paragraph of section 1915(a) seems to contemplate initial application to the district court for permission to proceed in forma pauperis, and although the circuit rules are generally silent on the question, the case law requires initial application to the district court. *Hayes v. United States*, 258 F.2d 400 (5th Cir., 1958), *cert. den.* 358 U.S. 856, 79 S.Ct. 87, 3 L.Ed.2d 89 (1958); *Elkins v. United States*, 250 F.2d 145 (9th Cir., 1957) see 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960); *United States v. Farley*, 238 F.2d 575 (2d Cir., 1956) see 354 U.S. 521, 77 S.Ct. 1371, 1 L.Ed.2d 1529 (1957). D.C. Cir. Rule 41(a) requires initial application to the district court. The content of the affidavit follows the language of the statute; the requirement of a statement of the issues comprehends the statutory requirement of a statement of ''the nature of the . . . appeal. . . .'' The second sentence is in accord with the decision in *McGann v. United States*, 362 U.S. 309, 80 S.Ct. 725, 4 L.Ed.2d 734 (1960). The requirement contained in the third sentence has no counterpart in present circuit rules, but it has been imposed by decision in at least two circuits. *Ragan v. Cox*, 305 F.2d 58 (10th Cir., 1962); *United States ex rel. Breedlove v. Dowd*, 269 F.2d 693 (7th Cir., 1959).

The second paragraph permits one whose indigency has been previously determined by the district court to proceed on appeal in forma pauperis without the necessity of a redetermination of indigency, while reserving to the district court its statutory authority to certify that the appeal is not taken in good faith, 28 U.S.C. §1915(a), and permitting an inquiry into whether the circumstances of the party who was originally entitled to proceed in forma pauperis have changed during the course of the litigation. Cf. Sixth Circuit Rule 26.

The final paragraph establishes a subsequent motion in the court of appeals, rather than an appeal from the order of denial or from the certification of lack of good faith, as the proper procedure for calling in question the correctness of the action of the district court. The simple and expeditious motion procedure seems clearly preferable to an appeal. This paragraph applies only to applications for leave to appeal in forma pauperis. The order of a district court refusing leave to initiate an action in the district court in forma pauperis is reviewable on appeal. See *Roberts v. United States District Court*, 339 U.S. 844, 70 S.Ct. 954, 94 L.Ed. 1326 (1950).

Subdivision (b). Authority to allow prosecution in forma pauperis is vested only in a ''court of the United States'' (see Note to subdivision (a), above). Thus in proceedings brought directly in a court of appeals to review decisions of agencies or of the Tax Court, authority to proceed in forma pauperis should be sought in the court of appeals. If initial review of agency action is had in a district court, an application to appeal to a court of appeals in forma pauperis from the judgment of the district court is governed by the provisions of subdivision (a).

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

The proposed amendment reflects the change in the title of the Tax Court to ''United States Tax Court.'' See 26 U.S.C. §7441.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rule 24(a) are technical. No substantive change is intended.

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. The Advisory Committee deletes the language in subdivision (c) authorizing a party proceeding in forma pauperis to file papers in typewritten form because the authorization is unnecessary. The rules permit all parties to file typewritten documents.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (a)(2). Section 804 of the Prison Litigation Reform Act of 1995 (''PLRA'') amended 28 U.S.C. §1915 to require that prisoners who bring civil actions or appeals from civil actions must ''pay the full amount of a filing fee.'' 28 U.S.C. §1915(b)(1). Prisoners who are unable to pay the full amount of the filing fee at the time that their actions or appeals are filed are generally required to pay part of the fee and then to pay the remainder of the fee in installments. 28 U.S.C. §1915(b). By contrast, Rule 24(a)(2) has provided that, after the district court grants a litigant's motion to proceed on appeal in forma pauperis, the litigant may proceed ''without prepaying or giving security for fees and costs.'' Thus, the PLRA and Rule 24(a)(2) appear to be in conflict.

Rule 24(a)(2) has been amended to resolve this conflict. Recognizing that future legislation regarding prisoner litigation is likely, the Committee has not attempted to incorporate into Rule 24 all of the requirements of the current version of 28 U.S.C. §1915. Rather, the Committee has amended Rule 24(a)(2) to clarify that the rule is not meant to conflict with anything required by the PLRA or any other statute.

Subdivision (a)(3). Rule 24(a)(3) has also been amended to eliminate an apparent conflict with the PLRA. Rule 24(a)(3) has provided that a party who was permitted to proceed in forma pauperis in the district court may continue to proceed in forma pauperis in the court of appeals without further authorization, subject to certain conditions. The PLRA, by contrast, provides that a prisoner who was permitted to proceed in forma pauperis in the district court and who wishes to continue to proceed in forma pauperis on appeal may not do so ''automatically,'' but must seek permission. *See, e.g., Morgan v. Haro*, 112 F.3d 788, 789 (5th Cir. 1997) (''A prisoner who seeks to proceed IFP on appeal must obtain leave to so proceed despite proceeding IFP in the district court.'').

Rule 24(a)(3) has been amended to resolve this conflict. Again, recognizing that future legislation regarding prisoner litigation is likely, the Committee has not attempted to incorporate into Rule 24 all of the requirements of the current version of 28 U.S.C. §1915. Rather, the Committee has amended Rule 24(a)(3) to clarify that the rule is not meant to conflict with anything required by the PLRA or any other statute.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note, except that ''a statute provides otherwise'' was substituted in place of ''the law requires otherwise'' in the text of the rule and conforming changes (as well as a couple of minor stylistic changes) were made to the Committee Note.

COMMITTEE NOTES ON RULES—2013 AMENDMENT

Rule 24(b) currently refers to review of proceedings ''before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court).'' Experience suggests that Rule 24(b) contributes to confusion by fostering the impression that the Tax Court is an executive branch agency rather than a court. (As a general example of that confusion, appellate courts have returned Tax Court records to the Internal Revenue Service, believing the Tax Court to be part of that agency.) To remove this possible source of confusion, the quoted parenthetical is deleted from subdivision (b) and appeals from the Tax Court are separately listed in subdivision (b)'s heading and in new subdivision (b)(1).

Changes Made After Publication and Comment. No changes were made after publication and comment.

TITLE VII. GENERAL PROVISIONS

Rule 25. Filing and Service

(a) FILING.

(1) *Filing with the Clerk.* A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: Method and Timeliness.*

(A) *In General.* Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A brief or appendix.* A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(C) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) *Electronic Filing.* A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a Motion with a Judge.* If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) *Clerk's Refusal of Documents.* The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

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

(b) SERVICE OF ALL PAPERS REQUIRED. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) MANNER OF SERVICE.

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) PROOF OF SERVICE.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) NUMBER OF COPIES. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

The rule that filing is not timely unless the papers filed are received within the time allowed is the familiar one. *Ward v. Atlantic Coast Line R.R. Co.*, 265 F.2d 75 (5th Cir., 1959), rev'd on other grounds 362 U.S. 396, 80 S.Ct. 789, 4 L.Ed.2d 820 (1960); *Kahler-Ellis Co. v. Ohio Turnpike Commission*, 225 F.2d 922 (6th Cir., 1955). An exception is made in the case of briefs and appendices in order to afford the parties the maximum time for their preparation. By the terms of the exception, air mail delivery must be used whenever it is the most expeditious manner of delivery.

A majority of the circuits now require service of all papers filed with the clerk. The usual provision in present rules is for service on ''adverse'' parties. In view of the extreme simplicity of service by mail, there seems to be no reason why a party who files a paper should not be required to serve all parties to the proceeding in the court of appeals, whether or not they

may be deemed adverse. The common requirement of proof of service is retained, but the rule permits it to be made by simple certification, which may be endorsed on the copy which is filed.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rules 25(a) and (b) are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (a). The amendment permits, but does not require, courts of appeals to adopt local rules that allow filing of papers by electronic means. However, courts of appeals cannot adopt such local rules until the Judicial Conference of the United States authorizes filing by facsimile or other electronic means.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The amendment accompanies new subdivision (c) of Rule 4 and extends the holding in *Houston v. Lack*, 487 U.S. 266 (1988), to all papers filed in the courts of appeals by persons confined in institutions.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). Several circuits have local rules that authorize the office of the clerk to refuse to accept for filing papers that are not in the form required by these rules or by local rules. This is not a suitable role for the office of the clerk and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this rule. This provision is similar to Fed.R.Civ.P. 5(e) and Fed.R.Bankr.P. 5005.

The Committee wishes to make it clear that the provision prohibiting a clerk from refusing a document does not mean that a clerk's office may no longer screen documents to determine whether they comply with the rules. A court may delegate to the clerk authority to inform a party about any noncompliance with the rules and, if the party is willing to correct the document, to determine a date by which the corrected document must be resubmitted. If a party refuses to take the steps recommended by the clerk or if in the clerk's judgment the party fails to correct the noncompliance, the clerk must refer the matter to the court for a ruling.

Subdivision (d). Two changes have been made in this subdivision. Subdivision (d) provides that a paper presented for filing must contain proof of service.

The last sentence of subdivision (d) has been deleted as unnecessary. That sentence stated that a clerk could permit papers to be filed without acknowledgment or proof of service but must require that it be filed promptly thereafter. In light of the change made in subdivision (a) which states that a clerk may not refuse to accept for filing a document because it is not in the proper form, there is no further need for a provision stating that a clerk may accept a paper lacking a proof of service. The clerk must accept such a paper. That portion of the deleted sentence stating that the clerk must require that proof of service be filed promptly after the filing of the document if the proof is not filed concurrently with the document is also unnecessary.

The second amendment requires that the certificate of service must state the addresses to which the papers were mailed or at which they were delivered. The Federal Circuit has a similar local rule, Fed.Cir.R. 25.

Subdivision (e). Subdivision (e) is a new subdivision. It makes it clear that whenever these rules require a party to file or furnish a number of copies a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that, if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

A party must consult local rules to determine whether the court requires a different number than that specified in these national rules. The Committee believes it would be helpful if each circuit either: 1) included a chart at the beginning of its local rules showing the number of copies of each document required to be filed with the court along with citation to the controlling rule; or 2) made available such a chart to each party upon commencement of an appeal; or both. If a party fails to file the required number of copies, the failure does not create a jurisdictional defect. Rule 3(a) states: ''Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate. . . .''

NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT

Subdivision (a). The amendment deletes the language requiring a party to use ''the most expeditious form of delivery by mail, except special delivery'' in order to file a brief using the mailbox rule. That language was adopted before the Postal Service offered Express Mail and other expedited delivery services. The amendment makes it clear that it is sufficient to use First-Class Mail. Other equally or more expeditious classes of mail service, such as Express Mail, also may be used. In addition, the amendment permits the use of commercial carriers. The use of private, overnight courier services has become commonplace in law practice. Expedited services offered by commercial carriers often provide faster delivery than First-Class Mail; therefore, there should be no objection to the use of commercial carriers as long as they are reliable. In order to make use of the mailbox rule when using a commercial carrier, the amendment requires that the filer employ a carrier who undertakes to deliver the document in no more than three calendar days. The three-calendar-day period coordinates with the three-day extension provided by Rule 26(c).

Subdivision (c). The amendment permits service by commercial carrier if the carrier is to deliver the paper to the party being served within three days of the carrier's receipt of the paper. The amendment also expresses a desire that when reasonable, service on a party be accomplished by a manner as expeditious as the manner used to file the paper with the court. When a brief or motion is filed with the court by hand delivering the paper to the clerk's office, or by overnight courier, the copies should be served on the other parties by an equally expeditious manner—meaning either by personal service, if distance permits, or by overnight courier, if mail delivery to the party is not ordinarily accomplished overnight. The reasonableness standard is included so that if a paper is hand delivered to the clerk's office for filing but the other parties must be served in a different city, state, or region, personal service on them ordinarily will not be expected. If use of an equally expeditious manner of service is not reasonable, use of the next most expeditious manner may be. For example, if the paper is filed by hand delivery to the clerk's office but the other parties reside in distant cities, service on them need not be personal but in most instances should be by overnight courier. Even that may not be required, however, if the number of parties that must be served would make the use of overnight service too costly. A factor that bears upon the reasonableness of serving parties expeditiously is the immediacy of the relief requested.

Subdivision (d). The amendment adds a requirement that when a brief or appendix is filed by mail or commercial carrier, the certificate of service state the date and manner by which the document was mailed or dispatched to the clerk. Including that information in the certificate of service avoids the necessity for a separate certificate concerning the date and manner of filing.

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; a substantive amendment is made, however, in subdivision (a).

Subdivision (a). The substantive amendment in this subdivision is in subparagraph (a)(2)(C) and is a companion to an amendment in Rule 4(c). Currently Rule 25(a)(2)(C) provides that if an inmate confined in an institution files a document by depositing it in the institution's internal mail system, the document is timely filed if deposited on or before the last day for filing. Some institutions have special internal mail systems for handling legal mail; such systems often record the date of deposit of mail by an inmate, the date of delivery of mail to an inmate, etc. The Advisory Committee amends the rule to require an inmate to use the system designed for legal mail, if there is one, in order to receive the benefit of this subparagraph.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Rule 25(a)(2)(D) presently authorizes the courts of appeals to permit papers to be *filed* by electronic means. Rule 25 has been amended in several respects to permit papers also to be *served* electronically. In addition, Rule 25(c) has been reorganized and subdivided to make it easier to understand.

Subdivision (c)(1)(D). New subdivision (c)(1)(D) has been added to permit service to be made electronically, such as by e-mail or fax. No party may be served electronically, either by the clerk or by another party, unless the party has consented in writing to such service.

A court of appeals may not, by local rule, forbid the use of electronic service on a party that has consented to its use. At the same time, courts have considerable discretion to use local rules to regulate electronic service. Difficult and presently unforeseeable questions are likely to arise as electronic service becomes more common. Courts have the flexibility to use their local rules to address those questions. For example, courts may use local rules to set forth specific procedures that a party must follow before the party will be deemed to have given written consent to electronic service.

Parties also have the flexibility to define the terms of their consent; a party's consent to electronic service does not have to be ''all-or-nothing.'' For example, a party may consent to service by facsimile transmission, but not by electronic mail; or a party may consent to electronic service only if ''courtesy'' copies of all transmissions are mailed within 24 hours; or a party may consent to electronic service of only documents that were created with Corel WordPerfect.

Subdivision (c)(2). The courts of appeals are authorized under Rule 25(a)(2)(D) to permit papers to be filed electronically. Technological advances may someday make it possible for a court to forward an electronically filed paper to all parties automatically or semi-automatically. When such court-facilitated service becomes possible, courts may decide to permit parties to use the courts' transmission facilities to serve electronically filed papers on other parties who have consented to such service. Court personnel would use the court's computer system to forward the papers, but the papers would be considered served by the filing parties, just as papers that are carried from one address to another by the United States Postal Service are considered served by the sending parties. New subdivision (c)(2) has been added so that the courts of appeals may use local rules to authorize such use of their transmission facilities, as well as to address the many questions that court-facilitated electronic service is likely to raise.

Subdivision (c)(4). The second sentence of new subdivision (c)(4) has been added to provide that electronic service is complete upon transmission. Transmission occurs when the sender performs the last act that he or she must perform to transmit a paper electronically; typically, it occurs when the sender hits the ''send'' or ''transmit'' button on an electronic mail program. There is one exception to the rule that electronic service is complete upon transmission: If the sender is notified—by the sender's e-mail program or otherwise—that the paper was not received, service is not complete, and the sender must take additional steps to effect service. A paper has been ''received'' by the party on which it has been served as long as the party has the ability to retrieve it. A party cannot defeat service by choosing not to access electronic mail on its server.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment. A paragraph was added to the Committee Note to clarify that consent to electronic service is not an ''all-or-nothing'' matter.

Subdivision (d)(1)(B)(iii). Subdivision (d)(1)(B)(iii) has been amended to require that, when a paper is served electronically, the proof of service of that paper must include the electronic address or facsimile number to which the paper was transmitted.

Changes Made After Publication and Comments. The text of the proposed amendment was changed to refer to ''electronic'' addresses (instead of to ''e-mail'' addresses), to include ''facsimile numbers,'' and to add the concluding phrase ''as appropriate for the manner of service.'' Conforming changes were made to the Committee Note.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

Subdivision (a)(2)(D). Amended Rule 25(a)(2)(D) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filing. Courts that mandate electronic filing recognize the need to make exceptions when requiring electronic filing imposes a hardship on a party. Under Rule 25(a)(2)(D), a local rule that requires electronic filing must include reasonable exceptions, but Rule 25(a)(2)(D) does not define the scope of those exceptions. Experience with the local rules that have been adopted and that will emerge will aid in drafting new local rules and will facilitate gradual convergence on uniform exceptions, whether in local rules or in an amended Rule 25(a)(2)(D).

A local rule may require that both electronic and ''hard'' copies of a paper be filed. Nothing in the last sentence of Rule 25(a)(2)(D) is meant to imply otherwise.

Changes Made After Publication and Comment. Rule 25(a)(2)(D) has been changed in one significant respect: It now authorizes the courts of appeals to require electronic filing only ''if reasonable exceptions are allowed.''[1] The published version of Rule 25(a)(2)(D) did not require ''reasonable exceptions.'' The change was made in response to the argument of many commentators that the national rule should require that the local rules include exceptions for those for whom mandatory electronic filing would pose a hardship.

Although Rule 25(a)(2)(D) requires that hardship exceptions be included in any local rules that mandate electronic filing, it does not attempt to define the scope of those exceptions. Commentators were largely in agreement that the local rules should include hard-

[1] At its June 15–16, 2005, meeting, the Standing Rules Committee with the concurrence of the advisory committee chair agreed to set out the ''reasonable exception'' clause as a separate sentence in the rule, consistent with drafting conventions of the Style Project.

ship exceptions of some type. But commentators did not agree about the perimeters of those exceptions. The Advisory Committee believes that, at this point, it does not have enough experience with mandatory electronic filing to impose specific hardship exceptions on the circuits. Rather, the Advisory Committee believes that the circuits should be free for the time being to experiment with different formulations.

The Committee Note has been changed to reflect the addition of the ''reasonable exceptions'' clause to the text of the rule. The Committee Note has also been changed to add the final two sentences. Those sentences were added at the request of Judge Sandra L. Lynch, a member of CACM [the Court Administration and Case Management Committee]. Judge Lynch believes that there will be few appellate judges who will want to receive only electronic copies of briefs, but there will be many who will want to receive electronic copies in addition to hard copies. Thus, the local rules of most circuits are likely to require a ''written'' copy or ''paper'' copy, in addition to an electronic copy. The problem is that the last sentence of Rule 25(a)(2)(D) provides that ''[a] paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.'' Judge Lynch's concern is that this sentence may leave attorneys confused as to whether a local rule requiring a ''written'' or ''paper'' copy of a brief requires anything in addition to the electronic copy. The final two sentences of the Committee Note are intended to clarify the matter.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.

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.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Under former Rule 26(a), short periods that span weekends or holidays were computed without counting those weekends or holidays. To specify that a period should be calculated by counting all intermediate days, including weekends or holidays, the Rules used the term ''calendar days.'' Rule 26(a) now takes a ''days-are-days'' approach under which all intermediate days are counted, no matter how short the period. Accordingly, ''3 calendar days'' in subdivisions (a)(2)(B)(ii) and (c)(1)(C) is amended to read simply ''3 days.''

Rule 26. Computing and Extending Time

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

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

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *''Last Day'' Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C)—and filing by mail under Rule 13(b)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) *''Next Day'' Defined.* The ''next day'' is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *''Legal Holiday'' Defined.* ''Legal holiday'' means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Me-