IN THE

Supreme Court of the United States

October Term 2025

ANNIE LAURA RAY
Appellant-Petitioner

vs.

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT, STEVEN GALLOWAY, JONATHAN CHAMPAGNE LINDA HUEBER, WENDY MONICAL, BECKY DANFORD, MATT DAMBORSKY, RAY SISSON, JAMES BROUSSARD, AND JACKIE GOTCHER
Respondents

MOTION TO DIRECT CLERK TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Veronica L. Davis

/s/ V.L. Davis
222 N. Mattson
West Columbia, Texas 77486
(979)248-4583
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TABLE OF AUTHORITIES

Bell v. Thompson, 545 U.S. 794, 802 125 S.Ct. 2825, 2831, 162 L.Ed.2d 693(2005) 5,10

Magnum Import Co. v. Coty, 262 U.S. 159, 164, 43 S.Ct. 531, 533, 67 L.Ed. 922 (1923)..... 10

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IN THE

UNITED STATES SUPREME COURT

ANNIE RAY
Appellant-Petitioner

vs.

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT
Respondent

MOTION TO DIRECT CLERK TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

TO THE HONORABLE COURT:

COMES NOW, ANNIE RAY, PETITIONER, in the above entitled and numbered cause and files this Motion to file her Petition for Writ of Certiorari out of Time and would show as follows:

Because there is little to no case law regarding timeliness provisions, Petitioner reverts to the **Federal Rules of Civil and Appellate Procedure** in order glean guidance for date calculations, as it pertains to the instant case.

ARGUMENT AND AUTHORITIES

I.

Petitioner contends that its Petition for Writ of Certiorari was timely and therefore the failure to file same is error and must be reconsidered.

TIMELINESS

1. An associate clerk for this Honorable United States Supreme Court asserts that Petitioner's Petition for Writ of Certiorari was untimely filed because her Petition for Rehearing was denied on June 16, 2025 thereby determining that the filing date for the Petition for Writ of Certiorari was due on September 14, 2025. (See Exhibit A, attached and incorporated by reference, the same as if fully copied and set forth herein.

2. The Fifth Circuit Court of Appeals issued a document entitled Judgment and Order on June 23, 2025.

3. In addition to same being entitled as a judgment and order and therefore appearing to be the Final Judgment in this cause, the document goes on to state, that a Bill of Costs and Mandate would be issued **after said date**.(See Exhibit B, attached and incorporated by reference, the same as if fully copied and set forth herein. (Emphasis added- discussed infra).

The specific language reads thusly:

> IT IS FURTHER ORDERED that Appellant pay to Appellees the cost on appeal to be taxed by the Clerk of this Court. [1]

---

[1] Additional details of the order are contained infra and in attached Exhibit B, and incorporated by reference, the same as if fully copied and set forth herein.

4. No Bill of Costs was issued therewith.

Federal Rule of Appellate Procedure 41(a) states in pertinent part that the mandate: "consists of a certified copy of the judgment, a copy of the court's opinion, if an, and any direction about costs." The document considered to be the mandate in this case does not. Same constitutes another basis that the Petitioner does not consider Exhibit B to be the mandate in this cause.

5. Moreover, on June 23, 2025, the Petitioner submitted a Petition for Rehearing En Banc, as well as a Motion to Stay the Mandate.

6. A deputy clerk for the 5th Circuit rejected same as untimely, although the clerk lacked the authority to do so. Same was not presented to the Court. (See Exhibit C, attached and incorporated by reference, the same as if fully copied and set forth herein.

7. Consequently, Petitioner would show that the date that the Petition was due would begin from the date of June 23, 2025, thereby making its initial submission of June 21, 2025 timely.

8. Petitioner would show that it filed a Motion for Reconsideration regarding the rejection of her Petition for Writ of Certiorari on or about October 14, 2025.

9. Same was also rejected as said entitled Motion for Reconsideration is not one the Court will consider. Counsel was instructed to refile with the appropriate captioned pleading. Consequently, Petitioner resubmits same.

II.

An examination of the records of the Court reveal that the document issued by the Court on June 23, 2025, indicates that:

1) same is the final judgment and order

2) the language in the judgment indicates that as follows:

> The judgment or mandate of this court *shall issue 7 days* after the time to file a petition for rehearing expires, or 7 days **after** entry of an order denying a timely petition for panel rehearing, rehearing en banc or motion for stay of mandate, whichever is later. (See Exhibit B, attached and incorporated by reference, the same as if fully copied and set forth herein.

Same indicates a future date. Therefore, Petitioner considers same to be a judgment/order with a mandate to issue within seven days from that date, premised upon the language contained therein.

The language contained supra indicates that:

1) the mandate shall issue ... 7 days *after entry of an order denying rehearing en banc* [Emphasis added]

Petitioner filed a Petition for Rehearing En Banc and a Motion to Stay the mandate on June 23, 2025. A clerk for the Fifth Circuit Court of Appeals refused to docket same as untimely in contravention of the **Federal Rules**

of Appellate Procedure 41 (b) and (d).

Federal Rules of Appellate Procedure 41(d) provides that the timely filing of a petition for rehearing en banc or motion to stay the mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

If a party seeks either a rehearing or a stay of the mandate, those requests automatically stay issuance of the mandate. A rehearing petition automatically stays issuance until that request is denied or, if granted, until the rehearing proceedings conclude. *See* **Fed. R. App. P.** 41(b) ("The court's mandate must issue 7 days after the time to file a petition for rehearing *expires,* or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later."). [Emphasis added]. 7 days after the filing of the Motion to Stay would be June 30th 2025.

Because the filing of a Motion for Rehearing En Banc automatically stays the issuance of the mandate, as does the filing of a Motion to Stay the Mandate, the issuance of the mandate was improper, The Supreme Court in **Bell v. Thompson, 545 U.S. 794,** 802 125 S.Ct. 2825, 2831, 162 L.Ed.2d

693(2005) determined that:

> On Petition for Rehearing or Motion. The **timely filing** of a petition for panel rehearing, petition for rehearing en banc, or motion for **stay** of **mandate**, **stays** the **mandate** until disposition of the petition or motion, **unless the court orders otherwise** [Emphasis added]

Additionally, the Petitioner's time had not expired. In examining the clerk's notes indicates that the filing was untimely, even though it was not. If the Petitioner is to assume that the clerk rejected her request for Rehearing En Banc or the Stay of Mandate because same was filed on June 23, 2025, hours after the final order of the appellate court's "mandate", then the clerk erred. Two provisions in the Federal Rules of Appellate procedure defy that reasoning:

Federal Rule of Appellate Procedure 26, in computing any time period specified in these rules.....

1) When the period is stated in days or a longer unit of time"

(A) exclude the day of the event that triggers the period.

Federal Rules of Appellate Procedure 26(4) defines the last day as midnight in that of the circuit court's time zone. Therefore, the filing was in all things timely. Assuming that by the clerk's calculations, 7 days

expired on June 23, 2025 (based upon denial of rehearing on June 16th, 2025, Petitioner, still would have had until the end of the business day to file on June 23, 2025 or until June 24, 2025, pursuant to the Fifth Circuit's **Rule of Internal Operating Procedure** that mandate shall issue after the 8th day from the time that a party may seek a rehearing or stay. (See Appendix D, attached and incorporated by reference, the same as if fully copied and set forth herein:

> Absent a motion for stay or a stay by operation of an order, rule, or procedure, mandates will issue promptly on the 8th day after the time for filing a petition for rehearing expires; or after entry of an order denying the petition.

Therefore, the Fifth Circuit violated its own internal rules of operation. Pursuant to the foregoing, the 8th day would have been July 01, 2025, thereby making the Petition for Writ of Certiorari due on September 29, 2025. Appellant's Motion for Rehearing En Banc and Motion to Stay were in all things timely. Therefore, Appellant/ Petitioner's Petition for Writ of Certiorari was in all things timely filed.

28 U.S. Code § 2101 (c) provides in pertinent part that:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the

> Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days
>
> (f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court.....

Petitioner contends that the confusion regarding whether the order was a mandate or final order, timely filing, the rejection of that filing, and the request for an issuance of a stay of mandate were good reasons to obtain a writ of certiorari from the Supreme Court. Those same reasons are a basis that the Clerk should not reject Petitioner's filing and deem same as timely.

Additionally, good reason exists because the Petitioner had a fall which was deemed to be the result of a stroke. Petitioner was hospitalized and subsequently placed in a rehabilitative facility, making her unable to tender the In Forma Pauperis forms to this Court. [2]

III.

---

[2] Upon request from this Court, counsel will obtain documentation of these events, if deemed necessary.

Whether the June 23 2025 should be construed as the mandate or final order

In one portion of the judgment , it reads that it is the final judgment. Also contained within the document is the language, that the

> "mandate of this court *shall issue* 7 days after the time to file a petition for rehearing expires, or 7 days after .....or motion for stay of mandate, whichever is later. See Fed.R.App. 41(b) [Emphasis added]

Said language indicates that the mandate will issue seven days following this judgment/ order and after an en banc rehearing or Motion to Stay has been sought.

The comments to **Federal Rule of Appellate Procedure** 41(d) states that the mandate is stayed when an Petition for Rehearing En Banc or a Motion to Stay is requested. The denial of the rehearing en banc and Motion to Stay effectively occurred in the Fifth Circuit on June 23, 2025 when the clerk failed to file same. Seven days thereafter would be June 30, 2025 or July 01, 2025 (pursuant to Fifth Circuit Internal Rule of Operating Procedure thereby making the Petition for Writ of Certiorari due on September 29, 2025. Same holds true for the denial of the Motion to Stay, which was presumed filed on June 23,

2025, since rejected by the Clerk on that date.

Petitioner contends that the clerk lacked the authority to refuse to present the Stay of Mandate and Petition for Rehearing En Banc to the Court. Same is premised upon this finding by the Supreme Court. Chief Justice Taft, in **Magnum Import Co. v. Coty**, 1923, 262 U.S. 159, 164, 43 S.Ct. 531, 533, 67 L.Ed. 922, established guidelines for granting stays which have withstood the years:

> The petition should, in the first instance, be made to the Circuit Court of Appeals which with its complete knowledge of the cases may with full consideration promptly pass on it. That court is in a position to judge first whether the case is one likely, under our practice to be taken up by us on certiorari, and second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no disrespect to this Court for the Circuit Court of Appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending application for certiorari to us. If it thinks a question involved should be ruled upon by this Court, it may certify it. If it does not certify, it may still consider that the case is one in which a certiorari may properly issue, and may in its discretion facilitate the application by withholding the mandate or suspending its decree.

Likewise, as heretofore stated, the Supreme Court in **Bell v. Thompson** at 802 supra determined that the Court, not the clerk, shall determine whether a stay of mandate shall issue.

Petitioner contends that at a minimum, the court should have concluded that the following issues were worthy of certiorari review, due to its impact on our nation and its impact on the **Americans with Disabilities Act** of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990). Among the issues presented in Petitioner's Writ of Certiorari, the following issues warranted and still warrant review by this Honorable Supreme Court:

1. Should this Honorable Court resolve the issue of whether underlying health conditions causing a predisposition to health hazards, warrants a decision from this Court regarding whether such persons should have been provided an accommodation for remote working during the height of the pandemic.

2. Is reversal required in a pandemic situation affecting the health of a nation without rules of governance being strictly adhered to for all employers/ employees.

3. Whether an employer is prohibited from asserting an essential functions argument when it refused to engage in the interactive process required by the EEOC and whether counsel may assert such an argument on behalf of the District.

4. Must reversal be required when the trial Court determined that Petitioner was automatically disqualified from an accommodation on the basis of "generic case law" without examining whether accommodations had been explored or rejected prior to an essential functions determination.

Petitioner was precluded from such a determination, as the clerk's failure to tender same to the Court circumvented a ruling in that regard. Therefore, Petitioner seeks Reconsideration of the Clerk's denial of its original filing and seeks to have its Petition for Certiorari accepted out of time. Petitioner further seeks a reversal of its rejected filing of its Petition for Writ of Certiorari and that same be considered timely and that this Honorable Court docket same from the original submission date and assign this cause a case number.

PRAYER

For all of the foregoing reasons identified herein, Petitioner respectfully requests that this Court grant her Petition for Writ of Certiorari, review the judgment and decision of the United States Court of Appeals for the Fifth Circuit, and find in favor of Petitioner. In the alternative, this Honorable Court must remand the matter to the Southern District of Texas for trial on the merits regarding Petitioner's wrongful discharge/contract nonrenewal and provide her with such other and further relief to which she is justly entitled.

Respectfully submitted,

/s/ V.L. Davis

Veronica L. Davis
USSC Adm # 313343
Attorney at Law
222 N. Mattson
West Columbia, Texas 77486
(979) 248-4583

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Writ of Certiorari has been sent to Christopher Gilbert on this the 21st day of October, 2025.

/s/ V.L. Davis

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion for Reconsideration contains 2486 words, 130 sentences, 286 lines, 62 paragraphs and 13/17 pages.

/s/ V.L. Davis

IN THE

Supreme Court of the United States

October Term 2025

ANNIE RAY
Appellant-Petitioner

vs.

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT
Respondent

APPENDIX TO MOTION TO DIRECT CLERK TO ACCEPT PETITION FOR REHEARING OUT OF TIME

Veronica L. Davis

/s/ V.L. Davis
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APPENDIX

A. Rejection by the Supreme Court as untimely

B. Final Judgment/ Mandate

C. Notice from Fifth Circuit Rejecting En Banc and Stay as Untimely

D. Fifth Circuit Internal Operating Procedure Regarding Mandates

E. 28 U.S.C. §2101 and Federal Rules of Appellate Procedure 41

EXHIBIT A

Correspondence from The Supreme Court of the United States

From: no-reply@supremecourt.gov

To: vld57atal@yahoo.com

Date: Wednesday, October 1, 2025 at 11:21 AM CDT

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

October 1, 2025

Veronica L. Davis
226 N. Mattson
West Columbia, TX 77486

RE: Annie Laura Ray v. Columbia Brazoria Independent School District, et al.
USCA5 No. 24-20227

Dear Ms. Davis:

The above-entitled petition for a writ of certiorari was postmarked September 22, 2025 and received September 30, 2025. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was June 16, 2025. Therefore, the petition was due on or before September 14, 2025. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

Your e-filing submissions are herewith rejected.

Sincerely,
Scott S. Harris, Clerk
By:

Pipa Fisher
(202) 479-3019

EXHIBIT B

United States Courts
Southern District of Texas
FILED
June 23, 2025
Nathan Ochsner, Clerk of Court

United States Court of Appeals for the Fifth Circuit

No. 24-20227

United States Court of Appeals
Fifth Circuit
FILED
April 28, 2025
Lyle W. Cayce
Clerk

ANNIE LAURA RAY,

Plaintiff—Appellant,

versus

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT; STEVEN GALLOWAY; JONATHAN CHAMPAGNE; LINDA HUEBNER; WENDY MONICAL; BECKY DANFORD; MATT DAMBROSKY; RAY SISSON; JAMES BROUSSARD; JACKIE GOTCHER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-145

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.



Certified as a true copy and issued as the mandate on Jun 23, 2025

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 23, 2025

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 24-20227 Ray v. Columbia Brazoria
USDC No. 4:23-CV-145

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

cc:
Ms. Veronica L. Davis
Mr. Christopher Blewer Gilbert
Ms. Dena Moghtader

EXHIBIT C

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 25, 2025

Ms. Veronica L. Davis
222 N. Mattson
West Columbia, TX 77486

No. 24-20227 Ray v. Columbia Brazoria
USDC No. 4:23-CV-145

Dear Ms. Davis,

On June 23, 2025, we received Appellant's Petition for Rehearing En Banc and Stay of Mandate.

We are taking no action.

The time for filing a petition for rehearing en banc has expired (See Fed. R. App. P. 40).

The incorporated request to stay the mandate was filed after the mandate had already issued.

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

cc:
Mr. Christopher Blewer Gilbert
Ms. Dena Moghtader

EXHIBIT D

United States Court of Appeals
for the Fifth Circuit

ORDER
General Docket No. 2024-02

The court adopts the following amendment to the FIFTH CIRCUIT INTERNAL OPERATING PROCEDURES (changes are in red):

Internal Operating Procedure following 5th Cir. R. 41:

I.O.P. - Absent a motion for stay or a stay by operation of an order, rule, or procedure, mandates will issue promptly on the 8th day after the time for filing a petition for rehearing expires; or after entry of an order denying the petition. As an exception, and by Court direction, the clerk will immediately issue the mandate when the Court dismisses a case for failure to prosecute an appeal or for lack of jurisdiction, or in such other instances as the Court may direct. The original record and any exhibits will be returned to the clerk of the district court with the mandate.

Any active Fifth Circuit Judge may request that the court withhold issuance of its mandate. This is often done to resolve differences between the judge who requests that the mandate be withheld and the panel or to request that the court be polled on whether rehearing en banc should be granted whether or not a petition for rehearing en banc has been filed by a party. If a mandate is withheld, the judge shall notify the clerk to withhold the mandate,

and the clerk will enter an order withholding the mandate. The identity of the judge will not be disclosed in the order.

The amended rule is effective February 5, 2024.

Dated this 5th day of February 2024.

Lyle W. Cayce

LYLE W. CAYCE
Clerk of Court

ENTERED AT THE DIRECTION OF THE COURT

EXHIBIT E

Quick search by citation:
Title
enter title
Section
section
Go!

28 U.S. Code § 2101 - Supreme Court; time for appeal or certiorari; docketing; stay

U.S. Code Notes

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces, or the decision of a Court of Criminal Appeals that the United States Court of Appeals for the Armed Forces refuses to grant a petition to review, shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 106, 63 Stat. 104; Pub. L. 98–209, § 10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100–352, § 5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 118–31, div. A, title V, § 533(a)(2)(B), Dec. 22, 2023, 137 Stat. 261.)

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) CONTENTS. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) WHEN ISSUED. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) EFFECTIVE DATE. The mandate is effective when issued.

(d) STAYING THE MANDATE PENDING A PETITION FOR CERTIORARI.

(1) Motion to Stay. A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(2) Duration of Stay; Extensions. The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(3) Security. The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(4) Issuance of Mandate. The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

Notes

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

Notes of Advisory Committee on Rules—1967

The proposed rule follows the rule or practice in a majority of circuits by which copies of the opinion and the judgment serve in lieu of a formal mandate in the ordinary case. Compare Supreme Court Rule 59. Although 28 U.S.C. §2101(c) permits a writ of certiorari to be filed within 90 days after entry of judgment, seven of the eight circuits which now regulate the matter of stays pending application for certiorari limit the initial stay of the mandate to the 30-day period provided in the proposed rule. Compare D.C. Cir. Rule 27(e).

Notes of Advisory Committee on Rules—1994 Amendment

Subdivision (a). The amendment conforms Rule 41(a) to the amendment made to Rule 40(a). The amendment keys the time for issuance of the mandate to the expiration of the time for filing a petition for rehearing, unless such a petition is filed in which case the mandate issues 7 days after the entry of the order denying the petition. Because the amendment to Rule 40(a) lengthens the time for filing a petition for rehearing in civil cases involving the United States from 14 to 45 days, the rule requiring the mandate to issue 21 days after the entry of judgment would cause the mandate to issue while the government is still considering requesting a rehearing. Therefore, the amendment generally requires the mandate to issue 7 days after the expiration of the time for filing a petition for rehearing.

Subdivision (b). The amendment requires a party who files a motion requesting a stay of mandate to file, at the same time, proof of service on all other parties. The old rule required the party to give notice to the other parties; the amendment merely requires the party to provide the court with evidence of having done so.

The amendment also states that the motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The amendment is intended to alert the parties to the fact that a stay of mandate is not granted automatically

and to the type of showing that needs to be made. The Supreme Court has established conditions that must be met before it will stay a mandate. *See* Robert L. Stern et al., *Supreme Court Practice* §17.19 (6th ed. 1986).

Committee Notes on Rules—1998 Amendment

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Several substantive changes are made in this rule, however.

Subdivision (b). The existing rule provides that the mandate issues 7 days after the time to file a petition for panel rehearing expires unless such a petition is timely filed. If the petition is denied, the mandate issues 7 days after entry of the order denying the petition. Those provisions are retained but the amendments further provide that if a timely petition for rehearing en banc or motion for stay of mandate is filed, the mandate does not issue until 7 days after entry of an order denying the last of all such requests. If a petition for rehearing or a petition for rehearing en banc is granted, the court enters a new judgment after the rehearing and the mandate issues within the normal time after entry of that judgment.

Subdivision (c). Subdivision (c) is new. It provides that the mandate is effective when the court issues it. A court of appeals' judgment or order is not final until issuance of the mandate; at that time the parties' obligations become fixed. This amendment is intended to make it clear that the mandate is effective upon issuance and that its effectiveness is not delayed until receipt of the mandate by the trial court or agency, or until the trial court or agency acts upon it. This amendment is consistent with the current understanding. Unless the court orders that the mandate issue earlier than provided in the rule, the parties can easily calculate the anticipated date of issuance and verify issuance with the clerk's office. In those instances in which the court orders earlier issuance of the mandate, the entry of the order on the docket alerts the parties to that fact.

Subdivision (d). Amended paragraph (1) provides that the filing of a petition for panel rehearing, a petition for rehearing en banc or a motion for a stay of mandate pending petition to the Supreme Court for a writ of certiorari stays the issuance of the mandate until the court disposes of the petition or motion. The provision that a petition for rehearing en banc stays the mandate is a companion to the amendment of Rule 35 that deletes the language stating that a request for a rehearing en banc does not affect the finality of the judgment or stay the issuance of the mandate. The Committee's objective is to treat a request for a rehearing en banc like a petition for panel rehearing so that a request for a rehearing en banc will suspend the finality of the court of appeals' judgment and delay the running of the period for filing a

petition for writ of certiorari. Because the filing of a petition for rehearing en banc will stay the mandate, a court of appeals will need to take final action on the petition but the procedure for doing so is left to local practice.

Paragraph (1) also provides that the filing of a motion for a stay of mandate pending petition to the Supreme Court for a writ of certiorari stays the mandate until the court disposes of the motion. If the court denies the motion, the court must issue the mandate 7 days after entering the order denying the motion. If the court grants the motion, the mandate is stayed according to the terms of the order granting the stay. Delaying issuance of the mandate eliminates the need to recall the mandate if the motion for a stay is granted. If, however, the court believes that it would be inappropriate to delay issuance of the mandate until disposition of the motion for a stay, the court may order that the mandate issue immediately.

Paragraph (2). The amendment changes the maximum period for a stay of mandate, absent the court of appeals granting an extension for cause, to 90 days. The presumptive 30-day period was adopted when a party had to file a petition for a writ of certiorari in criminal cases within 30 days after entry of judgment. Supreme Court Rule 13.1 now provides that a party has 90 days after entry of judgment by a court of appeals to file a petition for a writ of certiorari whether the case is civil or criminal.

The amendment does not require a court of appeals to grant a stay of mandate that is coextensive with the period granted for filing a petition for a writ of certiorari. The granting of a stay and the length of the stay remain within the discretion of the court of appeals. The amendment means only that a 90-day stay may be granted without a need to show cause for a stay longer than 30 days.

Subparagraph (C) is not new; it has been moved from the end of the rule to this position.

Committee Notes on Rules—2002 Amendment

Subdivision (b). Subdivision (b) directs that the mandate of a court must issue 7 days after the time to file a petition for rehearing expires or 7 days after the court denies a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. Intermediate Saturdays, Sundays, and legal holidays are counted in computing that 7-day deadline, which means that, except when the 7-day deadline ends on a weekend or legal holiday, the mandate issues exactly one week after the triggering event.

Fed. R. App. P. 26 (a)(2) has been amended to provide that, in computing any period of time, one should "[e]xclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days." This change in the method of computing deadlines means that 7-day deadlines (such as that in subdivision (b)) have been lengthened as a practical matter. Under the new computation method, a mandate would never issue sooner than 9 actual days after a triggering event, and legal holidays could extend that period to as much as 13 days.