

**BRIEF SUMMARY OF COMMENTS
OF THE SECTION ON COURTS, LAWYERS
AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR
ON PROPOSED AMENDMENT TO RULE 27 OF
THE DISTRICT OF COLUMBIA COURT OF APPEALS**

The Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar, including its Committee on Court Rules, generally supports the proposed amendments to Rule 27. For example, the requirement that a party requesting non-dispositive procedural relief consult with the opposing counsel before filing the motion codifies good practice, and it should reduce the burden both on the Court and the Clerk's Office. The Section suggests, however, that personal service in calendared, emergency, and expedited cases is not always necessary or feasible and that less burdensome, but equally effective, alternatives exist, modeled on the provisions of Rule 27(h)(2) for the United States Court of Appeals for the District of Columbia Circuit.

The Section urges one additional change, consistent with its earlier proposal to amend Rule 27 of the Federal Rules of Appellate Procedure. Except in calendared, emergency, and expedited cases where time is of the essence, the time to respond to dispositive motions should be 21 days instead of 7 days.

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OF THE DISTRICT OF COLUMBIA BAR ON
PROPOSED AMENDMENT TO RULE 27 OF
THE DISTRICT OF COLUMBIA COURT OF APPEALS**

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**Steering Committee,
Section on Courts, Lawyers
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David A. Reiser, Chair

Committee on Court Rules

June 23, 1995

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The views expressed herein represent only those of the Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar and not those of the Bar or its Board of Governors.

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The Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar, and its Committee on Court Rules, submit these comments concerning the proposed amendment to Rule 27 of the Rules of the District of Columbia Court of Appeals.

The District of Columbia Bar is the integrated bar for the District of Columbia. Among the Bar's sections is the Section on Courts, Lawyers and the Administration of Justice. The Section has a standing Committee on Court Rules, whose responsibilities include serving as a clearinghouse for comments on proposed changes to court rules. Comments submitted by the Section represent only its views, and not those of the D.C. Bar or of its Board of Governors.

We generally support the proposed amendments to Rule 27. The requirement that a party requesting non-dispositive procedural relief consult with the opposing counsel before filing the motion codifies good practice, and it should reduce the burden both on the Court and the Clerk's Office. Because of the time constraints, it is appropriate that the movant notify the other party immediately in calendared, emergency, and expedited cases. We suggest, however, that personal service in these cases is not always necessary or feasible and that less burdensome, but equally effective, alternatives exist. Rule 27(h)(2) for the United States Court of Appeals for the District of Columbia Circuit provides that if personal service is not feasible, counsel for the moving party may give telephone notice of the filing and serve the motion by the most expeditious form of mail or overnight delivery.

The widespread use of fax machines also provides another generally available and less costly alternative to personal service. The Court should consider permitting these alternatives.

We also urge one additional change. The proposed amendments would leave unchanged the current requirement that oppositions to motions are due seven days after service of the motion. This seven-day period is generally adequate for non-dispositive motions, and appropriate for all motions in calendared, emergency, and expedited cases where time is of the essence. However, in other cases, additional time is appropriate for responding to dispositive motions for summary affirmance or reversal or to motions to dismiss appeals on substantive grounds. The movant controls when such a motion is filed. Seven days is an extraordinarily short period of time in which to respond -- far shorter than the time normally permitted under Superior Court rules to respond to motions, especially dispositive motions. Even if the opposition is relatively straightforward and requires only modifying and updating trial court briefs (which is often not the case), it is frequently difficult for counsel with other responsibilities to complete this task within seven days. The burden is even greater when, as periodically happens with both private and governmental litigants, a different lawyer represents a party on appeal than in the trial court.

We understand that parties in this Court only infrequently request an extension of time to respond to dispositive motions. This does not necessarily mean, however, seven days are adequate. For example, some litigants may not file a motion for additional time because the Court will not rule until after the

response is due and they do not want to take even a small risk that the Court will not grant the extension retroactively. Moreover, alleviating the problem through extensions of time on a case-by-case basis would only add to the burdens of the Clerk's Office. The non-moving party may also fear that a request for additional time implies that the motion is more substantial than it is.

For these reasons, we propose that the fifth sentence in current Rule 27(a) -- which follows the new language contained in the proposed amendment -- be replaced by the following two sentences:

Any party may file a response or opposition to a non-dispositive procedural motion or to a motion in calendared, emergency, and expedited cases within seven days after service of the motion, but the court may shorten or extend this time. Except in calendared, emergency, and expedited cases, a party may file a response or opposition to a dispositive motion within twenty-one days after service of the motion, but the court may shorten or extend this time.