

# EXHIBIT 3

Cornell Law School

# Legal Information Institute [LII]

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Federal Rules of Appellate Procedure › TITLE VII. GENERAL PROVISIONS › Rule 45. Clerk's Duties

## Rule 45. Clerk's Duties

### (a) GENERAL PROVISIONS.

(1) **Qualifications.** The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

### (b) RECORDS.

(1) **The Docket.** The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) **Calendar.** Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) **Other Records.** The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

### (c) NOTICE OF AN ORDER OR JUDGMENT.

Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) **CUSTODY OF RECORDS AND PAPERS.** The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

## NOTES

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

### NOTES OF ADVISORY COMMITTEE ON RULES—1967

The duties imposed upon clerks of the courts of appeals by this rule are those imposed by rule or practice in a majority of the circuits. The second sentence of subdivision (a) authorizing the closing of the clerk's office on Saturday and non-national legal holidays follows a similar provision respecting the district court clerk's office found in FRCP 77 (c) and in FRCrP 56.

### NOTES OF ADVISORY COMMITTEE ON RULES—1971 AMENDMENT

The amendment adds Columbus Day to the list of legal holidays. See the Note accompanying the amendment of Rule 26(a).

### NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to Rule 45(b) permits the courts of appeals to maintain computerized dockets. The Committee believes that the Administrative Office of the United States Courts ought to have maximum flexibility in prescribing the format of this docket in order to ensure a smooth transition from manual to automated systems and subsequent adaptation to technological improvements.

The amendments to Rules 45(a) and (d) are technical. No substantive change is intended. The Birthday of Martin Luther King, Jr. has been added to the list of national holidays.

### 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.

### COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (c). Subdivision (c) has been amended so that the clerk may use electronic means to serve notice of entry of an order or judgment upon parties who have consented to such service.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

### COMMITTEE NOTES ON RULES—2005 AMENDMENT

Subdivision (a)(2). Rule 45(a)(2) has been amended to refer to the third Monday in February as “Washington's Birthday.” A federal statute officially designates the holiday as “Washington's Birthday,” reflecting the desire of Congress specially to honor the first president of the United States. See 5 U.S.C. §6103(a). During the 1998 restyling of the Federal Rules of Appellate Procedure, references to “Washington's Birthday” were mistakenly changed to “Presidents' Day.” The amendment corrects that error.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

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