except as provided in Rule 62(c) and (d), stated in this rule, no execution may issue on a judgment, nor may <u>and</u> proceedings be taken to enforce it; <u>are stayed for 30 days</u> until 14 days have passed after its entry, <u>unless the court orders otherwise</u>. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:</p> <p>(1) an interlocutory or final judgment in an action for an injunction or a receivership; or</p> <p>(2) a judgment or order that directs an accounting in an action for patent infringement.</p>	<ul style="list-style-type: none"> If a court tracks this stay period, then it may need to make local CM/ECF modifications or changes to internal procedures.

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 62(b) <i>Stay by Bond or Other Security</i>	<ul style="list-style-type: none"> former Rule 62(d), which required a party to provide a “supersedeas bond” to obtain a stay, has been replaced with new section 62(b), which allows a party to obtain a stay by providing a “bond or other security.” The amendment eliminates the antiquated term “supersedeas.” A letter of credit is one possible example of security other than a bond. 	<p><u>(b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or security.</u></p> <p>*****</p> <p>(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.</p>	<ul style="list-style-type: none"> Possible changes to local rules/administrative orders, policies, forms, <i>etc.</i>, that reference “supersedeas bonds” May require local CM/ECF changes to events referencing “supersedeas bonds”

Possible Operational Impact of Amendments to Criminal Rules (on track to become effective December 1, 2018)

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
Rule 12.4: Disclosure Statement (link to current version)			
Rule 12.4(a)(2) <i>Who Must File – Organizational Victim</i>	<ul style="list-style-type: none"> adds an opportunity for the government to request relief from disclosure requirement for good cause 	<p>(2) <i>Organizational Victim.</i> <u>Unless the government shows good cause, it must file a statement identifying any organizational victim of the alleged criminal activity.</u>If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 12.4(a)(1) to the extent it can be obtained through due diligence.</p>	<ul style="list-style-type: none"> Determine how such requests should be presented by the government (<i>e.g.</i>, by motion) and whether such requests warrant a new CM/ECF event, or require a new/revised local rule Revision of the following may be necessary: <ul style="list-style-type: none"> local forms used for disclosures internal procedures and training materials
Rule 12.4(b) <i>Time to File; Later Filing</i>	<ul style="list-style-type: none"> provides for a period of 28 days after the initial appearance for making the disclosures (changed from “<u>upon</u> initial appearance”) requires later disclosures to be made not only for changed information but also new information 	<p>(b) Time for to Filing; SupplementalLater Filing</p> <p>A party must:</p> <p>(1) file the Rule 12.4(a) statement <u>within 28 days after</u>upon the defendant’s initial appearance; and</p> <p>(2) promptly file a later<u>supplemental</u> statement <u>if any required information changes</u>upon any change in the information that the statement requires.</p>	<ul style="list-style-type: none"> Court may need to review its local procedures regarding conflict checks New 28-day deadline may require local CM/ECF changes Revision of the following may be necessary: <ul style="list-style-type: none"> local rules local forms used for disclosures standing/administrative orders relevant policies/procedures/training materials

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	Note/Impact/Concern
Rule 49: Serving and Filing Papers (link to current version)			
<p>General Note: Currently, the Criminal Rules incorporate by reference the Civil Rules provisions on filing and service (<i>i.e.</i>, requiring service and filing in the “manner provided for a civil action”). The amendments to Criminal Rule 49 set out standalone rules on filing and service that are more tailored to criminal cases. With the exceptions discussed below, the amendments are intended to carry over the applicable existing law on filing and service from the Civil Rules as well as the related amendments to Civil Rule 5 discussed above.</p> <ul style="list-style-type: none"> These changes may require revision of local rules, standing/administrative orders, policies, procedures, training materials, forms, <i>etc.</i>, to replace Civil Rule references with references to the new Criminal Rules. 			
<p>Rule 49(a)(1) <i>Service on a Party – What is Required</i></p> <p>and</p> <p>(a)(2) <i>Serving a Party’s Attorney</i></p>	<ul style="list-style-type: none"> removes the general incorporation to Civil Rules for service requirements language revised to reflect the requirement that nonparties must also serve certain filings on all parties as provided more specifically in new Rule 49(c) (a prior amendment had inadvertently removed the rule’s application to nonparties) 	<p>Rule 49. Serving and Filing Papers</p> <p>(a) <u>Service on a Party.</u></p> <p><u>(1) What is When Required.</u> A party must serve on every other party. <u>Each of the following must be served on every party:</u> any written motion (other than one to be heard <i>ex parte</i>), written notice, designation of the record on appeal, or similar paper.</p> <p>(b) How Made. Service must be made in the manner provided for a civil action.</p> <p><u>(2) Serving a Party’s Attorney.</u> Unless the court orders otherwise. <u>When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.</u></p>	<ul style="list-style-type: none"> The removal of reference to the service provisions of the Civil Rules may require revision of local rules, standing/administrative orders, policies, procedures, training materials, forms, <i>etc.</i>, to replace Civil Rule references with references to the new corresponding Criminal Rules. Possible changes to local requirements regarding service by a nonparty; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals Internal and external training materials

Federal Rules of Criminal Procedure			
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Rule 49(a)(3) <i>Service on a Party – Service by Electronic Means</i>	<ul style="list-style-type: none"> brings over the permissible means of electronic service specified in the Civil Rules. a party who is a registered CM/ECF user would now be subject to electronic service via CM/ECF without consent, unless the court provides otherwise (same as amendment to Civil Rule 5(b)(2)(E)) consent would still be required for service of a party via electronic means other than CM/ECF 	<p><u>(3) Service by Electronic Means.</u></p> <p><u>(A) Using the Court’s Electronic Filing System.</u></p> <p><u>A party represented by an attorney may serve a paper on a registered user by filing it with the court’s electronic-filing system.</u></p> <p><u>A party not represented by an attorney may do so only if allowed by court order or local rule. Service is complete upon filing, but is not effective if the serving party learns that it did not reach the person to be served.</u></p> <p><u>(B) Using Other Electronic Means. A paper may be served by any other electronic means that the person consented to in writing. Service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.</u></p>	<ul style="list-style-type: none"> A local rule is no longer necessary to authorize service via CM/ECF; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials/tutorials references in CM/ECF registration forms regarding consent to service via CM/ECF any other documents that reference the court’s local rules or administrative order on service via CM/ECF These changes may require revision of local rules, standing/administrative orders, policies, procedures, training materials, forms, <i>etc.</i>, to replace Civil Rule references with references to the new corresponding Criminal Rules. <p><u>Added Rules Committee Note</u></p> <p>During the comment period, concerns were expressed regarding what responsibility the court would have for NEF bounce-backs under the amendment. In other words, could the court via CM/ECF be construed as a “sender” such that it would be required to inform a filer that a NEF failed to reach the party to be served. <i>See Advisory Committee on Criminal Rules Meeting Agenda Book (April 28, 2017)</i> at 98-99. To address the concern, the committee added the following clarification to the Committee Notes section of the rule:</p> <p>“The rule does not make the court responsible for notifying a person who filed the paper with the court’s electronic filing system that an attempted transmission by the court’s system failed.”</p> <ul style="list-style-type: none"> Courts may want to consider reviewing their local policies and practices regarding how NEF bounce-backs are handled in light of this clarification. The Committee Note also does not address the court’s obligation to monitor a bounce-back of a court order or notice.

Federal Rules of Criminal Procedure			
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Rule 49(a)(4) <i>Service on a Party – Service by Nonelectronic Means</i>	<ul style="list-style-type: none"> brings over the permissible means of <u>nonelectronic</u> service specified in the Civil Rules. 	<p><u>(4) <i>Service by Nonelectronic Means.</i> A paper may be served by:</u></p> <p><u>(A) handing it to the person;</u></p> <p><u>(B) leaving it:</u></p> <p><u>(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or</u></p> <p><u>(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;</u></p> <p><u>(C) mailing it to the person's last known address—in which event service is complete upon mailing;</u></p> <p><u>(D) leaving it with the court clerk if the person has no known address; or</u></p> <p><u>(E) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.</u></p>	<ul style="list-style-type: none"> These changes may require revision of local rules, standing/administrative orders, policies, procedures, training materials, forms, <i>etc.</i>, to replace Civil Rule references with references to the new corresponding Criminal Rules.

Federal Rules of Criminal Procedure			
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Rule 49(b)(1) <i>Filing – When Required; Certificate of Service</i>	<ul style="list-style-type: none"> eliminates the requirement for a certificate of service where service is made via CM/ECF (same as amendment to Civil Rule 5(d)(1)(B)) 	<p><u>(b) Filing.</u></p> <p><u>(1) When Required; Certificate of Service. Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served by filing it with the court's electronic-filing system. When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.</u></p>	<ul style="list-style-type: none"> The removal of the requirement for a certificate of service (COS) when all parties are served via CM/ECF may necessitate review/revision of: <ul style="list-style-type: none"> local rules that impose additional requirements for COS case management QC procedures templates for deficiency notices re failure to include COS COS components of fillable forms referencing COS requirements

Federal Rules of Criminal Procedure			
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Rule 49(b)(2) <i>Filing – Means of Filing</i>	<ul style="list-style-type: none"> brings over the permissible means of filing specified in the Civil Rules person's name on a signature block along with CM/ECF user name/password serves as signature 	<p><u>(2) Means of Filing.</u></p> <p><u>(A) Electronically. A paper is filed electronically by filing it with the court's electronic-filing system. The user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's signature. A paper filed electronically is written or in writing under these rules.</u></p> <p><u>(B) Nonelectronically. A paper not filed electronically is filed by delivering it:</u></p> <p><u>(i) to the clerk; or</u></p> <p><u>(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.</u></p>	<ul style="list-style-type: none"> Possible changes to local requirements for electronic signatures because this requirement will now be addressed in the Rule; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals internal and external training materials any other documents that reference a local rule or administrative order and must be changed to reference national rule These changes may require revision of local rules, standing/administrative orders, policies, procedures, training materials, forms, <i>etc.</i>, to replace Civil Rule references with references to the new corresponding Criminal Rules.

Federal Rules of Criminal Procedure			
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Rule 49(b)(3)(A) <i>Filing – Means Used by Represented and Unrepresented Parties – Represented Party</i>	<ul style="list-style-type: none"> ■ makes electronic filing generally mandatory for a person represented by an attorney with exceptions for good cause or by local rule (same as amendment to Civil Rule 5(d)(3)) 	<p><u>(3) Means Used by Represented and Unrepresented Parties.</u></p> <p><u>(A) Represented Party. A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</u></p>	<ul style="list-style-type: none"> ■ Possible changes to local requirements for electronic filing because this requirement will now be addressed in the Rule; revision of the following may be necessary: <ul style="list-style-type: none"> ○ local rules ○ standing/administrative orders ○ CM/ECF guidance/policies/manuals ○ internal and external training materials ○ references to local requirements in CM/ECF registration forms ○ any other documents that reference the local rule or administrative order and must be changed to reference national rule
Rule 49(b)(3)(B) <i>Filing – Means Used by Represented and Unrepresented Parties – Unrepresented Party</i>	<ul style="list-style-type: none"> ■ requires nonelectronic filing by pro se litigants unless permitted by local rules or court order ■ Note: While a court may impose mandatory electronic filing on civil pro se litigants under Civil Rule 5(d)(3)(B)(ii), there is no comparable provision for mandatory electronic filing by criminal defendants 	<p><u>(B) Unrepresented Party. A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or local rule.</u></p>	<ul style="list-style-type: none"> ■ Possible changes to local requirements regarding when a pro se party would be allowed to file electronically ■ May necessitate review/revision of pro se filing guidance/forms and any of the following that relate to pro se filing: <ul style="list-style-type: none"> ○ local rules ○ standing/administrative orders ○ CM/ECF guidance/policies/manuals ○ internal and external training materials ○ any other documents that reference a local rule or administrative order and must be changed to reference national rule

Federal Rules of Criminal Procedure			
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Rule 49(b)(4) <i>Filing – Signature</i>	<ul style="list-style-type: none"> brings over Civil Rule 11(a) 	<p><u>(4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name—or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.</u></p>	<ul style="list-style-type: none"> This provision was already part of the Criminal Rules by reference to the Civil Rules on service and filing Any references to Civil Rule 11(a) in documents/materials pertaining to criminal cases should be changed to reference this new Criminal Rule
Rule 49(b)(5) <i>Filing – Acceptance by the Clerk</i>	<ul style="list-style-type: none"> brings over Civil Rule 5(d)(4) 	<p><u>(5) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.</u></p>	<ul style="list-style-type: none"> This provision was already part of the Criminal Rules by reference to the Civil Rules on service and filing Any references to Civil Rule 5(d)(4) in documents/materials pertaining to criminal cases should be changed to reference this new Criminal Rule

Federal Rules of Criminal Procedure			
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Rule 49(c) <i>Filing – Service and Filing by Nonparties</i>	<ul style="list-style-type: none"> adds new language to expressly permit nonparties to file in a criminal case when required or permitted by law requires nonparties to serve a filing on every party allows nonparties to file with CM/ECF when permitted by order or local rule. Examples of nonparties who might file in a criminal case include: media, material witnesses, and victims 	<p>(c) <u>Service and Filing by Nonparties. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or local rule.</u></p>	<ul style="list-style-type: none"> Possible changes to local requirements regarding service and electronic filing by a nonparty; revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders CM/ECF guidance/policies/manuals Internal and external training materials Consider creating a new form to be used by a non-party to request permission to file electronically
Rule 49(d) <i>Filing – Notice of Court Order</i>	<ul style="list-style-type: none"> moves language formerly in paragraph (c) to a new paragraph (d) and changes the general cross-reference to the Civil Rules to Criminal Rule 49(a). 	<p>(d) <u>Notice of a Court Order.</u> When the court issues an order on any post-arraignment motion, the clerk must provide notice in a manner provided for in a civil action <u>serve notice of the entry on each party as required by Rule 49(a). A party also may serve notice of the entry by the same means.</u> Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve—or authorize the court to relieve—a party's failure to appeal within the allowed time.</p>	<ul style="list-style-type: none"> Any references to the Civil Rules on service in documents/materials pertaining to criminal cases should be changed to reference Criminal Rule 49(a)