

LITIGATION SECTION AND THE COURTS, LAWYERS AND
THE ADMINISTRATION OF JUSTICE SECTION OF
THE DISTRICT OF COLUMBIA BAR

**COMMENTS OF THE
LITIGATION SECTION AND THE COURTS, LAWYERS AND THE
ADMINISTRATION OF JUSTICE SECTION OF THE DISTRICT OF
COLUMBIA BAR ON PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE
AND THE FEDERAL RULES OF APPELLATE PROCEDURE**

Teresa A. Howie, Co-Chair
John Moustakas, Co-Chair
Robin E. Jacobsohn
John M. Mott
Melissa G. Reinberg
Bonnie I Robin-Vergeer
Richard A. Seligman

Abbey Hairston, Co-Chair
Kirk K. Van Tine, Co-Chair
John M. Clifford
Barry Coburn
Christine M. Cooper
Diana Nowezki
Jerry P Roscoe
Joseph M. Sellers
Paul M. Smith

Steering Committee
Courts, Lawyers and the
Administration of Justice Section

Steering Committee
Litigation Section

March 2, 2001

These comments were principally prepared by Nicholas H. Cobbs, D.C. Bar Litigation Section.

**SUMMARY OF THE COMMENTS OF THE
LITIGATION SECTION AND THE COURTS, LAWYERS AND THE
ADMINISTRATION OF JUSTICE SECTION OF THE DISTRICT OF
COLUMBIA BAR ON PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE
AND THE FEDERAL RULES OF APPELLATE PROCEDURE**

The Litigation Section and the Courts, Lawyers and the Administration of Justice Section of the District of Columbia Bar intend to submit comments to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States concerning proposed amendments to Rule 58 of the Federal Rules of Civil Procedure and Rule 4 of the Federal Rules of Appellate Procedure. The Sections take no position on other amendments proposed by the Committee.

FEDERAL RULES OF CIVIL PROCEDURE: The Sections support the restructuring of Rule 58 to clarify the procedure for entering judgment. The Sections oppose the proposal to institute entry of judgment on the civil docket as an alternative event that can render a judgment effective for purposes of appeal in cases where a separate document of judgment is required. The Sections believe that the alternative proposed by the Committee creates a confusing situation in which attorneys would not have clear notice of when to measure the time for appeal.

FEDERAL RULES OF APPELLATE PROCEDURE: The Committee's proposed change to Fed. R. Civ. Pro. 58 is paralleled by a proposed amendment to Fed. R. App. Pro. 4 that would dispense with the requirement for entry of a separate document of judgment as a prerequisite for an appeal. The Sections oppose the proposed amendment of Fed. R. App. Pro. 4 for the same reasons that they oppose the proposed changes to Fed. R. Civ. Pro. 58.

**COMMENTS OF THE
LITIGATION SECTION AND THE COURTS, LAWYERS AND THE
ADMINISTRATION OF JUSTICE SECTION OF THE DISTRICT OF
COLUMBIA BAR ON PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE
AND THE FEDERAL RULES OF APPELLATE PROCEDURE**

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has solicited comments on proposed amendments to the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure. The Litigation Section of the District of Columbia Bar and the Courts, Lawyers and the Administration of Justice Section submit these comments on the proposals concerning the procedure for entry of judgment and the requirements for taking an appeal. The Sections do not take any position with respect to other proposed rules changes that are not addressed in these comments.

The Litigation Section and the Courts, Lawyers and the Administration of Justice Section of the District of Columbia Bar are voluntary groups comprising more than 2,500 attorneys who are members of the District of Columbia Bar. Most of the members of the Litigation Section and the Courts, Lawyers and the Administration of Justice Section are active trial or appellate attorneys, or court employees. The views expressed herein are not necessarily those of individual members of the respective sections and are not those of the D.C. Bar or its Board of Governors.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 58. Entry of Judgment.

The Sections approve of the restructuring of Rule 58 to clarify the procedure for issuing and entering judgments and for eliminating the requirement for entry of a separate document of judgment in situations where it is unnecessary. But the Sections believe that the proposed amendment to Rule 58 (b), which allows alternative events to constitute entry of judgment, will create more problems than it will cure. Accordingly, the Sections recommend that this proposed amendment be deleted. In its place, the Sections propose an amendment to Rule 58(b) that provides that where a separate document is required under Fed. R. Civ. Pro. 58(a)(1), only entry of the separate document shall constitute entry of the judgment.

The proposed amendment, as it now stands, would create uncertainty in many situations as to when a judgment is effective and, therefore, when the time for appeal begins to run. Under the present rules, where a separate document of judgment is required, attorneys know that the entry of that document marks the time that the judgment

is effective for purposes of execution and appeal. Although confusion may arise in situations where the judge or clerk fails to follow the rule by preparing a separate document, the remedy is not to sap the rule. The remedy is to clarify the requirement for entry of a separate document so that failures to follow the rule are less common.

The attached proposed amendment to Rule 58 (b) that the Sections submit would clarify the requirement for entry of a separate document. In addition, the amendment we propose would clarify both the obligation of attorneys to request entry of a separate document of judgment when one is not forthcoming, and the obligation of judges to issue such a document promptly upon receipt of a valid request.

The proposed amendment as it now stands creates a situation in which attorneys may not know when a judgment becomes effective. While a document of judgment is almost always sent to the attorneys, courts normally do not give attorneys notice of docket entries. The proposed amendment now imposes on attorneys an obligation to inspect the court's docket at regular intervals whenever the court issues a ruling that might be entered as a judgment. Moreover, even in circumstances where the judge does issue a separate document of judgment, an appeal might be barred under the proposed amendment if the judgment was entered more than 90 days previously on the court's docket.

The Litigation Section and the Courts, Lawyers and the Administration of Justice Section of the D.C. Bar believe that it would be better to clarify and enforce the current provision for entry of a separate document of judgment, where required, than to create an uncertain situation in which deadlines for execution of judgment and appeal could be fixed by a docket entry that was entered without notice to the attorneys. The amendment to Rule 54(b) proposed by the Sections address this issue.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4(a)(7) Entry Defined.

For reasons that we discuss above in connection with the proposed amendments to Fed. R. Civ. Pro. 58, the Sections propose to delete the proposed amendment to Fed. R. App. Pro. 4(a)(7), which would add a new subsection 4(a)(7)(B). The proposed amendment would eliminate the requirement for entry of a separate document of judgment as a basis for appeal. The Sections believe that it is important to maintain and enforce the current requirement for entry of a separate document of judgment so that attorneys will have a single, clear marker with which to measure the time for appeal in cases where a separate document of judgment is required.

**District of Columbia Bar
Litigation Section and
Courts, Lawyers and the Administration of Justice Section**

**PROPOSED CHANGE TO PROPOSED AMENDMENT
TO RULE 58 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Proposed Rule 58(a): No changes proposed.

Proposed Rule 58(b):

(b) Time of Entry. Judgment is entered for purposes of Rules 50, 52, 54(d)(2)(B), 59, 60, and 62 when it is entered in the civil docket under Rule 79(a). If a separate document is required by Rule 58(a)(1), only entry of the separate document shall constitute entry of the judgment.

Proposed Rule 58(c): No changes proposed.

Proposed Rule 58(d):

(d) Request for Entry. If a separate document is required by Rule 58(a) but is not prepared or not entered, a party may request that judgment be set forth on a separate document and be entered. The court must comply promptly with any legitimate request.

**PROPOSED CHANGE TO PROPOSED AMENDMENT
TO RULE 4 OF THE FEDERAL RULES OF APPELLATE PROCEDURE**

Proposed Rule 4(a)(1): No changes proposed.

Proposed Rule 4(a)(4): No changes proposed.

Proposed Rule 4(a)(5): No changes proposed.

Proposed Rule 4(a)(7)(A): No changes proposed

Proposed Rule 4(a)(7)(B): Delete in its entirety.