

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF APPELLATE PROCEDURE<sup>1</sup>**

1 **Rule 25. Filing and Service**

2 **(a) Filing.**

3 \* \* \* \* \*

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

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.

15 case. The provisions on remote electronic  
16 access in Federal Rule of Civil Procedure  
17 5.2(c)(1) and (2) apply in a petition for  
18 review of a benefits decision of the Railroad  
19 Retirement Board under the Railroad  
20 Retirement Act.

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#### **Committee Note**

There are close parallels between the Social Security Act and the Railroad Retirement Act. One difference, however, is that judicial review in Social Security cases is initiated in the district courts, while judicial review in Railroad Retirement cases is initiated directly in the courts of appeals. Federal Rule of Civil Procedure 5.2 protects privacy in Social Security cases by limiting remote electronic access. The amendment extends those protections to Railroad Retirement cases.

1 **Rule 42. Voluntary Dismissal**

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3 **(b) Dismissal in the Court of Appeals.**

4 **(1) Stipulated Dismissal.** The circuit clerk ~~may~~  
5 must dismiss a docketed appeal if the parties  
6 file a signed dismissal agreement specifying  
7 how costs are to be paid and pay any court  
8 fees that are due. ~~But no mandate or other~~  
9 ~~process may issue without a court order.~~

10 **(2) Appellant's Motion to Dismiss.** An appeal  
11 may be dismissed on the appellant's motion  
12 on terms agreed to by the parties or fixed by  
13 the court.

14 **(3) Other Relief.** A court order is required for  
15 any relief under Rule 42(b)(1) or (2) beyond  
16 the dismissal of an appeal—including  
17 approving a settlement, vacating an action of

- 18                   the district court or an administrative agency,  
19                   or remanding the case to either of them.
- 20 **(c) Court Approval.** This Rule 42 does not alter the  
21                   legal requirements governing court approval of a  
22                   settlement, payment, or other consideration.
- 23 **(d) Criminal Cases.** A court may, by local rule, impose  
24                   requirements to confirm that a defendant has  
25                   consented to the dismissal of an appeal in a criminal  
26                   case.

#### Committee Note

The amendment restores the requirement, in effect prior to the restyling of the Federal Rules of Appellate Procedure, that the circuit clerk dismiss an appeal if all parties so agree. It also clarifies that the fees that must be paid are court fees, not attorney’s fees. The rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. *See, e.g.*, Fed. R. Civ. P. 23(e) (requiring district court approval).

The amendment replaces old terminology and clarifies that any relief beyond dismissal of an appeal—including approving a settlement, vacating, or remanding—requires a court order. Pursuant to Rule 20, Rule 42(b) applies to petitions for review and applications to enforce an agency order. For Rule 42(b) to function in such cases,

“appeal” should be understood to include a petition for review or application to enforce an agency order.

The amendment permits local rules that impose requirements to confirm that a defendant has consented to the dismissal of an appeal in a criminal case.