

REVISIONS TO RULES
OF THE
SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 27, 2003

EFFECTIVE DATE: MAY 1, 2003

The Clerk's Comments that accompany the revisions to the Rules are not part of the Rules. They are furnished solely to assist readers in understanding the revisions.

Current Rule 13.5

For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be received by the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

Revised Rule 13.5

For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be **filed with** the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

[CLERK'S COMMENT: BECAUSE OF THE MAIL SCREENING PROCEDURES PRESENTLY IN PLACE, THE DATE AN APPLICATION FOR AN EXTENSION OF TIME IS RECEIVED BY THE CLERK IS NOT IN THE CONTROL OF THE PETITIONER. THE DELAY CAUSED BY THE SCREENING PROCESS HAS MADE THE APPLICATION OF THE 10-DAY PROVISION OF RULES 13.5 AND 30.2 DIFFICULT, REQUIRING A DETERMINATION AS TO WHEN THE APPLICATION FOR AN EXTENSION OF TIME

SHOULD HAVE BEEN RECEIVED UNDER NORMAL CIRCUMSTANCES. THEREFORE THE RULES ARE CHANGED TO REQUIRE THAT THE APPLICATION BE **FILED** 10 DAYS BEFORE THE FINAL FILING DATE. THE FILING DATE IS WITHIN THE PETITIONER'S CONTROL AS IT IS MOST OFTEN THE DATE THE APPLICATION IS MAILED OR THE DATE THE APPLICATION IS DELIVERED TO A THIRD-PARTY COMMERCIAL CARRIER.]

Current Rule 25.2

The respondent or appellee shall file 40 copies of the brief on the merits within 30 days after receiving the brief for the petitioner or appellant.

Revised Rule 25.2

The respondent or appellee shall file 40 copies of the brief on the merits within **35** days after the brief for the petitioner or appellant **is filed**.

[CLERK'S COMMENT: THE PURPOSE OF THE CHANGE TO RULE 25 IS TO ESTABLISH A KNOWN-TO-ALL DUE DATE FOR BOTTOM-SIDE BRIEFS ON THE MERITS. PREVIOUSLY, THE DUE DATES FOR THESE BRIEFS WAS TRIGGERED BY THE DATE A BRIEF WAS RECEIVED BY A PARTY. AS A RESULT, THE CLERK'S OFFICE WAS UNABLE TO ADVISE THE COURT AND THE PUBLIC OF THE PRECISE DUE DATES FOR MERITS BOTTOM-SIDE BRIEFS. THIS CHANGE IS CONSISTENT WITH THE 1995 REVISION TO RULE 15.3 FOR THE DUE DATE FOR A BRIEF IN OPPOSITION.]

Current Rule 25.3

The petitioner or appellant shall file 40 copies of the reply brief, if any, within 30 days after receiving the brief for the respondent or appellee, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

Revised Rule 25.3

The petitioner or appellant shall file 40 copies of the reply brief, if any, within **35** days after the brief for the respondent or appellee **is filed**, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

[CLERK'S COMMENT: THE PURPOSE OF THE CHANGE TO RULE 25 IS TO ESTABLISH A KNOWN-TO-ALL DUE DATE FOR REPLY BRIEFS ON THE MERITS. PREVIOUSLY, THE DUE DATES FOR THESE BRIEFS WAS TRIGGERED BY THE DATE A BRIEF WAS RECEIVED BY A PARTY. AS A RESULT, THE CLERK'S OFFICE WAS UNABLE TO ADVISE THE COURT AND THE PUBLIC OF THE PRECISE DUE DATES FOR REPLY BRIEFS. THIS CHANGE IS CONSISTENT WITH THE 1995 REVISION TO

RULE 15.3 FOR THE DUE DATE FOR A BRIEF IN OPPOSITION.]

Current Rule 29.2

A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark showing that the document was mailed on or before the last day for filing. Commercial postage meter labels alone are not acceptable. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, the Clerk will require the person who mailed the document to submit a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the details of the mailing and stating that the mailing took place on a particular date within the permitted time. A document also is timely filed if it is forwarded through a private delivery or courier service and is actually received by the Clerk within the time permitted for filing.

Revised Rule 29.2

A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, **other than a commercial postage meter label**, showing that the document was mailed on or before the last day for filing; **or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days**. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, **or if the third-party commercial carrier does not provide the date the document was received by the carrier**, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

[CLERK'S COMMENT: THE PURPOSE OF THE CHANGES IS TO ALLOW A DOCUMENT TO BE CONSIDERED TIMELY FILED UPON DELIVERY TO A COMMERCIAL CARRIER IN ADDITION TO DEPOSITING THE DOCUMENT WITH THE UNITED STATES POSTAL SERVICE. THE CHANGES RECOGNIZE THAT A PARTY SHOULD NOT BE PENALIZED FOR CHOOSING AN OFTEN-TIMES FASTER METHOD OF DELIVERY TO THE COURT. ESPECIALLY IN LIGHT OF THE MAIL SCREENING PROCEDURES IN EFFECT, DELIVERY BY COMMERCIAL CARRIER IS NORMALLY FASTER THAN DELIVERY BY UNITED STATES POSTAL SERVICE. MOREOVER, PRIVATE, OVERNIGHT COURIER SERVICES ARE COMMONLY USED IN LAW

PRACTICES AND PROVIDE DETAILED DOCUMENTATION, OFTEN ON-LINE, WITH REGARD TO RECEIPT AND DELIVERY OF THE DOCUMENT BY THE COURIER SERVICE. LASTLY, THE CHANGE ELIMINATES THE TRAP FOR THE UNWARY PETITIONER WHO SENDS A PETITION FOR A WRIT OF CERTIORARI IN A CIVIL CASE TO THE COURT ON THE 90TH DAY BY PRIVATE COURIER RATHER THAN UNITED STATES POSTAL SERVICE, THEREBY CAUSING THE PETITION TO BE JURISDICTIONALLY OUT OF TIME. THE CHANGES ARE CONSISTENT WITH THE 1996 AMENDMENTS TO RULE 25 OF THE FEDERAL RULES OF APPELLATE PROCEDURE, WHICH AUTHORIZE THE USE OF THIRD-PARTY COMMERCIAL CARRIERS FOR THE FILING OF BRIEFS.]

Current Rule 29.3

Any document required by these Rules to be served may be served personally or by mail on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, addressed to counsel of record at the proper post office address. When a party is not represented by counsel, service shall be made on the party, personally, or by mail.

Revised Rule 29.3

Any document required by these Rules to be served may be served personally, by mail, **or by third-party commercial carrier for delivery within 3 calendar days** on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail **or third-party commercial carrier**, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, **or delivery to the carrier for delivery within 3 calendar days**, addressed to counsel of record at the proper address. When a party is not represented by counsel, service shall be made on the party, personally, by mail, **or by commercial carrier. Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court.**

[CLERK'S COMMENT: THE RULE WILL HELP ENSURE EXPEDITIOUS SERVICE ON A PARTY.]

Current Rule 30.2

Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be received by the Clerk at least 10 days before the specified final filing date as computed under these Rules; if received less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

Revised 30.2

Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be **filed** at least 10 days before the specified final filing date as computed under these Rules; if **filed** less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

[CLERK'S COMMENT: BECAUSE OF THE MAIL SCREENING PROCEDURES PRESENTLY IN PLACE, THE DATE AN APPLICATION FOR AN EXTENSION OF TIME IS RECEIVED BY THE CLERK IS NOT IN THE CONTROL OF THE PETITIONER. THE DELAY CAUSED BY THE SCREENING PROCESS HAS MADE THE APPLICATION OF THE 10-DAY PROVISION OF RULES 13.5 AND 30.2 DIFFICULT, REQUIRING A DETERMINATION AS TO WHEN THE APPLICATION FOR AN EXTENSION OF TIME SHOULD HAVE BEEN RECEIVED UNDER NORMAL CIRCUMSTANCES. THE CHANGE REQUIRES THAT THE APPLICATION BE **FILED** 10 DAYS BEFORE THE FINAL FILING DATE. THE FILING DATE IS WITHIN THE PETITIONER'S CONTROL AS IT IS MOST OFTEN THE DATE THE APPLICATION IS MAILED OR THE DATE THE APPLICATION IS DELIVERED TO A THIRD-PARTY COMMERCIAL CARRIER

Current Rule 32 Models, Diagrams, and Exhibits

Revised Rule 32 Models, Diagrams, Exhibits, and Lodgings

3. Any party or *amicus curiae* desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court. The material proposed for lodging may not be submitted until and unless requested by the Clerk.

[CLERK'S COMMENT: THE PRACTICE OF LODGING NON-RECORD MATERIALS HAS INCREASED IN RECENT YEARS. AS A RESULT, PARTIES AND *AMICI CURIAE* HAVE DELUGED THE COURT WITH REPORTS, MAGAZINE ARTICLES, PHOTOGRAPHS, VIDEO AND CASSETTE TAPES, AND DVDS. THE NEW RULE PLACES THE BURDEN ON THE PARTY OR *AMICUS CURIAE* WISHING TO SUBMIT THE NON-RECORD MATERIAL TO SHOW WHY THE MATERIAL MAY PROPERLY BE

CONSIDERED. THE PROCEDURE ALSO ELIMINATES THE NEED FOR THE COURT TO BE THE DEPOSITORY OF MATERIALS THAT MAY NOT BE RELEVANT OR PROPERLY CONSIDERED.]

Current Rule 39.2

If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion shall precede and be attached to each copy of the accompanying document.

Revised 39.2

If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion, **and affidavit or declaration if required**, shall precede and be attached to each copy of the accompanying document.

[CLERK'S COMMENT: THE CHANGE SIMPLY CLARIFIES THAT THE *IN FORMA PAUPERIS* AFFIDAVIT OR DECLARATION MUST BE INCLUDED IN THE COPIES PROVIDED TO THE COURT.]

Revised Rule 44.6

If the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing received no more than 15 days after the date of the Clerk's letter will be deemed timely.

[CLERK'S COMMENT: THE PURPOSE OF THIS PROVISION IS TO ESTABLISH A DEADLINE FOR RESUBMITTING A PETITION FOR REHEARING IN CORRECTED FORM IN THE SAME MANNER AS RULE 14.5 ESTABLISHES A DEADLINE FOR RESUBMITTING A PETITION FOR A WRIT OF CERTIORARI.]