

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

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MEMORANDUM

**DATE:** May 22, 2006 (Revised June 30, 2006)

**TO:** Judge David F. Levi, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Carl E. Stewart, Chair  
Advisory Committee on Appellate Rules

**RE:** Report of Advisory Committee on Appellate Rules

**I. Introduction**

The Advisory Committee on Appellate Rules met on April 28, 2006, in San Francisco, California. The Committee approved proposed new Rule 25(a)(5).

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**II. Action Item**

The Advisory Committee is seeking final approval of proposed new Rule 25(a)(5).

**A. Introduction**

The Committee proposes to add a new Rule 25(a)(5) that addresses privacy concerns relating to court filings. New Rule 25(a)(5) will take a "dynamic conformity" approach, under which the privacy rules applicable below will also apply on appeal. In proceedings other than appeals from a district court, bankruptcy appellate panel, or bankruptcy court, privacy will be governed by new Civil Rule 5.2 (except that when an extraordinary writ is sought in a criminal case, new Criminal Rule 49.1 will govern).

PROPOSED AMENDMENT TO THE FEDERAL  
RULES OF APPELLATE PROCEDURE\*

Rule 25. Filing and Service

1 (a) Filing.

2 \* \* \* \* \*

3 (5) Privacy Protection. An appeal in a case whose  
4 privacy protection was governed by Federal Rule of  
5 Bankruptcy Procedure 9037, Federal Rule of Civil  
6 Procedure 5.2, or Federal Rule of Criminal  
7 Procedure 49.1 is governed by the same rule on  
8 appeal. In all other proceedings, privacy protection  
9 is governed by Federal Rule of Civil Procedure 5.2,  
10 except that Federal Rule of Criminal Procedure 49.1  
11 governs when an extraordinary writ is sought in a  
12 criminal case.

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\* New material is underlined; matter to be omitted is lined through.

**Committee Note**

**Subdivision (a)(5).** Section 205(c)(3)(A)(i) of the E-Government Act of 2002 (Public Law 107-347, as amended by Public Law 108-281) requires that the rules of practice and procedure be amended “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” In response to that directive, the Federal Rules of Bankruptcy, Civil, and Criminal Procedure have been amended, not merely to address the privacy and security concerns raised by documents that are filed electronically, but also to address similar concerns raised by documents that are filed in paper form. *See* FED. R. BANKR. P. 9037; FED. R. CIV. P. 5.2; and FED. R. CRIM. P. 49.1.

Appellate Rule 25(a)(5) requires that, in cases that arise on appeal from a district court, bankruptcy appellate panel, or bankruptcy court, the privacy rule that applied to the case below will continue to apply to the case on appeal. With one exception, all other cases — such as cases involving the review or enforcement of an agency order, the review of a decision of the tax court, or the consideration of a petition for an extraordinary writ — will be governed by Civil Rule 5.2. The only exception is when an extraordinary writ is sought in a criminal case — that is, a case in which the related trial-court proceeding is governed by Criminal Rule 49.1. In such a case, Criminal Rule 49.1 will govern in the court of appeals as well.

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**CHANGES MADE AFTER PUBLICATION AND COMMENT**

The rule is a modified version of the provision as published. The changes from the published proposal implement suggestions by

the Style Subcommittee of the Standing Committee on Rules of Practice and Procedure.

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