

DIVISION 4: COURTS, LAWYERS AND THE  
ADMINISTRATION OF JUSTICE



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## *The District of Columbia Bar*

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May 7, 1984

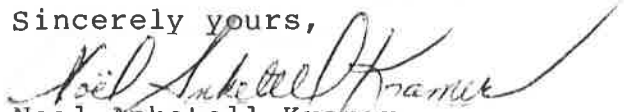
Lynne Lester  
Administrative Assistant  
for Divisions  
District of Columbia Bar  
1426 H Street, N.W.  
Washington, D.C. 20005

Dear Lynne:

Pursuant to D.C. Bar Division Guidelines 13(c), I am hereby submitting to you for distribution to the Board of Governors and to the other Divisions of the Bar Comments of the Committee on Court Rules of Division IV of the D.C. Bar on Proposed District of Columbia Court of Appeals Rule 41(c)(Recall of Mandate). The comments are in response to a notice of February 23, 1984, from the District of Columbia Court of Appeals proposing a time limit of 180 days from issuance of the mandate on motions to recall a mandate based on ineffective assistance of appellate counsel. While Division IV believes that 180 days is an appropriate time period, we believe the rule should also contain provisions to ensure that appellants receive notice of the decisions from their appellate counsel and, accordingly, have proposed further provisions to meet that concern.

The Steering Committee of Division IV has unanimously approved these comments. It is our intention to submit the comments to the Court of Appeals on May 15, 1984.

Sincerely yours,

  
Noel Anketell Kramer  
Chairperson, Division IV (Courts,  
Lawyers, and the Administration  
of Justice)  
District of Columbia Bar

cc: Gerald P. Greiman STANDING COMMITTEES

COMMENTS OF THE COMMITTEE ON COURT RULES  
OF DIVISION IV OF THE D.C. BAR ON PROPOSED  
DISTRICT OF COLUMBIA COURT OF APPEALS RULE 41(c)

Noel Anketell Kramer, Chair  
John P. Hume  
Larry P. Polansky  
Claudia Ribet  
John Townsend Rich  
Arthur B. Spitzer

John T. Boese, Co-Chair  
Gerald P. Greiman, Co-Chair\*  
Richard B. Nettler

Members of Committee on Court  
Rules Who Drafted Comment

Steering Committee, Division IV

Dated: May 3, 1984

\*Principal Author

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STANDARD DISCLAIMER

"The views expressed herein represent only those of Division IV: Courts, Lawyers, and the Administration of Justice, of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

We are writing to submit the comments of the Committee on Court Rules of Division IV of the District of Columbia Bar concerning the proposal to add a new paragraph (c) to D.C. Court of Appeals Rule 41. The proposed rule provides:

(c) RECALL OF MANDATE. In any appeal from a judgment of conviction in a criminal case, no motion to recall a mandate based on the asserted failure of counsel to represent the appellant effectively on appeal shall be considered by the court unless the motion is filed within 180 days from the issuance of the mandate.

We understand that the proposed rule is largely based on the fact that claims for ineffective assistance of counsel on appeal must be asserted in the Court of Appeals by way of a motion to recall the mandate, see Streater v. Jackson, 429 A.2d 173 (D.C. 1980), and that the Court is receiving a significant number of these motions well after the appeals have been resolved.

The Committee feels that the 180 day time period is adequate, and generally supports the concept embodied in the proposed rule. We understand, however, that a significant number of appellants do not timely receive notice of the Court of Appeals' decisions in their cases, either because their attorneys neglect to provide them with the decision or their whereabouts are unknown at the time of decision. Accordingly, we are concerned that the proposed rule could result in substantial injustice if an appellant does not timely receive notice of the Court of Appeals' resolution of his or her case, particularly if the 180 day time limit is deemed to be jurisdictional.

We therefore recommend that the proposed rule be adopted only in conjunction with the adoption of a procedure to attempt

to ensure that appellants in criminal cases receive timely notice of the decisions on their appeals. In that regard, we suggest that the following provisions, or similar provisions, be incorporated into the Court of Appeals' Rules:

(a) Promptly after the issuance of a decision in an appeal from a judgment of conviction in a criminal case, appellant's counsel shall mail a copy of the decision to the appellant at his or her current address by first class mail, postage prepaid. Appellant's counsel shall exercise reasonable diligence to ascertain the appellant's current address and to verify that the address used is in fact appellant's current address. If, after exercising reasonable diligence, counsel is unable to ascertain the appellant's current address, the decision shall be sent to the appellant's last known address.

(b) Within fourteen (14) days after the issuance of such decision, appellant's counsel shall file a certificate reflecting compliance with the foregoing, which shall include the following: (1) the date on which the decision was mailed, (2) the address to which it was mailed, (3) whether or not counsel has been able to verify that the address is in fact appellant's current address, (4) if not, the efforts made by counsel to ascertain appellant's current address, and (5) any other information known to counsel which tends to indicate whether or not appellant has received a copy of the decision.

We further recommend that the Court make clear, either in Rule 41(c) or by judicial construction, that the 180 day time limit may be extended under appropriate circumstances.