



**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.



Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
<b>Rule 5: Serving and Filing Pleadings and Other Papers</b>			
<p>Rule 5(b)(2)(E) <i>Service: How Made – Service in General</i></p>	<ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ consent would still be required for service of a party via electronic means <u>other than</u> CM/ECF</li> </ul>	<p>(b) <b>Service: How Made.</b></p> <p style="text-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 style="text-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</u> electronic means <del>if that</del> the person consented <u>to</u> in writing—in <u>either of</u> which events service is complete upon <del>transmission</del><u>filing or sending</u>, but is not effective if the <del>-serving party</del><u>filer or sender</u> learns that it did not reach the person to be served; or</p> <p style="text-align: center;">* * * * *</p> <p><del>(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).</del> <u>[Abrogated (Apr. __, 2018, eff. Dec. 1, 2018).]</u></p>	

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
<p>Rule 5(d)(1)(B)  <i>Filing – Certificate of Service</i></p>	<ul style="list-style-type: none"> <li>eliminates the requirement for a certificate of service where service is made via CM/ECF</li> </ul>	<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>	
<p>Rule 5(d)(3)(A)  <i>Filing – Electronic Filing, and Signing – By a Represented Person—Generally Required; Exceptions</i></p>	<ul style="list-style-type: none"> <li>makes electronic filing generally mandatory for a person represented by an attorney with exceptions for good cause or by local rule</li> </ul>	<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>	

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
<p>Rule 5(d)(3)(B)  <i>Filing – Electronic Filing, and Signing – By an Unrepresented Person—When Allowed or Required</i></p>	<ul style="list-style-type: none"> <li>▪ 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”</li> </ul>	<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>	
<p>Rule 5(d)(3)(C)  <i>Filing – Electronic Filing, and Signing – Signing</i></p>	<ul style="list-style-type: none"> <li>▪ person’s name on a signature block along with CM/ECF user name/password serves as signature</li> </ul>	<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>	

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
Rule 5(d)(3)(D) <i>Filing – Electronic Filing, and Signing – Same as a Written Paper</i>	<ul style="list-style-type: none"> <li>Removes reference to local rule requirements for electronic filing in light of the new national rules</li> </ul>	<p><u>(D) Same as a Written Paper.</u> A paper filed electronically <del>in compliance with a local rule</del> is a written paper for purposes of these rules.</p>	
<b>Rule 23: Class Actions</b>			
Rule 23(e)(5)(A) <i>Settlement, Voluntary Dismissal, or Compromise – Class-Member Objections – In General</i>	<ul style="list-style-type: none"> <li>removes the requirement that a class member obtain court approval before withdrawing an objection to a settlement/voluntary dismissal</li> <li>provides specific requirements for the contents of an objection</li> </ul>	<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); <del>the objection may be withdrawn only with the court's approval.</del> <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>	

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
<b>Rule 62: Stay of Proceedings to Enforce a Judgment</b>			
<p>Rule 62(a) <i>Automatic Stay</i></p>	<ul style="list-style-type: none"> <li>▪ extends the period of the automatic stay from 14 to 30 days</li> <li>▪ expressly recognizes the court’s authority to dissolve the automatic stay or supersede it by a court-ordered stay</li> <li>▪ 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)</li> </ul>	<p><b>Rule 62. Stay of Proceedings to Enforce a Judgment</b></p> <p>(a) <del>Automatic Stay; Exceptions for Injunctions, Receiverships, and Patent Accountings.</del> Except as <del>provided in Rule 62(c) and (d), stated in this rule, no</del> execution <del>may issue</del> on a judgment, <del>nor may</del> <u>and</u> proceedings <del>be taken</del> 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) <del>an interlocutory or final judgment in an action for an injunction or a receivership; or</del></p> <p>(2) <del>a judgment or order that directs an accounting in an action for patent infringement.</del></p>	

Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	
<p>Rule 62(b) <i>Stay by Bond or Other Security</i></p>	<ul style="list-style-type: none"> <li>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.</li> </ul>	<p><u>(b) Stay by Bond or Other Security.</u> 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.</p> <p>*****</p> <p><del>(d) Stay with Bond on Appeal.</del> 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>	

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	
<b>Rule 12.4: Disclosure Statement</b>			
Rule 12.4(a)(2) <i>Who Must File – Organizational Victim</i>	<ul style="list-style-type: none"> <li>adds an opportunity for the government to request relief from disclosure requirement for good cause</li> </ul>	<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><del>If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim.</del> 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>	
Rule 12.4(b) <i>Time to File; Later Filing</i>	<ul style="list-style-type: none"> <li>provides for a period of 28 days after the initial appearance for making the disclosures (changed from “<u>upon</u> initial appearance”)</li> <li>requires later disclosures to be made not only for changed information but also new information</li> </ul>	<p>(b) <del>Time for to Filing; Supplemental</del><b>Later Filing</b></p> <p>A party must:</p> <p>(1) file the Rule 12.4(a) statement <u>within 28 days after</u><del>upon</del> the defendant’s initial appearance; and</p> <p>(2) promptly file a <del>later</del><u>supplemental</u> statement <u>if any required information changes</u><del>upon any change in the information that the statement requires.</del></p>	

**Federal Rules of Criminal Procedure**

Rule	Description of Amendment	Text of Amendment	
<b>Rule 49: Serving and Filing Papers</b>			
<p><u>General Note:</u> 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"> <li>• 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.</li> </ul>			
<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"> <li>▪ removes the general incorporation to Civil Rules for service requirements</li> <li>▪ 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)</li> </ul>	<p><b>Rule 49. Serving and Filing Papers</b></p> <p>(a) <u>Service on a Party.</u></p> <p><u>(1) What is When Required.</u> <del>A party must serve on every other party.</del> <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><del>(b) How Made. Service must be made in the manner provided for a civil action.</del></p> <p><u>(2) Serving a Party’s Attorney.</u> <u>Unless the court orders otherwise,</u> <del>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.</del></p>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(a)(3) <i>Service on a Party – Service by Electronic Means</i>	<ul style="list-style-type: none"> <li>brings over the permissible means of <u>electronic</u> service specified in the Civil Rules.</li> <li>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))</li> <li>consent would still be required for service of a party via electronic means other than CM/ECF</li> </ul>	<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>	

**Federal Rules of Criminal Procedure**

Rule	Description of Amendment	Text of Amendment	
<p>Rule 49(a)(4) <i>Service on a Party – Service by Nonelectronic Means</i></p>	<ul style="list-style-type: none"> <li>▪ brings over the permissible means of <u>nonelectronic</u> service specified in the Civil Rules.</li> </ul>	<p><u>(4) Service by Nonelectronic Means. 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 style="padding-left: 40px;"><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 style="padding-left: 40px;"><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>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(b)(1) <i>Filing – When Required; Certificate of Service</i>	<ul style="list-style-type: none"> <li>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))</li> </ul>	<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>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(b)(2) <i>Filing – Means of Filing</i>	<ul style="list-style-type: none"> <li>brings over the permissible means of filing specified in the Civil Rules</li> <li>person's name on a signature block along with CM/ECF user name/password serves as signature</li> </ul>	<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>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(b)(3)(A) <i>Filing – Means Used by Represented and Unrepresented Parties – Represented Party</i>	<ul style="list-style-type: none"> <li>▪ 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))</li> </ul>	<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>	
Rule 49(b)(3)(B) <i>Filing – Means Used by Represented and Unrepresented Parties – Unrepresented Party</i>	<ul style="list-style-type: none"> <li>▪ requires nonelectronic filing by pro se litigants unless permitted by local rules or court order</li> <li>▪ 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</li> </ul>	<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>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(b)(4) <i>Filing – Signature</i>	<ul style="list-style-type: none"> <li>brings over Civil Rule 11(a)</li> </ul>	<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>	
Rule 49(b)(5) <i>Filing – Acceptance by the Clerk</i>	<ul style="list-style-type: none"> <li>brings over Civil Rule 5(d)(4)</li> </ul>	<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>	

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	
Rule 49(c) <i>Filing – Service and Filing by Nonparties</i>	<ul style="list-style-type: none"> <li>adds new language to expressly permit nonparties to file in a criminal case when required or permitted by law</li> <li>requires nonparties to serve a filing on every party</li> <li>allows nonparties to file with CM/ECF when permitted by order or local rule.</li> <li>Examples of nonparties who might file in a criminal case include: media, material witnesses, and victims</li> </ul>	<p>(c) <u>Service and Filing by Nonparties.</u> 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.</p>	
Rule 49(d) <i>Filing – Notice of Court Order</i>	<ul style="list-style-type: none"> <li>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).</li> </ul>	<p>(d) <u>Notice of a Court Order.</u> When the court issues an order on any post-arraignment motion, the clerk must <del>provide notice in a manner provided for in a civil action</del> <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>	