

## MEMORANDUM

DATE: April 9, 2015

TO: Advisory Committee on Appellate Rules

FROM: Catherine T. Struve, Reporter

RE: Item No. 15-AP-B: Technical amendment to update Rule 26(a)(4)(C)'s reference to Rule 13

In 2013, Rule 13 – governing appeals as of right from the Tax Court – was revised and became Rule 13(a), and a new Rule 13(b) – providing that Rule 5 governs permissive appeals from the Tax Court – was added.<sup>1</sup> At that time, Rule 26(a)(4)(C)'s reference to “filing by mail under Rule 13(b)”<sup>2</sup> should have been updated to refer to “filing by mail under Rule 13(a)(2).”<sup>3</sup> I regret to say that I overlooked the cross-reference at the time. I now propose amending Rule 26(a)(4)(C) to update the cross-

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<sup>1</sup> The 2013 Committee Note to Rule 13 explains:

Rules 13 and 14 are amended to address the treatment of permissive interlocutory appeals from the Tax Court under 26 U.S.C. § 7482(a)(2). Rules 13 and 14 do not currently address such appeals; instead, those Rules address only appeals as of right from the Tax Court. The existing Rule 13 – governing appeals as of right – is revised and becomes Rule 13(a). New subdivision (b) provides that Rule 5 governs appeals by permission. The definition of district court and district clerk in current subdivision (d)(1) is deleted; definitions are now addressed in Rule 14. The caption of Title III is amended to reflect the broadened application of this Title.

<sup>2</sup> Prior to the 2013 amendment, Rule 13(b) read: “**(b) Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk’s office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.”

<sup>3</sup> Rule 13(a)(2) now reads: “**(2) Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk’s office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.”

reference. Here is the proposal, which, as a technical amendment, can proceed without publication:<sup>4</sup>

## **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.

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**(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)~~ 13(a)(2) – 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.

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<sup>4</sup> An additional proposed amendment to Rule 26(a)(4)(C) is discussed elsewhere in this agenda book. That additional amendment would update Rule 26(a)(4)(C)'s cross-references to Rule 25(a) in the event that Rule 25(a) is restructured in connection with the amendments related to electronic filing. But assuming that the Committee decides to proceed with that proposal, the additional amendment to Rule 26(a)(4)(C) would be at least one year behind the technical amendment proposed here (due to the need for publication for comment).