

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

- (a) Contents.** Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.
- (b) When Issued.** The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.
- (c) Effective Date.** The mandate is effective when issued.
- (d) Staying the Mandate.**
- (1) On Petition for Rehearing or Motion.** The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.
 - (2) Pending Petition for Certiorari.**
 - (A)** A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.
 - (B)** The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.
 - (C)** The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.
 - (D)** The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

Local Rule 41. Motion for Stay of the Mandate.

A motion for stay of the issuance of the mandate shall not be granted simply upon request. Ordinarily the motion shall be denied unless there is a specific showing that it is not frivolous or filed merely for delay. A motion to stay the mandate pending the filing of a petition for certiorari must show that the certiorari petition would present a substantial question and set forth good cause for a stay. Stay requests are normally acted upon without a request for a response.

I.O.P.-41.1. Issuance of the Mandate.

On the date of issuance of the mandate, the Clerk of the Court will issue written notice to the parties and the clerk of the lower court that the judgment of the Court of Appeals takes effect that day. The trial court record will be returned to the clerk of that court once the mandate has issued.

-41.2. Petitions for Writs of Certiorari.

A petition for a writ of certiorari must be filed with the Supreme Court within 90 days of the entry of judgment in a criminal case or a civil case. The time for the petition does not run from the issuance of the mandate, but from the date of judgment which is also the opinion date. If a petition for rehearing or a petition for rehearing en banc is timely filed, the time runs from the date of denial of that petition. Counsel should consult the Rules of the Supreme Court for details on how to proceed with the petition.

The Rules of the Supreme Court do not require that the record accompany a petition for certiorari and the record will not be forwarded unless specifically requested by the petitioner or counsel. Requests to certify and transmit the record to the Supreme Court prior to action on the petition for a writ of certiorari are disfavored by the Supreme Court. The Clerk of the Supreme Court will request the record from the Court of Appeals when review of the record is desired by the Supreme Court prior to action on a petition for writ of certiorari or upon granting certiorari if the record has not been transmitted earlier. The same procedures are followed for Supreme Court review by certification pursuant to 28 U.S.C. § 1254(2).

If a case is remanded to the Court of Appeals from the Supreme Court, the case shall be reopened under the original docket number and the Court of Appeals may require additional briefs and oral argument, summarily dispose of the case, or take any other action consistent with the Supreme Court's opinion.

Former I.O.P.-41.2 amended and redesignated Local Rule 41 December 1, 1995.

I.O.P.-41.1 amended December 1, 1995.

Former I.O.P.-41.3 amended and redesignated I.O.P.-41.2 December 1, 1995; amended December 1, 1998.