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**Federal Rules of Appellate Procedure  
and  
Seventh Circuit Rules**

**Federal Rule of Appellate Procedure 1:**

**RULE 1. Scope of Rules; Title**

**(a) Scope of Rules.**

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the practice of the district court.

**(b)** [Abrogated]

**(c) Title.** These rules are to be known as the Federal Rules of Appellate Procedure.

**CIRCUIT RULE 1. Scope of Rules**

These rules govern procedure in the United States Court of Appeals for the Seventh Circuit. <sup>7</sup>  
Circuit Rules of the United States Court of Appeals for the Seventh Circuit.

**Federal Rule of Appellate Procedure 2:**

**RULE 2. Suspension of Rules**

On its own or a party's motion, a court of appeals may, to expedite its decision or for other good cause, suspend or modify any of these rules in a particular case and order proceedings as it directs, except as otherwise provided.

**CIRCUIT RULE 2. Suspension of Circuit Rules**

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In the interest of expediting decision or for other good cause, the court may suspend the requ

## Federal Rule of Appellate Procedure 3:

### RULE 3. Appeal as of Right--How Taken

#### (a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken by filing a notice of appeal with the district clerk within the time allowed by [Rule 4](#). At the time of filing, the appellant must file enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not constitute grounds for appeal, but is ground only for the court of appeals to act as it considers appropriate, including

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from a district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken in the manner prescribed by [Rules 5](#) and [6](#), respectively.

#### (b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district court judgment or order, and it is practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined as consolidated appeals.

#### (c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice; if a party representing more than one party may describe those parties with such terms as "all plaintiffs" or "A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse or dependent (including parties), unless the notice clearly indicates otherwise.

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- (3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient to bring the appeal as representative of the class.
- (4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or if the intent to appeal is otherwise clear from the notice.
- (5) [Form 1](#) in the Appendix of Forms is a suggested form of a notice of appeal.

## **(d) Serving the Notice of Appeal.**

- (1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party, excluding the appellant's or, if a party is proceeding pro se, to the party's last known address. In criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by mail or addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and later docket entries to the clerk of the court of appeals named in the notice. The district clerk must file the notice of appeal when the notice of appeal was filed.
- (2) If an inmate confined in an institution files a notice of appeal in the manner provided by [Rule 3](#), the clerk must also note the date when the clerk docketed the notice.
- (3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must file the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient if made to the party or the party's counsel.

**(e) Payment of Fees.** Upon filing a notice of appeal, the appellant must pay the district clerk the docketing fee. The clerk receives the appellate docket fee on behalf of the court of appeals.

## **CIRCUIT RULE 3. Notice of Appeal, Docketing Fee, Docketing Statement, and Designation of Appellate Counsel**

- (a) *Forwarding Copy of Notice of Appeal.* When the clerk of the district court sends to the clerk of the court of appeal, the district court clerk shall include any docketing statement. In civil cases the clerk shall include the judgments or orders under review, any transcribed oral statement of reasons, opinion, memorandum of fact, and conclusions of law. The clerk of the district court shall also complete and include the Docketing Information Sheet in the form prescribed by this court.
- (b) *Dismissal of Appeal for Failure to Pay Docketing Fee.* If a proceeding is docketed without the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the court shall dismiss the appeal.
- (c)(1) *Docketing Statement.* The appellant must serve on all parties a docketing statement on the court at the time of the filing of the notice of appeal or with the clerk of this court within seven days. The docketing statement must comply with the requirements of [Circuit Rule 28\(a\)](#). If there has been a change of counsel, the appellant must also file a statement of the new counsel.

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proceedings in the case, or if the party believes that the earlier appellate proceedings are sufficient, the statement must identify these proceedings by caption and number. The statement also must identify the district court that, although not appealed, (a) arises out of the same criminal conviction, or (b) is a conviction of the district court as satisfying the criteria of 28 U.S.C. §1915(g). If any of the parties to the litigation believes that the statement must identify the current occupant of the office. The docketing statement in a criminal case must identify the prisoner's current place of confinement and its current warden; if the statement must describe the nature of any ongoing custody (such as supervised release). If the docketing statement is not complete and correct, the appellee must provide a complete one to the appellant within 14 days after the date of the filing of the appellant's docketing statement.

(2) Failure to file the docketing statement within 14 days of the filing of the notice of appeal will result in a fine on counsel. Failure to file the statement within 28 days of the filing of the notice of appeal will result in the appeal being dismissed. When the appeal is docketed, the court will rule on the provisions.

(d) *Counsel of Record.* The attorney whose name appears on the docketing statement or other document filed by a party in this court will be deemed counsel of record, and a separate notice of appearance need not be filed. If more than one attorney is shown, the attorney who is counsel of record must be clearly identified as counsel of record.) If no attorney is so identified, the court will treat the first listed as counsel of record. Documents only to the counsel of record for each party, who is responsible for transmitting them to the court. The docketing statement or other document must provide the post office address and telephone number of the counsel of record. The names of other members of the Bar of this Court and, if desired, their post office addresses must be clearly identified. An attorney representing a party who will not be appearing in person must file a separate notice of appearance as counsel of record indicating the name of the party representing the party. An attorney may withdraw, without consent of the court, unless another counsel of record is simultaneously substituted.

## **Federal Rule of Appellate Procedure 4:**

### **RULE 4. Appeal as of Right--When Taken**

#### **(a) Appeal in a Civil Case.**

##### *(1) Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed at any time after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is governed by the purposes of Rule 4(a).

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(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision of the judgment or order-is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice on the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a).

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 54(d);

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment-but before the entry of an order disposing of a motion listed in Rule 4(a)(4)(A)-the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or any part of such an order, must file a notice of appeal, or an amended notice of appeal-in compliance with this Rule-measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires;

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule expires, the party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be extended or otherwise modified. If the motion is filed after the expiration of the prescribed time, notice must be given in accordance with local rules.

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(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an ap the date when its order to reopen is entered, but only if all the following conditions are satisfie

(A) the court finds that the moving party did not receive notice under Federal Rule of Appellat the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days : notice under Federal Rule of Appellate Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgen docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when th the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these eve

- the judgement or order is set forth on a separate document, or

- 150 days have run from entry of the judgement or order in the civil docket under Federal Ru

(B) A failure to set forth a judgement or order on a separate document when required by Fed (1) does not affect the validity of an appeal from that judgement or order.

## **(b) Appeal in a Criminal Case.**

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 1

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district later of:

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- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision, sentence, or order-but before the entry of the judgment or order-is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, a notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order granting the motion, or within 10 days after the entry of the judgment of conviction, whichever period applies to a timely motion:

- (i) for judgment of acquittal under Rule 29;
- (ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is filed after the entry of the judgment; or
- (iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order-but before the entry of the judgment or order-becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or
- (ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective-without amendment-to appeal from an order disposing of the motion as provided in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may, with or without motion and notice-extend the time to file a notice of appeal from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct an error in a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion and notice of appeal filed before entry of the order disposing of the motion.

(6) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the court's docket.

## **(c) Appeal by an Inmate Confined in an Institution.**

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case,

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deposited in the institution's internal mail system on or before the last day for filing. If an inmate uses legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing means compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period for another party to file a notice of appeal runs from the date when the district court docketed the first notice of appeal.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the date of the defendant's notice of appeal, whichever is later.

**(d) Mistaken Filing in the Court of Appeals.** If a notice of appeal is filed in either a civil or a criminal case in a court of appeals, the clerk of that court must note on the notice the date when it was received in the court of appeals. The notice is then considered filed in the district court on the date so noted.

## Federal Rule of Appellate Procedure 5:

### RULE 5. Appeal by Permission

#### (a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all parties to the action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal, or, if not so specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to appeal, and the necessary conditions are met, the district court may amend its order, either on its own or on the motion of a party, to include the required permission or statement. In that event, the time to petition runs from the date of the order.

#### (b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

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- (D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and
- (E) an attached copy of:
  - (i) the order, decree, or judgment complained of and any related opinion or memorandum, and
  - (ii) any order stating the district court's permission to appeal or finding that the necessary conditions for appeal have been met.
- (2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is filed.
- (3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

**(c) Form of Papers; Number of Copies.** All papers must conform to [Rule 32\(a\)\(1\)](#). Except for the petition for permission to appeal, a brief must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the appendix, if any. All papers must be double-spaced and comply with the requirements required by [Rule 5\(b\)\(1\)\(E\)](#). An original and 3 copies must be filed unless the court requires a different number of copies by order in a particular case.

**(d) Grant of Permission; Fees; Cost Bond; Filing the Record.**

- (1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:
  - (A) pay the district clerk all required fees; and
  - (B) file a cost bond if required under [Rule 7](#).
- (2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered is the date of the notice of appeal for calculating time under these rules.
- (3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receipt of the fees, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with the rules of the circuit court of appeals.

**Federal Rule of Appellate Procedure 6:**

**RULE 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel.**

**(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction.** An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising original jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

**(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.**

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(1) *Applicability of Other Rules.* These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in [Rule 3\(c\)](#) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 1 in the Appendix of Forms;

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in "appellate panel."

(2) *Additional Rules.* In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) *Motion for Rehearing.*

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy court enters a judgment, order, or decree-but before disposition of the motion for rehearing-becomes the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rule 4, to amend a previously filed notice of appeal. A party intending to challenge an altered or amended notice of appeal must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) *The Record on Appeal.*

(i) Within 10 days after filing the notice of appeal, the appellant must file with the clerk of the court of appeals a statement of the issues and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 10 days of the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts of the record.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under [Rule 3\(d\)](#).

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## (C) *Forwarding the Record.*

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the record and send them promptly to the circuit clerk together with a list of the documents correctly and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not accept documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record. The circuit clerk may, by omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must file in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The circuit clerk may provide by rule or order that a certified copy of the docket entries be sent in place of the record. A party may request at any time during the pendency of the appeal that the redesignated record be filed in the circuit court.

(D) *Filing the Record.* Upon receiving the record or a certified copy of the docket entries sent to the circuit clerk, the circuit clerk must file it and immediately notify all parties of the filing date.

## **Federal Rule of Appellate Procedures 7:**

### **RULE 7. Bond for Costs on Appeal in a Civil Case**

In a civil case, the district court may require an appellant to file a bond or provide other security necessary to ensure payment of costs on appeal. [Rule 8\(b\)](#) applies to a surety on a bond given by the appellant.

## **Federal Rule of Appellate Procedure 8:**

### **RULE 8. Stay or Injunction Pending Appeal**

#### **(a) Motion for Stay.**

(1) *Initial Motion in the District Court.* A party must ordinarily move first in the district court for

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the Court of Appeals; Conditions on Relief.* A motion for the relief mentioned in (1) may be made in the court of appeals or to one of its judges.

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(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute;

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a single judge. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the amount of the relief sought.

**(b) Proceeding Against a Surety.** If a party gives security in the form of a bond or stipulation, each surety submits to the jurisdiction of the district court and irrevocably appoints as its agent on whom any papers affecting the surety's liability on the bond or undertaking may be enforced in the district court without the necessity of an independent proceeding, that the district court prescribes may be served on the district clerk, who must promptly mail a copy to the surety if the address is known.

**(c) Stay in a Criminal Case.** Rule 38 of the Federal Rules of Criminal Procedure governs a stay of proceedings pending appeal.

## **CIRCUIT RULE 8. Motions for Stays and Injunctions Pending Appeal**

Counsel's obligation under [Fed. R. App. P. 8\(a\)](#) to provide this court with the reasons the district court includes an obligation to supply any statement of reasons by a magistrate judge or bankruptcy court, a copy of the order or memorandum of decision in which the reasons were stated, or if they were not stated, a copy of the transcript of proceedings is preferred; but, in an emergency, if such a copy is not available, the reasons given by the district or bankruptcy court will suffice.

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## Federal Rule of Appellate Procedure 9:

### Rule 9. Release in a Criminal Case

#### (a) Release Before Judgment of Conviction.

(1) The district court must state in writing, or orally on the record, the reasons for an order releasing a defendant in a criminal case. A party appealing from the order must file with the court of appeals the order and the court's statement of reasons as soon as practicable after filing the notice of appeal. The factual basis for the district court's order must be included in the transcript of the release proceedings if a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the papers, affidavits, and parts of the record that the parties present or the court requires. Unless otherwise ordered, the papers must be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the decision of the court of appeals.

**(b) Release After Judgment of Conviction.** A party entitled to do so may obtain review of a release after a judgment of conviction by filing a notice of appeal from that order in the district court of appeals if the party has already filed a notice of appeal from the judgment of conviction. The review is subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the order of conviction.

**(c) Criteria for Release.** The court must make its decision regarding release in accordance with 18 U.S.C. §§ 3142, 3143, and 3145(c).

### CIRCUIT RULE 9. Motions Concerning Custody Pending Trial or Appeal

(a) All requests for release from custody pending trial shall be by motion. The defendant shall file a motion.

(b) All requests to reverse orders granting bail or enlargement pending trial or appeal shall be by motion. The defendant shall file a notice of appeal followed by a motion.

(c) All requests for release from custody after sentencing and pending the disposition of the main case. There is no need for a separate notice of appeal.

(d) Any motion filed under this rule shall be accompanied by a memorandum of law.

## Federal Rule of Appellate Procedure 10:

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## **RULE 10. The Record on Appeal**

**(a) Composition of the Record on Appeal.** The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.

### **(b) The Transcript of Proceedings.**

(1) *Appellant's Duty to Order.* Within 10 days after filing the notice of appeal or entry of an order granting a remaining motion of a type specified in [Rule 4\(a\)\(4\)\(A\)](#), whichever is later, the appellant must

(A) order from the reporter a transcript of such parts of the proceedings not already on file as necessary, subject to a local rule of the court of appeals and with the following qualifications:

- (i) the order must be in writing;
- (ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act;
- (iii) the appellant must, within the same period, file a copy of the order with the district clerk; and

(B) file a certificate stating that no transcript will be ordered.

(2) *Unsupported Finding or Conclusion.* If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of that finding or conclusion.

(3) *Partial Transcript.* Unless the entire transcript is ordered:

(A) the appellant must within the 10 days provided in Rule 10(b)(1) file a statement of the issues presented on the appeal and must serve on the appellee a copy of both the order or certificate and the statement of the issues;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, the appellee may within the following 10 days either order the parts or move in the court to require the appellant to do so.

(4) *Payment.* At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the transcript.

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**(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript of a Hearing or Trial is Unavailable.** If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence in the best available means, including the appellant's recollection. The statement must be served on the appellee and any objections or proposed amendments within 10 days after being served. The statement and any amendments must then be submitted to the district court for settlement and approval. As settled, the statement must be included by the district clerk in the record on appeal.

**(d) Agreed Statement as the Record on Appeal.** In place of the record on appeal as defined in Rule 11, the appellant may prepare, sign, and submit to the district court a statement of the case showing how the issues were presented, argued, and decided in the district court. The statement must set forth only those facts averred and those facts that are essential to the court's resolution of the issues. If the statement is truthful, it-together with any amendments court may consider necessary to a full presentation of the issues on appeal-must be approved by the district court and then be certified to the court of appeals as the record on appeal. The district clerk must then prepare the record on appeal within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appellant's record on appeal.

**(e) Correction or Modification of the Record.**

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the record submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, a correction or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

## **CIRCUIT RULE 10. Preparation of Record in District Court Appeals**

**(a) Record Preparation Duties.** The clerk of the district court shall prepare within 14 days of filing the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (as defined below). The transcript of a deposition is "filed" within the meaning of this rule, and an exhibit is "filed" to the extent that it is tendered to the district court in support of a brief or motion, whether or not the deposition transcripts or exhibits as part of the record. These materials may be designated as "filed" without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure that exhibits not in the possession of the district court clerk are furnished to the clerk with the notice of appeal. The following items will not be included in a record unless specifically required by the date of filing within ten days after the notice of appeal is filed or unless specifically ordered by the court.

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briefs and memoranda,

notices of filings,

subpoenas,

summonses,

motions to extend time,

affidavits and admissions of service and mailing,

notices of settings,

depositions and notices, and jury lists.

(b) *Correction or Modification of Record.* A motion to correct or modify the record pursuant to motion to strike matter from the record on the ground that it is not properly a part thereof shall court. That court's order ruling on the motion will be transmitted to this court as part of the rec

(c) *Order or Certification with Regard to Transcript.* Counsel and court reporters are to utilize when ordering transcripts or certifying that none will be ordered. For specific requirements, see [App. P.](#)

(d) *Ordering Transcripts in Criminal Cases.*

(1) *Transcripts in Criminal Justice Act Cases.* At the time of the return of a verdict of guilty or, adjudication of guilt in a criminal case in which the defendant is represented by counsel appo Act (C.J.A.), counsel for the defendant shall request a transcript of testimony and other releva C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is transcribed so much of the proceedings as the judge believes necessary for an appeal. The t clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a guilty or within seven days after sentencing, whichever occurs later. If the district judge decide time, the judge shall retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall imme the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a

(2) *Transcripts in Other Criminal Cases.* Within 10 days after filing the notice of appeal in othe appellant's counsel shall deposit with the court reporter the estimated cost of the transcript or [Fed. R. App. P.](#), unless the district court orders that the transcript be paid for by the United St must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-Justice Act unless the district court determines that fairness requires a different division of the paragraph will be cause for dismissal of the appeal.

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(e) *Indexing of Transcript.* The transcript of proceedings to be transmitted to this court as part of the record on appeal (including copies prepared for the use of the court or counsel in the case on appeal) shall be bound by two or more volumes, with the pages consecutively numbered throughout all volumes. The transcript of proceedings, shall contain a suitable index, which shall refer to the number of the volume as well as the page number for all volumes, and shall include the following information:

- (1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination and cross-examination of each witness is taken.
- (2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of the exhibit and the pages of the transcript where each exhibit has been identified, offered, and received or admitted.
- (3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions to the jury, with reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and in such cases, this paragraph to all the transcripts taken together as one, the rule may be applied separately to each other distinct proceeding.

(f) *Presentence Reports.* The presentence report is part of the record on appeal in every criminal case. The appellant should transmit this report under seal, unless it has already been placed in the public record in the trial court. If transmitted under seal, the report may not be included in the appendix to the brief or the separate appendix to the brief. [P. 30](#) and [Circuit Rule 30](#). Counsel of record may review the presentence report at the clerk's office, the probation officer's written comments and any other portion submitted in camera to the trial judge.

(g) *Effect of Omissions from the Record on Appeal.* When a party's argument is countered by the opposing party to raise the point in the trial court or before an agency, the party opposing the waiver contentions must ensure that the point was asserted and also ensure that the record before the court of appeals contains the transcript of the proceedings.

## Federal Rule of Appellate Procedure 11:

### RULE 11. Forwarding the Record

(a) **Appellant's Duty.** An appellant filing a notice of appeal must comply with [Rule 10\(b\)](#) and ensure that the record is complete and necessary to enable the clerk to assemble and forward the record. If there are multiple appellants, the clerk must forward a single record.

### (b) Duties of Reporter and District Clerk.

(1) *Reporter's Duty to Prepare and File a Transcript.* The reporter must prepare and file a transcript of the proceedings.

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the

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expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge of appeals directly.

(2) *District Clerk's Duty to Forward.* When the record is complete, the district clerk must number the record and send them promptly to the circuit clerk together with a list of the documents correspondingly identified. Unless directed to do so by a party or the circuit clerk, the district clerk must forward appeals documents of unusual bulk or weight, physical exhibits other than documents, or other items for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, the district clerk must advise the circuit clerk in advance for their transportation and receipt.

**(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.** The district court on motion may order, that the district clerk retain the record temporarily for the use of the court of appeals. In that event the district clerk must certify to the circuit clerk that the record is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must forward the record.

**(d) [Abrogated.]**

**(e) Retaining the Record by Court Order.**

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docketed record be filed with the entire record. But a party may at any time during the appeal request that designated parts of the record be retained.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a certified copy of the docket entries together with the parts of the original record allowed by the district court and certified by the parties.

**(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties.** The district court may order by stipulation filed in the district court that designated parts of the record be retained in the district court for use by the court of appeals or request by a party. The parts of the record so designated remain a part of the record.

**(g) Record for a Preliminary Motion in the Court of Appeals.** If, before the record is forwarded to the court of appeals, a party files a preliminary motion in the court of appeals:

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- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a supersedeas bond; or
- for any other intermediate order, the district clerk must send the court of appeals any parts of the record to the court of appeals.

## **CIRCUIT RULE 11. Record on Appeal**

(a) *Record Transmission.* Appellate records from the Eastern Division of the Northern District of California shall be transmitted to the court of appeals when prepared. Prepared appellate records from all other courts in the circuit shall be retained by the district court clerk's office pursuant to Rule 11(c), Fed. R. App. P. Rule 11(c) until the appeal is ready for scheduling for oral argument or submission, the clerk of the court of appeals shall be required to transmit the record to the court of appeals. The parties may agree or the court of appeals may order the clerk to transmit the record to the court of appeals at an earlier time. But in no event shall the clerk of the court of appeals transmit items, currency, securities, liquids, drugs, weapons, or similar items without a specific order of the court of appeals.

(b) *Transcript and Other Supplemental Transmissions.* When trial or hearing transcripts, or other exhibits that have been retained in the district court for use in the appeal are returned to the clerk after initial transmission of the record, they shall be immediately transmitted to the court of appeals as a supplemental record without the requirement of this court's order. This immediate transmission is required by Rule 11(b), Fed. R. App. P., that the court reporter notify the clerk of the court of appeals that the clerk of the district court.

(c) *Extension of Time.*

(1) *Requests for Extension to be Addressed to Court of Appeals.* All requests for extension of time shall be addressed to the court of appeals.

(2) *Extension of Time for Preparation of Transcript.* Any request by a court reporter for an extension of time must be filed with the clerk of this court on the date the transcript was first ordered. The request must include the date the transcript was ordered, the reasons for both that request and any extensions of time, and a certificate that all parties or their counsel have been sent a copy of the request. If an extension of time longer than 60 days from the date the transcript was first ordered, it must be approved by the district judge who tried the case or the chief judge of the district court that the request has been reviewed and that steps are being taken to insure that all ordered transcripts will be promptly prepared and filed.

(d) *Withdrawal of Record.* During the time allowed for the preparation and filing of a brief, an

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acting *pro se* may withdraw the record upon giving a receipt to the clerk who has physical custody of the record. If a clerk is assigned, a record may not be withdrawn without an order of the court. Original records may be examined only in the clerk's office. The party who has withdrawn the record may not remove it until the record has been returned to the clerk's office from which it was withdrawn. Except as otherwise provided, records may not be taken from a clerk's office without leave of this court on written motion. Failure of a party to comply with these provisions may be treated as contempt of this court. When the party withdrawing the record is in custody, the court, on order of this court, will send the record to the warden of the institution in which the party is held. The record will be made available to the party under supervised conditions and be returned to the respective

## Federal Rule of Appellate Procedure 12:

### RULE 12. Docketing the Appeal; Filing a

### Representation Statement; Filing the Record

**(a) Docketing the Appeal.** Upon receiving the copy of the notice of appeal and the docket entry under [Rule 3\(d\)](#), the circuit clerk must docket the appeal under the title of the district-court action and add the appellant's name if necessary.

**(b) Filing a Representation Statement.** Unless the court of appeals designates another time, the appellant must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties who represent on appeal.

**(c) Filing the Record, Partial Record, or Certificate.** Upon receiving the record, partial record, or certificate provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing.

## CIRCUIT RULE 12. Docketing the Appeal

**(a) Docketing.** The clerk will notify counsel and parties acting *pro se* of the date the appeal is docketed.

**(b) Caption.** The parties on appeal shall be designated in the title of the cause in court as they appear in the district court, with the addition of identification of appellant and appellee, for example, John Smith, Plaintiff-Appellant. Actions seeking habeas corpus shall be designated "Petitioner v. Custodian." Petitioner v. Custodian."

## Federal Rule of Appellate Procedure 13:

### RULE 13. Review of a Decision of the Tax Court

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## **(a) How Obtained; Time for Filing Notice of Appeal.**

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must file three copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, the other party must file a notice of appeal within 120 days after the Tax Court's decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time for filing a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision.

**(b) Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in Washington, D.C. or by mail addressed to the clerk. If sent by mail the notice is considered filed on the date of mailing. The notice must comply with Rule 3 of the Internal Revenue Code, as amended, and the applicable regulations.

**(c) Contents of the Notice of Appeal; Service; Effect of Filing and Service.** [Rule 3](#) prescribes the contents of the notice of appeal, the manner of service, and the effect of its filing and service. [Form 2](#) in the Appendix is the form for the notice of appeal.

## **(d) The Record on Appeal; Forwarding; Filing.**

(1) An appeal from the Tax Court is governed by the parts of [Rules 10, 11, and 12](#) regarding the record on appeal, the time and manner of forwarding and filing, and the docketing in the court of appeals. The parts of [Rules 10, 11, and 12](#) and in [Rule 3](#) to the district court and district clerk are to be read as referring to the Tax Court.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be forwarded to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the court of appeals must make provision for the record.

## **Federal Rule of Appellate Procedure 14:**

### **RULE 14. Applicability of Other Rules to the Review of a Tax Court Decision**

All provisions of these rules, except Rules 4-9, 15-20, and 22-23, apply to the review of a Tax Court decision.

## **Federal Rule of Appellate Procedure 15:**

### **RULE 15. Review or Enforcement of an Agency Order--How Obtained; Intervention**

#### **(a) Petition for Review; Joint Petition.**

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(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition in a court of appeals authorized to review the agency order. If their interests make joinder practical, parties may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition—using such terms as "petitioner" or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a party to the statute); and

(C) specify the order or part thereof to be reviewed.

(3) [Form 3](#) in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the statute.

## **(b) Application or Cross-Applcation to Enforce an Order; Answer; Default.**

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals. If a petition is filed to review an agency order that the court may enforce, a party opposing the application may file an application for enforcement.

(2) Within 20 days after the application for enforcement is filed, the respondent must serve or file the application and file it with the clerk. If the respondent fails to answer in time, the court will enter a default as requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the venue is based, and the relief requested.

**(c) Service of the Petition or Application.** The circuit clerk must serve a copy of the petition or cross-application to enforce an agency order, on each respondent as prescribed by [Rule 3\(d\)](#). The manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

**(d) Intervention.** Unless a statute provides another method, a person who wants to intervene in the proceedings must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties.

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intervention authorized by statute-must be filed within 30 days after the petition for review is filed. The petition must include a statement of the interest of the moving party and the grounds for intervention.

**(e) Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay to the circuit clerk all required fees.

## **Federal Rule of Appellate Procedure 15.1:**

### **RULE 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding**

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board must file a written brief and appear for briefing and at oral argument, unless the court orders otherwise.

## **Federal Rule of Appellate Procedure 16:**

### **RULE 16. The Record on Review or Enforcement**

**(a) Composition of the Record.** The record on review or enforcement of an agency order consists of:

- (1) the order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

**(b) Omissions From or Misstatements in the Record.** The parties may at any time, by stipulation, amend the record or correct a misstatement, or the court may so direct. If necessary, the court may order a supplemental record to be prepared and filed.

## **Federal Rule of Appellate Procedure 17:**

### **RULE 17. Filing the Record**

**(a) Agency to File; Time for Filing; Notice of Filing.** The agency must file the record with the court within 30 days of the date of the court's order being served with a petition for review, unless the statute authorizing review provides otherwise. If the agency files an application for enforcement unless the respondent fails to answer or the court orders otherwise, the court may extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

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## **(b) Filing-What Constitutes.**

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record part of the record on review for all purposes and, if the court or a party so requests, must be preserved prior stipulation.

## **Federal Rule of Appellate Procedure 18:**

### **RULE 18. Stay Pending Review**

#### **(a) Motion for a Stay.**

(1) *Initial Motion Before the Agency.* A petitioner must ordinarily move first before the agency decision or order.

(2) *Motion in the Court of Appeals.* A motion for a stay may be made to the court of appeals c

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute;

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

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(D) The motion must be filed with the circuit clerk and normally will be considered by a panel case in which time requirements make that procedure impracticable, the motion may be made judge.

**(b) Bond.** The court may condition relief on the filing of a bond or other appropriate security.

## **Federal Rule of Appellate Procedure 19:**

### **RULE 19. Settlement of a Judgment Enforcing an Agency Order in Part**

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the party who believes conforms to the opinion must within 7 days file with the clerk and serve the agency with the agency's proposed judgment. The court will settle the judgment and direct entry of judgment.

## **Federal Rule of Appellate Procedure 20:**

### **RULE 20. Applicability of Rules to the Review or Enforcement of an Agency Order**

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

## **Federal Rule of Appellate Procedure 21:**

### **RULE 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs**

#### **(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.**

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition and proof of service on all parties to the proceeding in the trial court. The party must also provide proof of service on all parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

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- (ii) the issues presented;
- (iii) the facts necessary to understand the issue presented by the petition; and
- (iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it

## **(b) Denial; Order Directing Answer; Briefs; Precedence.**

(1) The court may deny the petition without an answer. Otherwise, it must order the response time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may. The trial-court judge may request permission to address the petition but may not do so unless the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

**(c) Other Extraordinary Writs.** An application for an extraordinary writ other than one provided made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and [\(b\)](#).

**(d) Form of Papers; Number of Copies.** All papers must conform to [Rule 32\(a\)\(1\)](#). Except for must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires local rule or by order in a particular case.

## **Federal Rule of Appellate Procedure 22:**

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## **RULE 22. Habeas Corpus and Section 2255 Proceedings**

**(a) Application for the Original Writ.** An application for a writ of habeas corpus must be made to the district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If an application made or transferred to it, renewal of the application before a circuit judge is not permitted. If an application is denied by a circuit judge, appeal to the court of appeals from the district court's order denying the application is permitted under 28 U.S.C. § 2253.

### **(b) Certificate of Appealability.**

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the circuit judge must either issue a certificate of appealability or state why a certificate should not be issued. The certificate or statement must be filed with the notice of appeal and the file of the district court. If the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judge of the court of appeals. If an express request for a certificate is filed, the notice of appeal constitutes a request addressed to the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States appeals.

## **CIRCUIT RULE 22. Death Penalty Cases.**

### *(a) Operation and Scope.*

(1) This rule applies to all cases involving persons under sentence of capital punishment.

(2) Cases within the scope of this rule will be assigned to a panel as soon as the appeal is docketed. The panel to which a case is assigned will handle all substantial matters pertaining to the case, including certificate of appealability, execution, consideration of the merits, second or successive petitions, remands from the Supreme Court, and associated procedural matters. If a judge on the panel is unavailable to participate, another judge may be assigned to the panel.

(3) Pursuant to 18 U.S.C. §3006A, and 21 U.S.C. §848(q), 28 U.S.C. §2254(h), and 28 U.S.C. §2255, a judge shall be appointed for any person under a sentence of death who is financially unable to obtain counsel, and does not already have counsel appointed by a state under 28 U.S.C. §2255.

(4) The panel to which a case is assigned may make changes in procedure and scheduling if it determines that such changes are required.

### *(b) Notice of Appeal and Required Documents.*

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(1) The district court clerk must notify the clerk of this court by telephone immediately upon the case within the scope of this rule. In all cases within the scope of this rule, the district court clerk shall transmit the record to the court of appeals. A supplemental record may be sent later if items are not current.

(2) Upon receipt of the record from the district court clerk, or any petition, application or motion to the court, the clerk of this court shall docket the appeal. The panel will be immediately notified.

(3) Upon filing a notice of appeal, the appellant shall immediately transmit to the court four copies of the state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons to be presented on appeal to this court. If a document or transcript is needed and is not immediately available, the appellant shall submit an affidavit as to the decision and reasons given by the court. Appellant shall file the copies of the record if it is available.

## (c) *Briefs.*

(1) Unless the court sets another schedule, the following time limitations apply.

(A) On direct appeal in a federal criminal prosecution, the appellant shall serve and file a brief within 49 days after the appeal is docketed. The appellee shall serve and file a brief within 49 days after service of the brief by the appellant. The appellant may serve and file a reply brief within 21 days after service of the brief by the appellee.

(B) In all other cases within the scope of this rule the appellant will have 28 days from the date the appeal is docketed to file and serve a brief. The appellee then will have 21 days from the service of the brief to file and serve a brief. Seven days after service of the appellee's brief, appellant may file and serve a reply brief.

(2) If an issue is raised that was not presented at a prior stage of the litigation (for example, in the state court, or this court on a prior appeal), the party raising the issue must state why the issue should nonetheless be granted.

## (d) *Submission and Oral Argument.*

(1) The court will hear oral argument in every direct appeal in a federal criminal prosecution and in every appeal of a decision concerning an initial petition under 28 U.S.C. §2254 in a state case. In any other case, oral argument may be held at the discretion of the court. Oral argument will be evaluated under the standards of Fed. R. App. P. 34(a).

(2) Oral argument will be held expeditiously after the filing of the reply brief.

(3) The merits of an appeal may be decided summarily if the panel decides that an appeal is frivolous. The panel may issue a single opinion deciding both the merits of the appeal and the motion for a summary decision.

## (e) *Opinion or Order.*

(1) The panel's decision shall be made without undue delay. In cases to which 28 U.S.C. §2254 applies, the decision will be issued no later than 120 days after the date the reply brief was filed.

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(2) In cases in which an execution date has been set and not stayed, the panel will release the losing party time to ask for rehearing or consideration by the Supreme Court.

(f) *Panel or En Banc Rehearing.*

(1) Any active judge of the court may, within 14 days after filing of the opinion, notify the panel of the mandate and poll the court for en banc consideration. If the mandate has already issued, the poll is by the en banc court. All judges are to vote within 10 days after the request for the vote on en banc consideration. A judge unable by reason of illness or absence to act within the time allowed by this rule may extend the period upon written notice to the other judges. Unless within 30 days after the petition for rehearing or petition (if one has been requested), is filed, a majority of the panel, or of the judges in active participation in the rehearing or rehearing en banc, the court will enter an order denying the petition.

(2) If the court decides to rehear an appeal en banc, the appeal will be scheduled for oral argument within the time allowed by 28 U.S.C. §2266(c).

(g) *Second or Successive Petitions or Appeals.* A second or successive petition or appeal will not be granted if the first appeal, motion for stay of execution, application for certificate of appealability, or motion for leave to commence a second or successive case is governed by [Circuit Rule 22.2](#). The original panel.

(h) *Stay of Execution.*

(1) A stay of execution is granted automatically (A) on direct appeal in a federal criminal prosecution and (B) in some state cases by 28 U.S.C. §2262(a). A stay of execution is forbidden in some cases (b) and (c). All requests with respect to stays of execution over which the court possesses discretion and contends that §2262 or Rule 38(a) has not been followed, must be made by motion under this rule.

(2) An appellant may not file a motion to stay execution or to vacate a stay of execution unless accompanied by a certificate of appealability or four copies of a request that this court issue a certificate of appealability and of the district judge's statement as to why the certificate should not issue. The request for a certificate of appealability and motion to stay execution shall be decided together.

(3) The movant shall file four copies of the motion and shall immediately notify opposing counsel. If the relevant documents have not yet been filed with this court as part of the record, a copy of each shall be filed with the motion:

(i) certificate of appealability;

(ii) the complaint, petition or motion seeking relief in the district court and the response thereto;

(iii) the district court decision on the merits;

(iv) the motion in the district court to stay execution or vacate stay of execution and the response thereto.

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(v) the district court decision on the motion to stay execution or vacate stay of execution.

If any required document cannot be filed, the movant shall state the reason for the omission.

(4) If an issue is raised that was not presented at a prior stage of the litigation (for example, in state court, or this court on a prior appeal), the party raising the issue must state why the issue should nonetheless be granted.

(5) If the attorney for the government has no objection to the motion for stay, the court shall enter an order staying execution.

(6) Parties shall endeavor to file motions with the clerk during normal business hours. Parties filing motions during nonbusiness hours shall call the clerk's telephone number for recorded instructions. The clerk's telephone number, the designated representatives of the appropriate governmental body or counsel for that body, and other communications received by the clerk during nonbusiness hours. Each side must keep a copy of the motion and office telephone number of one attorney who will serve as emergency representative.

(7) An order of the panel granting or denying a motion to issue or vacate a stay of execution is final and not subject to appeal.

(i) *Clerk's List of Cases.* The clerk shall maintain a list by jurisdiction of cases within the scope of this rule.

(j) *Notification of State Supreme Court Clerk.* The clerk shall send to the state supreme court clerk a copy of the habeas corpus case within the scope of this rule.

## **Circuit Rule 22.2. Successive Petitions for Collateral Review**

(a) A request under 28 U.S.C. §2244(b) or the final paragraph of 28 U.S.C. §2255 for leave to file a successive petition must include the following information and attachments, in this order:

(1) A disclosure statement, if required by [Circuit Rule 26.1](#).

(2) A short narrative statement of all claims the person wishes to present for decision. This statement shall state whether any of these claims has been presented previously to any state or federal court and, if it was, whether it was presented and resolved. If the claim has not previously been presented to a federal court, the applicant shall state:

(A) That the claim depends on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court; or

(B) That the factual predicate for the claim could not have been discovered previously through diligent discovery and that the facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by a preponderance of the convincing evidence that no reasonable fact-finder would have found the applicant guilty of the crime.

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constitutional error.

(3) A short narrative statement explaining how the person proposes to establish the requirement applicant who relies on a new rule of constitutional law must identify the new rule, the case the decision of the Supreme Court that holds this new rule applicable to cases on collateral review.

(4) Copies of all opinions rendered by any state or federal court previously rendered in the case and any collateral attack.

(5) Copies of all prior petitions or motions for collateral review.

(b) A copy of the application, together with all attachments, must be served on the attorney for the agency at the same time as the application is filed with the court. The application must include the name of the person served, by what means, and when. If the application is made by a prisoner who is not represented by counsel, the application may be made under the terms of [Fed. R. App. P. 4\(c\)](#).

(c) Except in capital cases in which execution is imminent, the attorney for the custodian (in state cases) or the Attorney (in federal cases) may file a response within 14 days. When an execution is imminent, the response must include copies of any petitions or opinions that the applicant omitted.

(d) The applicant may file a reply memorandum within 10 days of the response, after which the panel of the court will render its decision.

(e) An applicant's failure to supply the information and documents required by this rule will lead to the denial of the application, but without prejudice to its renewal in proper form.

## Federal Rule of Appellate Procedure 23:

### RULE 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

**(a) Transfer of Custody Pending Review.** Pending review of a decision in a habeas corpus proceeding by a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner may not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon review, the court, justice, or judge rendering the decision under review shows the need for a transfer, the court, justice, or judge may substitute the successor custodian as a party.

**(b) Detention or Release Pending Review of Decision Not to Release.** While a decision on review is pending, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, may order that the prisoner be:

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- (1) detained in the custody from which release is sought;
- (2) detained in other appropriate custody; or
- (3) released on personal recognizance, with or without surety.

**(c) Release Pending Review of Decision Ordering Release.** While a decision ordering the review, the prisoner must-unless the court or judge rendering the decision, or the court of app judge or justice of either court orders otherwise-be released on personal recognizance, with c

**(d) Modification of the Initial Order on Custody.** An initial order governing the prisoner's cu recognizance or surety, continues in effect pending review unless for special reasons shown Supreme Court, or to a judge or justice of either court, the order is modified or an independer release, or surety is issued.

## Federal Rule of Appellate Procedure 24:

### RULE 24. Proceeding In Forma Pauperis

#### (a) Leave to Proceed In Forma Pauperis.

(1) *Motion in the District Court.* Except as stated in [Rule 24\(a\)\(3\)](#), a party to a district-court ac forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by [Form 4](#) of the Appendix of Forms, the party's inability to and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the Motion.* If the district court grants the motion, the party may proceed on app security for fees and costs, unless a statute provides otherwise. If the district court denies the in writing.

(3) *Prior Approval.* A party who was permitted to proceed in forma pauperis in the district-cou to be financially unable to obtain an adequate defense in a criminal case, may proceed on ap further authorization, unless:

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not the party is not otherwise entitled to proceed in forma pauperis. In that event, the district cour for the certification or finding; or

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(B) a statute provides otherwise.

(4) *Notice of District Court's Denial.* The district clerk must immediately notify the parties and district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the Court of Appeals.* A party may file a motion to proceed on appeal in forma pauperis within 30 days after service of the notice prescribed in [Rule 24\(a\)\(4\)](#). The motion must include the district court and the district court's statement of reasons for its action. If no affidavit was filed, the motion must include the affidavit prescribed by [Rule 24\(a\)\(1\)](#).

**(b) Leave to Proceed In Forma Pauperis on Appeal or Review of an Administrative-Agency Appeal.** If an appeal or review of a proceeding before an administrative agency, board, commission, or official (including the United States Tax Court) proceeds directly in a court of appeals, a party may file for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

**(c) Leave to Use Original Record.** A party allowed to proceed on appeal in forma pauperis may have the appeal heard on the original record without reproducing any part.

## Federal Rules of Appellate Procedure 25:

### RULE 25. Filing and Service

#### (a) Filing.

(1) *Filing with the Clerk.* A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: Method and Timeliness.*

(A) *In General.* Filing may be accomplished by mail addressed to the clerk, but filing is not timely if the papers are not filed with the clerk within the time fixed for filing.

(B) *A Brief or Appendix.* A brief or appendix is timely filed, however, if on or before the last day for filing it is

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious,

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- (ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.
- (C) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely if deposited in the court's filing system on or before the last day for filing. If an institution has a system designed for legal mail, the institution may elect to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with the rule or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage was paid.
- (D) *Electronic Filing.* A court of appeals may by local rule permit or require papers to be filed, and a court may by local rule require that papers be filed electronically, if the means are consistent with technical standards, if any, that the Judicial Conference of the United States has adopted. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A document that complies with a local rule constitutes a written paper for the purpose of applying these rules.
- (3) *Filing a Motion with a Judge.* If a motion requests relief that may be granted by a single judge, the motion must be filed with the judge; the judge must note the filing date on the motion and give it priority.
- (4) *Clerk's Refusal of Documents.* The clerk must not refuse to accept for filing any paper prepared in proper form because it is not presented in proper form as required by these rules or by any local rule or practice.
- (5) *Privacy Protection.* An appeal in a case whose privacy protection was governed by Federal Rule of Criminal Procedure 6(e), Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by that rule. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2. Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.
- (b) Service of All Papers Required.** Unless a rule requires service by the clerk, a party must serve a copy of every paper on the other parties to the appeal or review. Service on a party represented by counsel is made to the party's counsel.
- (c) Manner of Service.**
- (1) Service may be by any of the following:
- (A) personal, including delivery to a responsible person at the office of counsel;
- (B) by mail;
- (C) by third-party commercial carrier for delivery within 3 calendar days; or
- (D) by electronic means, if the party being served consents in writing.
- (2) If authorized by local rule, a party may use the court's transmission equipment to make electronic filing.
- (3) When reasonable considering such factors as the immediacy of the relief sought, distance, and the nature of the proceeding, service must be by a manner at least as expeditious as the manner used to file the paper with the court.

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(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service is complete on transmission, unless the party making service is notified that the paper was not received.

## **(d) Proof of Service.**

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, and the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with [Rule 25\(a\)\(2\)\(E\)](#), the filing must state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

**(e) Number of Copies.** When these rules require the filing or furnishing of a number of copies, the party must file the number by local rule or by order in a particular case.

## **Federal Rules of Appellate Procedure 26:**

### **RULE 26. Computing and Extending Time**

**(a) Computing Time.** The following rules apply in computing any period of time specified in these rules, a court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 7 calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act is to be done in a court—a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, and Memorial Day.

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Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving | other day declared a holiday by the President, Congress, or the state in which is located either the challenged judgment or order, or the circuit clerk's principal office.

**(b) Extending Time.** For good cause, the court may extend the time prescribed by these rule act, or may permit an act to be done after that time expires. But the court may not extend the

(1) a notice of appeal (except as authorized in [Rule 4](#)) or a petition for permission to appeal; c

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or othe administrative agency, board, commission, or officer of the United States, unless specifically :

**(c) Additional Time after Service.** When a party is required or permitted to act within a pres served on that party, 3 calendar days are added to the prescribed period unless the paper is stated in the proof of service. For purposes of the Rule 26(c), a paper that is served electronic the date of service stated in the proof of service.

## **CIRCUIT RULE 26. Extensions of Time to File Briefs**

Extensions of time to file briefs are not favored. A request for an extension of time shall be in affidavit. The date the brief is due shall be stated in the motion. The affidavit must disclose fa satisfaction of the court that with due diligence, and giving priority to the preparation of the bri brief on time.

In addition, if the time for filing the brief has been previously extended, the affidavit shall set f motions and the court's ruling thereon. All factual statements required by this rule shall be set Generalities, such as that the purpose of the motion is not for delay, or that counsel is too bus

Grounds that may merit consideration are:

(1) Engagement in other litigation, provided such litigation is identified by caption, number, an a description of action taken on a request for continuance or deferment of other litigation; (b) why other litigation should receive priority over the case in which the petition is filed; and (c) c including why other associated counsel cannot either prepare the brief for filing or, in the alter counsel of the other litigation claimed as a ground for extension.

(2) The matter under appeal is so complex that an adequate brief cannot reasonably be prep: provided that the complexity is factually demonstrated in the affidavit.

(3) Extreme hardship to counsel will result unless an extension is granted, in which event the set forth in detail.

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The motion shall be filed at least five days before the brief is due, unless it is made to appear are the basis of the motion did not exist earlier or were not, or with due diligence could not have been obtained by the movant's counsel. Notice of the fact that an extension will be sought must be given to the opposing party in a copy of the motion prior to the filing thereof.

In criminal cases, or in other cases in which a party may be in custody (including military service), the affidavit must set forth in the affidavit as to the custodial status of the party, including the conditions of the party's confinement.

## Federal Rule of Appellate Procedure 26.1:

### RULE 26.1 Corporate Disclosure Statement

**(a) Who Must File.** Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party, or that there is no such corporation.

**(b) Time for Filing; Supplemental Filing.** A party must file the statement with the principal brief, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule provides otherwise. If the statement has already been filed, the party's principal brief must include the statement and must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

**(c) Number of Copies.** If the Rule 26.1 statement is filed before the principal brief, or if a party is required to file a supplemental statement, a party must file an original and 3 copies unless the court requires a different number by local rule or case.

### CIRCUIT RULE 26.1. Disclosure Statement

**(a) Who Must File.** Every attorney for a non-governmental party or amicus curiae, and every attorney for a governmental party, must file a statement under this rule. A party or amicus required to file a statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the information required by the national rule.

**(b) Contents of Statement.** The statement must disclose the names of all law firms whose attorneys have appeared for the party or amicus in the case (including proceedings in the district court or before the court of appeals) and are expected to appear in this court. If any litigant is using a pseudonym, the statement must disclose the pseudonym. A disclosure required by the preceding sentence will be kept under seal.

**(c) Time for Filing.** The statement under this rule and Fed. R. App. P. 26.1 must be filed no later than the principal brief, with a party's first motion or response to an adversary's motion, or when directed by the court, whichever is earliest. A disclosure statement also must accompany any petition for permission to appeal under 28 U.S.C. § 1294.

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be included with each party's brief. See [Fed. R. App. P. 28\(a\)\(1\), \(b\)](#).

(d) *Duty to Update*. Counsel must file updated disclosure statements under this rule and [Fed.](#) any change in the information required to be disclosed.

## Federal Rule of Appellate Procedure 27:

### RULE 27. Motions

#### (a) In General.

(1) *Application for Relief*. An application for an order or other relief is made by motion unless in writing form. A motion must be in writing unless the court permits otherwise.

(2) *Contents of a Motion*.

(A) *Grounds and Relief Sought*. A motion must state with particularity the grounds for the motion and the legal argument necessary to support it.

(B) *Accompanying Documents*.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or a copy of the exhibit.

(C) *Documents Barred or not Required*.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) *Response*.

(A) *Time to File*. Any party may file a response to a motion; Rule 27(a)(2) governs its content. A motion or [41](#) may be granted before the 8-day period runs only if the court gives reasonable notice to

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sooner.

(B) *Request for Affirmative Relief.* A response may include a motion for affirmative relief. The motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the court to the request for relief.

(4) *Reply to Response.* Any reply to a response must be filed within 5 days after service of the present matters that do not relate to the response.

**(b) Disposition of a Motion for a Procedural Order.** The court may act on a motion for a procedural order under [Rule 26\(b\)](#)--at any time without awaiting a response, and may, by rule or by order in a particular case, act on specified types of procedural motions. A party adversely affected by the court's, or the court's, motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that the court reconsider, vacate, or modify the disposition.

**(c) Power of a Single Judge to Entertain a Motion.** A circuit judge may act alone on any motion, or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or otherwise that only the court may act on any motion or class of motions. The court may review the action of a single judge.

**(d) Form of Papers; Page Limits; and Number of Copies.**

(1) *Format.*

(A) *Reproduction.* A motion, response, or reply may be reproduced by any process that yields a clear image on paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) *Cover.* A cover is not required but there must be a caption that includes the case number, the case name, and a brief descriptive title indicating the purpose of the motion and identifying the party.

(C) *Binding.* The document must be bound in any manner that is secure, does not obscure the text, and is able to lie reasonably flat when open.

(D) *Paper Size, Line Spacing, and Margins.* The document must be on 8 ½ by 11 inch paper. Quotations more than two lines long may be indented and single-spaced. Headings and footnotes must be double-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margin.

(E) *Typeface and Type Styles.* The document must comply with the typeface requirements of [Rule 32\(a\)\(6\)](#).

(2) *Page Limits.* A motion or a response to a motion must not exceed 20 pages, exclusive of the statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits. A reply to a response must not exceed 10 pages.

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(3) *Number of Copies.* An original and 3 copies must be filed unless the court requires a different order in a particular case.

**(e) Oral Argument.** A motion will be decided without oral argument unless the court orders otherwise.

## Federal Rule of Appellate Procedure 28:

### RULE 28. Briefs

**(a) Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the following order:

(1) a corporate disclosure statement if required by [Rule 26.1](#);

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with page references to the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to appropriate statutes and facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or that the court of appeals' jurisdiction is on some other basis;

(5) a statement of the issues presented for review;

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record;

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the issues, the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and part

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appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear under a separate heading placed before the discussion of the issues);

(10) a short conclusion stating the precise relief sought; and

(11) the certificate of compliance, if required by [Rule 32\(a\)\(7\)](#).

**(b) Appellee's Brief.** The appellee's brief must conform to the requirements of [Rule 28\(a\)\(1\)](#)—the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

**(c) Reply Brief.** The appellant may file a brief in reply to the appellee's brief. Unless the court files. A reply brief must contain a table of contents, with page references, and a table of authorities (arranged), statutes, and other authorities with references to the pages of the reply brief where

**(d) References to Parties.** In briefs and at oral argument, counsel should minimize use of the "appellee." To make briefs clear, counsel should use the parties' actual names or the designating agency proceeding, or such descriptive terms as "the employee," "the injured person," "the tax stevedore."

**(e) References to the Record.** References to the parts of the record contained in the appendix must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party must follow one of the methods detailed in [Rule 30\(c\)](#). If the original record is used under [Rule 30\(f\)](#) paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in

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of the appendix or of the transcript at which the evidence was identified, offered, and received.

**(f) Reproduction of Statutes, Rules, Regulations, etc.** If the court's determination of the issue involves the interpretation of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum supplied to the court in pamphlet form.

**(g) [Reserved]**

**(h) [Deleted]**

**(i) Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one party, including consolidated cases, any number of appellants or appellees may join in a brief, and a party may file a part of another's brief. Parties may also join in reply briefs.

**(j) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after a brief has been filed- or after oral argument but before decision- a party may promptly advise the court by letter. A copy to all other parties, setting forth the citations. The letter must state the reasons for the supplementation and refer either to the page of the brief or to a point argued orally. The body of the letter must not exceed one page and must be made promptly and must be similarly limited.

## **CIRCUIT RULE 28. Briefs**

Briefs must conform to Fed. R. App. P. 28 and the additional provisions in [Circuit Rules 12\(b\)](#). The requirements supplement those in the corresponding provisions of Fed. R. App. P. 28:

**(a) Appellant's Jurisdictional Statement.** The jurisdictional statement in appellant's brief, see Fed. R. App. P. 28, must contain the following details:

(1) The statement concerning the district court's jurisdiction shall identify the provision of the statute or rule involved if jurisdiction is based on the existence of a federal question. If jurisdiction depends on the amount in controversy, the statement shall identify the jurisdictional amount and the citizenship of each party to the litigation. If the case involves a corporation, the statement shall identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association or partnership the statement shall identify the members. The statement shall supply similar details concerning the invocation of supplemental jurisdiction.

(2) The statement concerning appellate jurisdiction shall identify the statutory provision believed to confer jurisdiction on the court and the following particulars:

(i) The date of entry of the judgment or decree sought to be reviewed.

(ii) The filing date of any motion for a new trial or alteration of the judgment or any other motion.

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which to appeal.

(iii) The disposition of such a motion and the date of its entry.

(iv) The filing date of the notice of appeal (together with information about an extension of time).

(v) If the case is a direct appeal from the decision of a magistrate judge, the dates on which the entry of final judgment by the magistrate judge.

(3) If the appeal is from an order other than a final judgment which adjudicates all of the claims, counsel shall provide the information necessary to enable the court to determine whether the Elaboration will be necessary in the following cases although the list is illustrative rather than exhaustive.

(i) If any claims or parties remain for disposition in the district court, identify the nature of those claims and parties. An appeal may be taken in advance of the final judgment. If there has been a certificate under 28 U.S.C. § 1292(b), give the particulars and describe the relevant parties subject to the appeal and the claims or parties remaining in the district court.

(ii) If the ground of jurisdiction is the "collateral order doctrine," describe how the order meets the requirements of the doctrine: finality, separability from the merits of the underlying action, and practical unreviewability. Cite pertinent cases establishing the appealability of orders of the character involved.

(iii) If the order sought to be reviewed remands a case to a bankruptcy judge or administrative law judge, describe why the order should be done on remand and why the order is nonetheless "final."

(iv) Whenever some issues or parties remain before the district court, give enough information to enable the court to determine whether the order is appealable. Appeals from orders granting or staying arbitration or abstaining from the grant or denial of injunctions require careful exposition of jurisdictional facts.

(b) *Appellee's Jurisdictional Statement.* The appellee's brief shall state explicitly whether or not the appellant's brief is complete and correct. If it is not, the appellee shall provide a complete and correct statement.

(c) *Statement of the Facts.* The statement of the facts required by Fed. R. App. P. 28(a)(7) shall be a statement of facts, not an argument or comment. No fact shall be stated in this part of the brief unless it is supported by the record or the appendix where that fact appears.

(d) *Brief in Multiple Appeals.*

(1) *Order and Number of Briefs.* **[superceded by Fed. R. App. P. 28.1; eff. 12/01/05]**

(a) If a cross-appeal is filed, the clerk will designate which party will file the opening brief, and the adverse party may file a combined responsive brief and opening brief in its own appeal. This limitation for principal briefs. The party that filed the opening brief may file a combined responsive brief and reply brief in its own appeal. This brief may not exceed the page limitation for reply briefs.

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(b) The court will entertain motions for realignment of the briefing schedule and enlargement of the time for filing briefs if the norm established by this rule proves inappropriate. Because it is improper to take a cross-appeal as a basis for arguments in support of a judgment, the court will not grant motions under this subsection by which a party seeks to enlarge their rights under the judgment.

(2) *Captions of Briefs in Multiple Appeals.* When two or more parties file cross-appeals or other appeals, the briefs shall bear the appellate case numbers and captions of all related appeals.

(e) *Citation of Supplemental Authority.* Counsel shall file the original letter and ten copies of supplemental authority at the court's attention under Fed. R. App. P. 28(j).

(f) *Citation to the United States Reports.* Citation to the opinions of the Supreme Court of the United States shall include the Volume and page of the United States Reports, once the citation is available.

## Federal Rule of Appellate Procedure 28.1:

### RULE 28.1. Cross-Appeals

**(a) Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), (A)-(B) do not apply to such a case, except as otherwise provided in this rule.

**(b) Designation of Appellant.** The party who files a notice of appeal first is the appellant for Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. This designation may be modified by the parties' agreement or by court order.

**(c) Briefs.** In a case involving a cross-appeal:

(1) *Appellant's Principal Brief.* The appellant must file a principal brief in the appeal. The brief must state the issues and the reasons for the appeal.

(2) *Appellee's Principal and Response Brief.* The appellee must file a principal brief in the cross-appeal, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28.1(c)(2) and must not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's Response and Reply Brief.* The appellant must file a brief that responds to the appellee's principal and response brief and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28.1(c)(3) and that none of the following need appear unless the appellant is dissatisfied with the appellee's principal and response brief:

(A) the jurisdictional statement;

(B) the statement of issues;

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(C) the statement of the case;

(D) the statement of facts; and

(E) the statement of the standard of review.

(4) *Appellee's Reply Brief.* The appellee may file a brief in reply to the response in the cross appeal with Rule 28(b)(2)-(3) and (11) and must be limited to issues presented by the cross-appeal.

(5) *No Further Briefs.* Unless the Court permits, no further briefs may be filed in a case involving

(d) *Cover.* Except for filing by unrepresented parties, the cover of the appellant's brief must be red; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, green; the amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must comply with Rule 32(a)(2).

**(e) Length.**

(1) *Page Limitation.* Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief, the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 15 pages.

(2) *Type-Volume Limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume of the appellant's principal and response brief.

(3) *Certificate of Compliance.* A brief submitted under Rule 28.1(e)(2) must comply with [Rule 28.1\(e\)\(3\)](#).

**(f) Time to Serve and File a Brief.** Briefs must be served and filed as follows:

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- (1) the appellant's principal brief, within 40 days after the record is filed;
- (2) the appellee's principal and response brief, within 30 days after the appellant's principal b
- (3) the appellant's response and reply brief, within 30 days after the appellee's principal and r
- (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is s  
argument unless the court, for good cause, allows a later filing.

## Federal Rule of Appellate Procedure 29:

### RULE 29. Brief of an Amicus Curiae

**(a) When Permitted.** The United States or its officer or agency, or a State, Territory, Commo  
Columbia may file an amicus-curiae brief without the consent of the parties or leave of court.  
a brief only by leave of court or if the brief states that all parties have consented to its filing.

**(b) Motion for Leave to File.** The motion must be accompanied by the proposed brief and st

- (1) the movant's interest; and
- (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to

**(c) Contents and Form.** An amicus brief must comply with [Rule 32](#). In addition to the require  
identify the party or parties supported and indicate whether the brief supports affirmance or re  
corporation, the brief must include a disclosure statement like that required of parties by [Rule](#)  
comply with Rule 28, but must include the following:

- (1) a table of contents, with page references;
- (2) a table of authorities-cases (alphabetically arranged), statutes and other authorities-with r  
where they are cited;
- (3) a concise statement of the identity of the amicus curiae, its interest in the case, and the sc
- (4) an argument, which may be preceded by a summary and which need not include a statem  
review; and
- (5) a certificate of compliance, if required by [Rule 32\(a\)\(7\)](#).

**(d) Length.** Except by the court's permission, an amicus brief may be no more than one-half

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by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, it may affect the length of an amicus brief.

**(e) Time for Filing.** An amicus curiae must file its brief, accompanied by a motion for filing with the court, within 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may specify the time within which an opposing party may answer.

**(f) Reply Brief.** Except by the court's permission, an amicus curiae may not file a reply brief.

**(g) Oral Argument.** An amicus curiae may participate in oral argument only with the court's permission.

## Federal Rule of Appellate Procedure 30:

### RULE 30. Appendix to the Briefs

#### (a) Appellant's Responsibility.

(1) *Contents of the Appendix.* The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) *Excluded Material.* Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even if they are not in the appendix.

(3) *Time to File; Number of Copies.* Unless filing is deferred under Rule 30(c), the appellant must file the appendix with the brief and must serve one copy on counsel for each party separately represented. An appellant proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each party separately represented. The court may by local rule or by order in a particular case require the filing of more copies.

#### (b) All Parties' Responsibilities.

(1) *Determining the Contents of the Appendix.* The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on each party a statement of the parts of the record the appellant intends to include in the appendix and a statement of the reasons for the inclusion of each part.

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present for review. The appellee may, within 10 days after receiving the designation, serve or additional parts to which it wishes to direct the court's attention. The appellant must include the appendix. The parties must not engage in unnecessary designation of parts of the record, but all parts designated must be available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) *Costs of Appendix.* Unless the parties agree otherwise, the appellant must pay the cost of including parts of the record designated by the appellee to be unnecessary, the appellant must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if parts of the record to be included in the appendix, the court may impose the cost of those parts. The court must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously include unnecessary material in the appendix.

## **(c) Deferred Appendix.**

(1) *Deferral Until After Briefs Are Filed.* The court may provide by rule for classes of cases or preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed after the appellee's brief is served. Even though the filing of the appendix may be deferred, the appellant must designate the parts of the record it wants included in the appendix when it serves its statement of the issues presented.

## (2) *References to the Record.*

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. If the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the appendix by [Rule 31\(a\)](#), containing appropriate references to pertinent pages of the record. In that event, if the appendix is filed, the party must serve and file copies of the brief, containing references to the pertinent pages of the appendix, of or in addition to the references to the pertinent pages of the record. Except for the corrections and other changes may be made to the brief.

**(d) Format of the Appendix.** The appendix must begin with a table of contents identifying the relevant docket entries. The relevant docket entries must follow the table of contents. Other parts of the record must follow. If pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be included immediately before the included pages. Omissions in the text of papers or of the transcript must be corrected. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

**(e) Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in separate volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be filed with the separately represented party. If a transcript of a proceeding before an administrative agency, used in a district-court action and has been designated for inclusion in the appendix, the transcript must be included in the appendix as an exhibit.

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**(f) Appeal on the Original Record Without an Appendix.** The court may, either by rule for order in a particular case, dispense with the appendix and permit an appeal to proceed on the of the record, or relevant parts, that the court may order the parties to file.

## **CIRCUIT RULE 30. Appendices**

(a) *Contents.* The appellant shall submit, bound with the main brief, an appendix containing the and any opinion, memorandum of decision, findings of fact and conclusions of law, or oral statement of the trial court or administrative agency upon the rendering of that judgment, decree, or order.

(b) *Additional Contents.* The appellant shall also include in an appendix:

(1) Copies of any other opinions, orders, or oral rulings in the case that address the issues so appellant's brief challenges any oral ruling, the portion of the transcript containing the judge's included in the appendix.

(2) Copies of any opinions or orders in the case rendered by magistrate judges or bankruptcy sought to be raised.

(3) Copies of all opinions, orders, findings of fact and conclusions of law rendered in the case (including their administrative law judges and adjudicative officers such as administrative appeal members of boards and commissions, and others who serve functionally similar roles). This review original review of the administrative decision is in this court or was conducted by the district court.

(4) If this is a collateral attack on a criminal conviction, then the appendix also must include copies of federal court or state appellate court previously rendered in the criminal prosecution, any appeal attack.

(5) An order concerning a motion for new trial, alteration or amendment of the judgment, rehear under Rules 52(a) or 59, Fed. R. Civ. P.

(6) Any other short excerpts from the record, such as essential portions of the pleading or contract, pertinent pictures, or brief portions of the transcript, that are important to a considered appeal.

(7) The documents in (b) may also be placed in the appendix bound with the brief if these documents required appendix in (a) do not exceed fifty pages.

(c) *Appendix to the brief of a Cross-Appellant.* The brief of a cross-appellant must comply with materials contained in the appendix of the appellant.

(d) *Statement that All Required Materials are in Appendix.* The appendix to each appellant's brief

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all of the materials required by parts (a) and (b) of this rule are included. If there are no materials required by parts (a) and (b) of this rule, counsel shall so certify.

(e) *Stipulated Joint Appendix and Supplemental Appendices.* The parties may file a stipulated appendix, containing material not included in an appendix previously filed, may be filed with the transcript. The appendix should not be lengthy, and costs for a lengthy appendix will not be awarded.

(f) *Indexing of Appendix.* If a party elects to file an appendix containing portions of the transcript, the party shall file an index of the portions of the transcript contained therein in the form and detail described in the rule, and a complete table of contents.

## Federal Rule of Appellate Procedure 31:

### RULE 31. Serving and Filing Briefs

#### (a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court orders a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are served and filed, either by local rule or by order in a particular case.

**(b) Number of Copies.** Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party for each separately represented party. The court may by local rule or by order in a particular case require a different number.

**(c) Consequence of Failure to File.** If an appellant fails to file a brief within the time provided, and no extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief within the time provided may not argue on appeal unless the court grants permission.

### CIRCUIT RULE 31. Filing of Briefs and Failure to Timely File Briefs

(a) *Time for Filing Briefs.* Except in agency cases, the time for filing briefs shall run from the date the record is docketed, regardless of the completeness of the record at the time of docketing, unless the court orders otherwise.

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(b) *Number of Briefs Required.* The clerk of this court is authorized to accept 15 copies of briefs. Rule 31(b), Fed. R. App. P. Appointed counsel shall also file 15 copies.

(c) *Failure of Appellant to File Brief.* When an appellant's original brief is not filed when it is due, the clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should be taken. If no order is entered, the court will then take appropriate action.

(1) *All Criminal Cases in Which the Defendant Has Counsel and Civil Cases With Court-Appointed Counsel.* The clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should be taken. If no order is entered, the court will then take appropriate action.

(2) *All Other Cases.* The clerk shall enter an order directing counsel, or a pro se appellant, to show cause within 14 days why the case should not be treated as ready for oral argument. If no order is entered, the court will then take appropriate action.

(d) *Failure of Appellee to File Brief.* When an appellee's brief is not filed on time, the clerk shall enter an order directing the appellee to show cause within 14 days why the case should not be treated as ready for oral argument. If no order is entered, the court will then take appropriate action.

(e) *Digital Versions.*

(1) A digital version of each brief (including the appendix required by Circuit Rule 30(a) to (c)) must be furnished to the court at the time the paper brief is filed, unless counsel certifies that the material is not available electronically. The digital version of each brief (from cover through conclusion) must be furnished even if digital versions of some materials are not available.

(2) The digital version must be furnished on floppy disk, on CD-ROM, or via the Internet. Details are available on the court's web page. The label of a disk, if one is used, must show the case name, docket number, and the page number of the brief is presented.

(3) The electronic version must be in Portable Document Format (also known as PDF or Acrobat) and must be generated by printing to PDF from the original word processing file, so that the text of the digital version is searchable. PDF images created by scanning paper documents do not comply with this rule.

(4) One copy of the digital version must be furnished to each party separately represented by

## **Federal Rule of Appellate Procedure 32:**

### **RULE 32. Form of Briefs, Appendices, and Other Papers**

#### **(a) Form of a Brief.**

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## (1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief must be intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see [Rule 12\(a\)](#));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom

(3) *Binding.* The brief must be bound in any manner that is secure, does not obscure the text, reasonably flat when open.

(4) *Paper Size, Line Spacing, and Margins.* The brief must be on 8 ½ by 11 inch paper. The quotations more than two lines long may be indented and single-spaced. Headings and footnotes Margins must be at least one inch on all four sides. Page numbers may be placed in the margin there.

(5) *Typeface.* Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ½ characters per inch.

(6) *Type Styles.* A brief must be set in a plain, roman style, although italics or boldface may be used. Names must be italicized or underlined.

(7) *Length.*

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(A) *Page limitation.* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless (B), (C).

(B) *Type-volume limitation.*

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in R

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The contents of contents, table of citations, statement with respect to oral argument, any addendum contained and any certificates of counsel do not count toward the limitation.

(C) *Certificate of Compliance.*

(i) A brief submitted under Rule 28.1 or 32(a)(7)(B) must include a certificate by the attorney, the brief complies with the type-volume limitation. The person preparing the certificate may refer to the word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) [Form 6](#) in the appendix of forms is a suggested form of a certificate of compliance. Use of [Form 6](#) is sufficient to meet the requirements of Rule 28.1 or 32(a)(7)(C)(i).

**(b) Form of an Appendix.** An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

**(c) Form of Other Papers.**

(1) *Motion.* The form of a motion is governed by [Rule 27\(d\)](#).

(2) *Other Papers.* Any other paper, including a petition for panel rehearing and a petition for h

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any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a).

(A) a cover is not necessary if the caption and signature page of the paper together contain the text of the petition. If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

**(d) Signature.** Every brief, motion, or other paper filed with the court must be signed by the person who is represented, by one of the parties attorneys.

**(e) Local Variation.** Every court of appeals must accept documents that comply with the form and content of the local rule or order in a particular case a court of appeals may accept documents that do not meet the requirements of this rule.

## CIRCUIT RULE 32. Form of a Brief

(a) A brief need not comply with the portion of Fed. R. App. P. 32(a)(3) requiring it to "lie reasonably flat." A binding is acceptable if it is secure and does not obscure the text.

(b) A brief need not comply with the 14-point-type requirement in Fed. R. App. P. 32(a)(5)(A). Proportionally spaced type is 12 points or larger in the body of the brief, and 11 points or larger in the caption.

## Federal Rule of Appellate Procedure 32.1:

### RULE 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

- (i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or "interim";
- (ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition in a publicly accessible electronic database, the party must file and serve a copy of that disposition with the brief or other paper in which it is cited.

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## **CIRCUIT RULE 32.1. Publication of Opinions**

(a) Policy. It is the policy of the circuit to avoid issuing unnecessary opinions.

(b) Publication. The court may dispose of an appeal by an opinion or an order. Opinions, which are released in printed form, are published in the Federal Reporter, and constitute the law of the circuit. Opinions, which are released in photocopied form, are not published in the Federal Reporter, and are not precedential. Every order bears the legend: "Nonprecedential disposition. To be cited only in accordance with the opinion." .

(c) Motion to change status. Any person may request by motion that an order be reissued as precedential or nonprecedential. The court may grant the motion if it states why this change would be appropriate.

(d) Citation of older orders. No order of this court issued before January 1, 2007, may be cited as precedent to establish the law of the case from an earlier proceeding.

## **Federal Rule of Appellate Procedure 33:**

### **RULE 33. Appeal Conferences**

The court may direct the attorneys and, when appropriate, the parties to participate in one or more conferences to discuss the issues in the matter that may aid in disposing of the proceedings, including simplifying the issues and discussing the merits. The court may designate another person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much information as possible about the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

## **CIRCUIT RULE 33. Prehearing Conference**

At the conference the court may, among other things, examine its jurisdiction, simplify and define the issues, establish the briefing schedule, set limitations on the length of briefs, and explore the possibilities of settlement.

## **Federal Rule of Appellate Procedure 34:**

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## RULE 34. Oral Argument

### (a) In General.

(1) *Party's Statement.* Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) *Standards.* Oral argument must be allowed in every case unless a panel of three judges who have heard the case on the merits record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the oral argument would not significantly aid in the decision.

**(b) Notice of Argument; Postponement.** The clerk must advise all parties whether oral argument is required, the date, time, and place for it, and the time allowed for each side. A motion to postpone oral argument must be filed reasonably in advance of the hearing date.

**(c) Order and Contents of Argument.** The appellant opens and concludes the argument. Counsel may refer to the record from briefs, records, or authorities.

**(d) Cross-Appeals and Separate Appeals.** If there is a cross-appeal, [Rule 28.1\(b\)](#) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative arguments.

**(e) Nonappearance of a Party.** If the appellee fails to appear for argument, the court must hear the appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

**(f) Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, in which case oral argument will not be heard.

**(g) Use of Physical Exhibits at Argument; Removal.** Counsel intending to use physical exhibits at oral argument must arrange to place them in the courtroom on the day of the argument before the argument begins. At the end of the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. If counsel does not remove the exhibits, the court may dispose of the exhibits if counsel does not reclaim them within a reasonable time after the hearing.

## CIRCUIT RULE 34. Oral Argument

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(a) *Notice to Clerk.* The names of counsel intending to argue orally shall be furnished to the clerk of the court at least 10 days before the argument.

(b) *Calendar.*

(1) The calendar for a particular day will generally consist of three appeals scheduled for oral argument at 10:30 a.m., and two appeals scheduled for oral argument at 2:30 p.m. The time allotted for oral argument will be set based on the nature of the case. The clerk will notify counsel approximately 21 days before the argument. The types of cases listed below are to be given priority. This listing here is not intended to indicate relative priority among the types of cases.

(i) Appeal from an order of confinement after refusal of an immunized witness to testify before a grand jury (must be decided within 30 days.) 28 U.S.C. § 1826.

(ii) Criminal Appeals. Rule 45(b), Fed. R. App. P.

(iii) Appeals from orders refusing or imposing conditions of release, which will be heard without oral argument. Fed. R. App. P.

(iv) Appeals involving issues of public importance.

(v) Habeas corpus and 28 U.S.C. § 2255 appeals.

(vi) Appeals from the granting, denying, or modifying of injunctions.

(vii) Petitions for writs of mandamus and prohibition and other extraordinary writs. Rule 21(b), Fed. R. App. P.

(viii) "Any other action if good cause therefore is shown. For purposes of this subsection, 'good cause' means a violation of the Constitution of the United States or a Federal Statute (including rights under section 552 of the United States Code) or a factual context that indicates that a request for expedited consideration has merit." 28 U.S.C. § 2112(d)(2)(B)

(2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule oral argument the same day in order to minimize travel time and expenses.

(3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the oral argument for a particular day or week will be respected, if possible.

(4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule oral argument. Subparagraphs (2) and (3) of this paragraph should therefore be made as early as possible. Whenever practicable, criminal appeals are scheduled for oral argument shortly after the appellant's brief is filed and civil appeals shortly after the appellee's brief is filed.

(c) *Divided Argument Not Favored.* Divided arguments on behalf of a single party or multiple parties are not favored by the court. When such arguments are nevertheless divided or when more than one party is represented by different counsel, the court may schedule separate oral arguments for each party or group of parties.

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same side for parties with differing interests, the time allowed shall be apportioned between s discretion. If counsel are unable to agree, the court will allocate the time.

(d) *Preparation.* In preparing for oral arguments, counsel should be mindful that this court foll prior to oral argument.

(e) *Waiver or Postponement.* Any request for waiver or postponement of a scheduled oral arg motion, with proof of service on all other counsel or parties. Postponements will be granted o circumstances.

(f) *Statement Concerning Oral Argument.* A party may include, as part of a principal brief, a s argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34(a).

(g) *Citation of Authorities at Oral Argument.* Counsel may not cite or discuss a case at oral a cited in one of the briefs or drawn to the attention of the court and opposing counsel by a filing filing may be made on the day of oral argument, if absolutely necessary, but should be made

(h) *Argument by Law Student.* The court may permit a law student to present oral argument u this court's bar, with the client's written approval, if the representation is part of a program of a supervising attorney's motion must be filed at least 14 days before the date on which argue reasons why presentation of argument by a law student is appropriate.

## Federal Rule of Appellate Procedure 35:

### RULE 35. En Banc Determination

**(a) When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges and who are not disqualified may order that an appeal or other proceeding be heard or rehea banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless

- (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisio
- (2) the proceeding involves a question of exceptional importance.

**(b) Petition for Hearing or Rehearing En Banc.** A party may petition for a hearing or rehear

- (1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the c addressed (with citation to the conflicting case or cases) and consideration by the full court is

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and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which, for example, a petition may assert that a proceeding presents a question of exceptional importance if the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals on the same issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not contain any material not counted under [Rule 32](#).

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate rules apply.

**(c) Time for Petition for Hearing or Rehearing En Banc.** A petition that an appeal be heard en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed with the petition for a petition for rehearing.

**(d) Number of Copies.** The number of copies to be filed must be prescribed by local rule and court order in a particular case.

**(e) Response.** No response may be filed to a petition for an en banc consideration unless the court orders otherwise.

**(f) Call for a Vote.** A vote need not be taken to determine whether the case will be heard or reheard en banc, but a vote may be called for a vote.

## **Circuit Rule 35. Petitions for Rehearing En Banc**

Every petition for rehearing en banc, and every brief of an amicus curiae supporting or opposing a petition for rehearing en banc, must include a statement providing the information required by [Fed. R. App. P. 26.1](#) and the petition is filed.

## **Federal Rule of Appellate Procedure 36:**

### **RULE 36. Entry of Judgment; Notice**

**(a) Entry.** A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and file the judgment, and

(1) after receiving the court's opinion-but if settlement of the judgment's form is required, after

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(2) if a judgment is rendered without an opinion, as the court instructs.

**(b) Notice.** On the date when judgment is entered, the clerk must serve on all parties a copy no opinion was written-and a notice of the date when the judgment was entered.

## **CIRCUIT RULE 36. Reassignment of Remanded Cases**

Whenever a case tried in a district court is remanded by this court for a new trial, it shall be re trial before a judge other than the judge who heard the prior trial unless the remand order dire same judge retry the case. In appeals which are not subject to this rule by its terms, this cour opinion or order that this rule shall apply on remand.

## **Federal Rule of Appellate Procedure 37:**

### **RULE 37. Interest on Judgments**

**(a) When the Court Affirms.** Unless the law provides otherwise, if a money judgment in a civ interest is allowed by law is payable from the date when the district court's judgment was ente

**(b) When the Court Reverses.** If the court modifies or reverses a judgment with a direction t in the district court, the mandate must contain instructions about the allowance of interest.

## **Federal Rule of Appellate Procedure 38:**

### **RULE 38. Frivolous Appeals--Damages and Costs**

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed mot reasonable opportunity to respond, award just damages and single or double costs to the app

## **Federal Rule of Appellate Procedure 39:**

### **RULE 39. Costs**

**(a) Against Whom Assessed.** The following rules apply unless the law provides or the court

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree c

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- (2) if a judgment is affirmed, costs are taxed against the appellant;
- (3) if a judgment is reversed, costs are taxed against the appellee;
- (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed on

**(b) Costs For and Against the United States.** Costs for or against the United States, its agencies, or its officers, are taxable only if authorized by law under [Rule 39\(a\)](#).

**(c) Costs of Copies.** Each court of appeals must, by local rule, fix the maximum rate for taxing necessary copies of a brief or appendix, or copies of records authorized by [Rule 30\(f\)](#). The rate charged for such work in the area where the clerk's office is located and should encourage economy.

**(d) Bill of Costs: Objections; Insertion in Mandate.**

- (1) A party who wants costs taxed must within 14 days after entry of judgment file with the circuit clerk an itemized and verified bill of costs.
- (2) Objections must be filed within 10 days after service of the bill of costs, unless the court orders otherwise.
- (3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate. The mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the circuit clerk's request to add the statement of costs, or any amendment of it, to the mandate.

**(e) Costs on Appeal Taxable in the District Court.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

## **CIRCUIT RULE 39. Costs of Printing Briefs and Appendices**

The cost of printing or otherwise producing copies of briefs and appendices shall not exceed the amount established by the clerk of the court of appeals. If a commercial printing process has been used, a copy of the invoice shall be attached to the itemized and verified bill of costs filed and served by the party.

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## Federal Rule of Appellate Procedure 40:

### RULE 40. Petition for Panel Rehearing

#### (a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) *Time*. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing must be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, a party may seek rehearing 45 days after entry of judgment, unless an order shortens or extends the time.

(2) *Contents*. The petition must state with particularity each point of law or fact that the petitioner claims the court overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer*. Unless the court requests, no answer to a petition for panel rehearing is permitted. An answer may be granted in the absence of such a request.

(4) *Action by the Court*. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

**(b) Form of Petition; Length.** The petition must comply in form with [Rule 32](#). Copies must be filed in accordance with the court's rules. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must be no more than 15 pages.

### CIRCUIT RULE 40. Petitions for Rehearing

(a) *Table of Contents*. The petition for rehearing shall include a table of contents with page references to the points raised (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the petition.

(b) *Number of Copies*. Fifteen copies of a petition for rehearing shall be filed, except that 30 copies shall be filed if the petition suggests rehearing en banc.

(c) *Time for Filing After Decision in Agency Case*. The date on which this court enters a final decision is the date of the "entry of judgment" for the purpose of commencing the period for filing a petition for rehearing with Fed. R. App. P. 40, notwithstanding the fact that a formal detailed judgment is entered at a later date.

(d) *Time for Filing after Decision from the Bench*. The time limit for filing a petition for rehearing shall be the same as the time limit for filing a petition for rehearing after a decision from the bench.

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court's written order following a decision from the bench.

(e) *Rehearing Sua Sponte before Decision.* A proposed opinion approved by a panel of this court would overrule a prior decision of this court or create a conflict between or among circuits the first circulated among the active members of this court and a majority of them do not vote to reject whether the position should be adopted. In the discretion of the panel, a proposed opinion which procedure may be similarly circulated before it is issued. When the position is adopted by the procedure, the opinion, when published, shall contain a footnote worded, depending on the circumstances, as follows:

This opinion has been circulated among all judges of this court in regular active service. (No judge not favor) a rehearing en banc on the question of (e.g., overruling *Doe v. Roe.*)

## Federal Rule of Appellate Procedure 41:

### 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 copy of the court's opinion, if any, and any direction about costs.

(b) **When Issued.** The court's mandate must issue 7 calendar days after the time to file a petition for panel rehearing, rehearing en banc, or a petition for a writ of certiorari, 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 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. The motion must be served on all parties and must show that the certiorari petition would present 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 files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay 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.

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(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court writ of certiorari is filed.

## **CIRCUIT RULE 41. Immediate Issuance of Mandate After Certain Dispositions**

The mandate will issue immediately when an appeal is dismissed (1) voluntarily, (2) for failure to file the docketing statement under [Circuit Rule 3\(c\)](#), or (4) for failure by the appellant

## **Federal Rule of Appellate Procedure 42:**

### **RULE 42. Voluntary Dismissal**

**(a) Dismissal in the District Court.** Before an appeal has been docketed by the circuit clerk, an appeal may be dismissed on the filing of a stipulation signed by all parties or on the appellant's motion with notice.

**(b) Dismissal in the Court of Appeals.** The circuit clerk may dismiss a docketed appeal if the appellant agrees to pay the costs of the appeal and pay any fees that are due. But no mandate may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties.

## **Federal Rule of Appellate Procedure 43:**

### **RULE 43. Substitution of Parties**

#### **(a) Death of a Party.**

(1) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while an appeal is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion of the representative or by any party. A party's motion must be served on the representative in accordance with Rule 43(a)(1). If a decedent has no representative, any party may suggest the death on the record, and the court may take appropriate proceedings.

(2) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative-or, if there is no personal representative, the decedent's estate may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, the court may take appropriate proceedings with Rule 43(a)(1).

(3) *Before Notice of Appeal Is Filed-Potential Appellee.* If a party against whom an appeal may be filed dies before the notice of appeal is filed, the court may take appropriate proceedings with Rule 43(a)(1).

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judgment or order in the district court, but before a notice of appeal is filed, an appellant may occur. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a).

**(b) Substitution for a Reason Other Than Death.** If a party needs to be substituted for any procedure prescribed in Rule 43(a) applies.

**(c) Public Officer: Identification; Substitution.**

(1) *Identification of Party.* A public officer who is a party to an appeal or other proceeding in a described as a party by the public officer's official title rather than by name. But the court may to be added.

(2) *Automatic Substitution of Officeholder.* When a public officer who is a party to an appeal capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public automatically substituted as a party. Proceedings following the substitution are to be in the name any misnomer that does not affect the substantial rights of the parties may be disregarded. An entered at any time, but failure to enter an order does not affect the substitution.

## CIRCUIT RULE 43. Change in Public Offices

Whenever any of the parties to the litigation appears in an official capacity and there is a change after the filing of the [Rule 3\(c\)\(1\)](#) docketing statement, the official-capacity litigant (other than notify the court of the identity of the new occupant of the office. Similarly, in collateral attacks notify the court of any change in custodian or custodial status.

## Federal Rule of Appellate Procedure 44:

### RULE 44. Case Involving a Constitutional Question Where United States is Not a Party

(a) If a party questions the constitutionality of an Act of Congress in a proceeding in which the officer, or employee is not a party in an official capacity, the questioning party must give written immediately upon the filing of the record or as soon as the question is raised in the court of appeals that fact to the Attorney General.

(b) If a party questions the constitutionality of a statute of a State in a proceeding in which the employee is not a party in an official capacity, the questioning party must give written notice to upon the filing of the record or as soon as the question is raised in the court of appeals. The court the attorney general of the State.

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## Federal Rule of Appellate Procedure 45:

### 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 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 any motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule to be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, and Christmas Day.

#### (b) Records.

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

(2) *Calendar.* Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. On the calendar for argument, the clerk must give preference to appeals in criminal cases and to 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 Director.

(c) **Notice of an Order or Judgment.** Upon the entry of an order or judgment, the circuit clerk must give notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. The notice 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. If the clerk or instructs otherwise, the clerk must not permit an original record or paper to be taken from the court's custody. If of the case, original papers constituting the record on appeal or review must be returned to the party from whom they were received. The clerk must preserve a copy of any brief, appendix, or other paper that is filed with the record.

**Circuit Rule 45 will be redrafted to reflect changes approved by the Judicial Conference, effective 1/8/2009.**

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## **CIRCUIT RULE 45. Fees**

(a) *Fees To Be Collected by the Clerk.* The fees to be collected by the clerk are as follows:

(1) For docketing a case on appeal or review, or docketing any other proceeding, \$100. A separate party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court, pay only one fee. A docketing fee shall not be charged for the docketing of an application for the writ of habeas corpus or appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results of the same, \$20.

(3) For certifying or exemplifying any document or paper, whether the certification or exemplification is by separate document, or by separate instrument, \$7.

(4) For reproducing any record or paper, 50 cents per page. This fee does not include certification.

(5) For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, \$20.

(6) For each printed copy of any opinion, including any separate and dissenting opinions in the case, \$2, but no charge shall be assessed for:

(i) A copy of the opinion furnished to each party of record in the case, and

(ii) Copies of opinions furnished those appearing upon a "Public Interest List" established by the court, by providing proper and adequate media of dissemination to the general public.

(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage place of business of the court, \$35.

(8) For a check paid into the court which is returned for lack of funds, \$35.

(9) No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

(b) *Fees To Be Paid in Advance.* The clerk shall not be required to docket any proceeding or file any papers if the fees due to the clerk have not been paid, except at the direction of a judge of this court or at the direction of the court to proceed without prepayment of fees.

## **Federal Rule of Appellate Procedure 46:**

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## **RULE 46. Attorneys**

### **(a) Admission to the Bar.**

(1) *Eligibility.* An attorney is eligible for admission to the bar of a court of appeals if that attorney has good professional character and is admitted to practice before the Supreme Court of the United States, another United States court of appeals, or a United States district court (including the district court for the Northern Mariana Islands, and the Virgin Islands).

(2) *Application.* An applicant must file an application for admission, on a form approved by the court, and the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following affirmation:

"I, \_\_\_\_\_, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor at law before this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) *Admission Procedures.* On written or oral motion of a member of the court's bar, the court may admit an applicant. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant must appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by the court.

### **(b) Suspension or Disbarment.**

(1) *Standard.* A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) *Procedure.* The member must be given an opportunity to show good cause, within the time prescribed by the court. If the member shows good cause, the member should not be suspended or disbarred.

(3) *Order.* The court must enter an appropriate order after the member responds and a hearing is held. If the time prescribed for a response expires, if no response is made.

**(c) Discipline.** A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney an opportunity to show cause to the contrary, and, if requested, a hearing.

## **CIRCUIT RULE 46. Attorneys**

(a) *Admission.* The lead attorney for all parties represented by counsel in this court must be a member of the court's bar. Counsel have thirty days from docketing of the matter in this court to comply. In addition, any

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appeal must be admitted to practice in this court. An applicant for admission to the bar of this application on the form furnished by the clerk. The oath or affirmation thereon may be taken by federal or state law to administer an oath. When an appropriate application and motion have been filed, a fee may be required, the clerk shall present the papers to an active or senior circuit judge for action. If an applicant requests admission in open court, the applicant must appear in open court and shall make an oral motion in support of the written application. If admission is in chambers, the applicant shall appear.

(b) *Admission Fees.* The prescribed fee for admission is \$15.00, except that attorneys who have been admitted to practice in this court or this court to represent a party on appeal in forma pauperis, law clerks to judges of this court, and attorneys employed by the United States or any agency thereof need not pay the fee. The clerk shall receive the fee of the lawyers fund and shall deposit it in a bank designated by the court. Payments from the fund shall be for the purchase of law books, for library conveniences, or other court purposes, by checks duly signed and countersigned by two judges of this court.

(c) *Government Attorneys.* Attorneys for any federal, state or local government office or agency may appear in connection with their official duties without being formally admitted to practice before the court.

(d) *Striking a Name from the Roll of Attorneys.* Whenever it is shown to this court that any member of the bar has been disbarred or suspended from practice, or their names have been stricken from the roll of attorneys of Columbia, they will be forthwith suspended from practice before this court. They will thereupon show cause, within 30 days, why their names should not be stricken from the roll of attorneys of this court. Upon the attorney's response to the rule to show cause, or upon the expiration of the 30 days, this court will enter an appropriate order.

## **Federal Rule of Appellate Procedure 47:**

### **RULE 47. Local Rules by Courts of Appeals**

#### **(a) Local Rules.**

(1) Each court of appeals acting by a majority of its judges in regular active service may, after providing an opportunity for comment, make and amend rules governing its practice. A generally applicable local rule regarding practice before a court must be in a local rule rather than an internal operating procedure. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted by the Supreme Court. A local rule must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. The court must send the Administrative Office of the United States Courts a copy of each local rule and must file a copy of each local rule when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a nonwillful failure to comply with the requirement.

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**(b) Procedure When There Is No Controlling Law.** A court of appeals may regulate practice in a manner consistent with federal law, these rules, and local rules of the circuit. No sanction or penalty shall be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules of the circuit if a violator has been furnished in the particular case with actual notice of the requirement.

## **CIRCUIT RULE 47. Advisory Committee**

The court shall appoint an Advisory Committee to provide a forum for continuing study of the rules and to serve as a conduit between members of the bar who have suggestions for change and the court, and to bear responsibility for effectuating change. The committee shall consist of one district judge, one lawyer from each state of the circuit, Illinois, Indiana, and Wisconsin, and, as *ex officio* member, the Vice-President of the Seventh Circuit Bar Association, the Circuit Executive, the Senior Staff Attorney, and the court. The district judges, attorneys, and law school professors on the committee shall serve staggered terms, their appointments being staggered.

The court shall appoint a chairman from the membership of the committee to serve for a two-year term. The committee shall promulgate its own rules, and call its own meetings. The advisory committee shall propose rule changes and shall consider comments received. From time to time, as it deems appropriate, it may make recommendations to the circuit council or to the court. Suggestions for consideration by the court shall be filed with the clerk of this court.

## **Federal Rule of Appellate Procedure 48:**

### **RULE 48. Masters**

**(a) Appointment; Powers.** A court of appeals may appoint a special master to hold hearings and report on factual findings and disposition in matters ancillary to proceedings in the court. Unless the order of appointment specifies or limits the master's powers, those powers include, but are not limited to, the following:

- (1) regulating all aspects of a hearing;
- (2) taking all appropriate action for the efficient performance of the master's duties under the reference;
- (3) requiring the production of evidence on all matters embraced in the reference; and
- (4) administering oaths and examining witnesses and parties.

**(b) Compensation.** If the master is not a judge or court employee, the court must determine whether the cost is to be charged to any party.

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## **CIRCUIT RULE 50. Judges to Give Reasons when Dismissing a Claim, Granting Summary Judgment, or Issuing an Appealable Order**

Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation by remanding or transferring the case, or denying leave to proceed in forma pauperis with or without an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons on the record or by written statement. The court urges the parties to bring to this court's attention any violation of this rule as they comply with this rule.

## **CIRCUIT RULE 51. Summary Disposition of Certain Appeals by Convicted Persons; Waiver of Appellate Counsel**

### *(a) Duties of Criminal Trial Counsel.*

Trial counsel in a criminal case, whether retained or appointed by the district court, is responsible for the representation of the client desiring to appeal unless specifically relieved by the court of appeals. Such relief shall be freely granted. If trial counsel was appointed by the district court and a new appellate counsel will be appointed as appellate counsel without further proof of the client's eligibility for representation was not found to be eligible for Criminal Justice Act representation in the district court but appellate counsel must immediately assist the client in filing in the district court a motion to proceed as of right to obtain an adequate defense in a criminal case. This motion must be accompanied by an affidavit containing the same information as contained in Form 4 of the Appendix to the Federal Rules of Appellate Procedure. If the court of appeals will appoint trial counsel as appellate counsel unless the district court informs the court of appeals that new counsel should be appointed. If the motion is denied by the district court, trial counsel must immediately assist the client in filing a motion of appeals. Counsel may have additional duties under Part V of the Circuit's Plan implemented in 1964.

*(b) Withdrawal of Court-Appointed Counsel in a Criminal Case.* When representing a convicted person on appeal, review the conviction, court-appointed counsel who files a brief characterizing an appeal as frivolous (see *Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) shall file a proof of service which also indicates the current address of the client. Except as provided in these rules, the clerk shall then send to the client by certified mail, return receipt requested, a copy of the brief and a copy of the form substantially the form set out in Appendix I to these rules. The same procedures shall be followed when the clerk when a motion to dismiss the appeal has been filed by the appellee and the appellant's argument that could be made in opposition to the motion would be frivolous.

### *(c) Time for Filing Motion to Withdraw in a Criminal Case.*

Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed within 10 days of the notice of appeal. The court of appeals will make all appellate appointments.

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(d) *Notice of Motion to Dismiss Pro Se Appeal.* When a convicted person appears *pro se* in a conviction, and the government moves to dismiss the appeal for a reason other than failure to shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, of the motion with a notice in substantially the form set out in [Appendix II](#) to these rules.

(e) *Dismissal if No Response.* If no response to a notice under paragraph (a) or (b) of this rule the mailing, the appeal may be dismissed.

(f) *Voluntary Waiver of Appeal.* Notwithstanding the preceding paragraphs, if the convicted person appeal after consultation with appellate counsel, the appeal may be dismissed upon the filing executed acknowledgment and consent in substantially the form set out in Appendix III to the [App. P.](#)

(g) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise person has been found incompetent or there is reason to believe that person is incompetent, matter shall be referred directly to the court by the clerk for such action as law and justice may

## **CIRCUIT RULE 52. Certification of Questions of State Law**

(a) When the rules of the highest court of a state provide for certification to that court by a federal court under the laws of that state which will control the outcome of a case pending in the federal court, a motion of a party, may certify such a question to the state court in accordance with the rules of that case in this court to await the state court's decision of the question certified. The certification shall be filed in this court. A motion for certification shall be included in the moving party's brief.

(b) If the state court decides the certified issue, then within 21 days after the issuance of its opinion, the court shall file court statements of their positions about what action this court should take to complete the review.

## **CIRCUIT RULE 53. [Rescinded]**

## **CIRCUIT RULE 54. Remands from Supreme Court**

When the Supreme Court remands a case to this court for further proceedings, counsel for the party shall file, after the issuance of a certified copy of the Supreme Court's judgment pursuant to its Rule 45, a motion for the court's positions as to the action which ought to be taken by this court on remand.

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## **CIRCUIT RULE 55. Prohibition of Photographs and Broadcasts**

The taking of photographs in, or radio or television broadcasting from the courtroom or any of judges' chambers or corridors adjacent thereto on the 26th floor of the Federal Courthouse located at 226 North Dearborn Street, Chicago, Illinois, without permission of the court, is prohibited.

## **CIRCUIT RULE 56. Opportunity to Object and Make Proposals on the Record**

(a) *Opportunity to State Objections and their Rationale.* Whenever a rule of court requires a party to state reasons in order to preserve a claim for appeal (e.g., Fed. R. Civ. P. 51, Fed. R. Crim. P. 30, Fed. R. App. P. 25), the party must ensure that parties have an adequate opportunity to put their proposals, objections, and responses on the record. If a judge entertains proposals or objections off the record (for example, a sidebar conference or in chambers), as soon as practicable the judge must offer an opportunity to summarize on the record the proposals or objections discussed, and the reasons for the proposal or objection. The judge then must state the ruling on the proposals or objections.

(b) *Waiver.* Parties offered an opportunity to make a record under part (a) of this rule must use that opportunity for appeal. No proposal, objection, or reason may be urged as a ground of appeal unless a party believes that he or she has not been given an adequate opportunity to make a record under this rule. This rule does not alter any obligation imposed by any other rule to make concrete proposals or objections on the record in order to preserve a claim for appeal.

## **CIRCUIT RULE 57. Remands for Revision of Judgment**

A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or any other rule that permits the modification of a final judgment, should request the district court to grant the motion. If the district court so indicates, this court will remand the case for a new trial or judgment. Any party dissatisfied with the judgment as modified must file a fresh notice of appeal.

## **CIRCUIT RULE 60. Seventh Circuit Judicial Conference**

(a) *Purpose of the Conference.* Each year the Chief Judge shall call a circuit judicial conference in accordance with 28 U.S.C. § 333 for the purpose of considering the business of courts and advising means of improving the circuit. The Chief Judge shall designate the location of the conference and either preside or invite a representative of the Seventh Circuit Bar Association, or others, to preside.

(b) *Members of the Conference.* Each active Circuit, District, Bankruptcy, and Magistrate Judge shall be a member of the conference. The following shall be members of the conference and are encouraged to attend: (1) District and Bankruptcy Judges; (2) Circuit Executive, Deputy Circuit Executive, Senior Staff /

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staff attorneys and law clerks to all Circuit, District, Bankruptcy, and Magistrate Judges; (3) Circuit District Courts and Bankruptcy Courts in the Circuit; (4) United States Attorneys in the Circuit; (5) Circuit Defenders in the Circuit and their legal staffs; (6) Members of the Seventh Circuit Bar Association; (7) the Chief Judge or by the President of the Seventh Circuit Bar Association with the approval of the Circuit; (8) United States Trustees in the Circuit and their legal staffs.

(c) *Planning of the Conference.* The Judicial Conference shall be planned by a committee composed of three judges appointed annually by the Chief Judge from the active judges in the Circuit and four members of the Bar Association appointed annually by the President of the Bar Association. The Chief Judge and the President of the Bar Association, shall designate one of the members to chair the committee.

(d) *Executive Session.* All or part of one day of the conference shall be designated by the Chief Judge to be attended only by active Circuit, District and Bankruptcy Judges, Magistrate Judges and

(e) *Record of the Conference.* The Clerk of the Court of Appeals shall make and preserve a record of the Judicial Conference.

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## APPENDIX OF FORMS TO FEDERAL RULES OF APPELLATE PROCEDURE

### FORM 1.

#### NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the \_\_\_\_\_  
District of \_\_\_\_\_

File Number \_\_\_\_\_

A. B., <u>Plaintiff</u>	]	Notice of Appeal
	]	
v.	]	
	]	
C. D., <u>Defendant</u>	]	

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]
]

Notice is hereby given that \_\_\_\_\_ (here name all parties taking
(defendants) in the above named case,\* hereby appeal to the United States Court of Appeals
Circuit (from the final judgment) (from an order (describing it)) entered in this action
\_\_\_\_\_, 20\_\_ .

(s)
Attorney for
Address

\* See Rule 3(c) for permissible ways of identifying appellants

## FORM 2.

### NOTICE OF APPEAL TO A COURT OF APPEALS FROM A DECISION OF THE UNITED STATES TAX COURT

UNITED STATES TAX COURT
Washington, D.C.

A. B., Petitioner ]
]
v. ]
]
Commissioner of Internal Revenue, ]
Respondent ]
]
]

Docket No. \_\_\_\_\_

# visited 1/8/2009

## Notice of Appeal

Notice is hereby given that \_\_\_\_\_ (here name all parties taking the appeal) has filed a petition for review with the United States Court of Appeals for the \_\_\_\_\_ Circuit from (that part of) the decision above captioned proceeding on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (relating to \_\_\_\_\_).

(s)  
Counsel for  
Address

\* See [Rule 3\(c\)](#) for permissible ways of identifying appellants.

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### FORM 3.

### PETITION FOR REVIEW OF ORDER OF AN AGENCY, BOA COMMISSION OR OFFICER

United States Court of Appeals  
for the \_\_\_\_\_ Circuit

A. B., Petitioner

] ] ]

v.

Petition for Review

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\_\_\_\_\_ (here name all parties bringing the petition)\* he  
review of the Order of the XYZ Commission (describe the order) entered on \_\_\_\_\_

(s)  
Attorney for  
Address

\* See [Rule 15](#).











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**FORM 5.**

**NOTICE OF APPEAL TO A COURT OF APPEALS  
FROM A JUDGMENT OR ORDER OF A  
DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL**

United States District Court for the  
\_\_\_\_\_ District of \_\_\_\_\_

In re

\_\_\_\_\_,  
Debtor

\_\_\_\_\_, ]  
Plaintiff ]

v. ]

\_\_\_\_\_, ]  
Defendant ]

File No. \_\_\_\_\_

Notice of Appeal to the United States Court of Appeals for the \_\_\_\_\_

\_\_\_\_\_, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the \_\_\_\_\_ Circuit from the final judgment [or order or decree] of the district court for the \_\_\_\_\_ [or bankruptcy appellate panel of the \_\_\_\_\_ circuit], entered in \_\_\_\_\_ describe the judgment, order, or decree] \_\_\_\_\_. The parties are \_\_\_\_\_ [or order or decree] appealed from and the names and addresses of their respective attorneys are \_\_\_\_\_

Date  
signed

Address

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## FORM 6.

### CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENT AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of [Fed. R. App. P. 32\(a\)\(7\)\(B\)](#) bec

\_\_this brief contains [state the number of ] words, excluding the parts of the brief exe  
32(a)(7)(B)(iii), or

\_\_this brief uses a monospaced typeface and contains [state the number of ] lines of  
of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of [Fed. R. App. P. 32\(a\)\(5\)](#) and th  
[Fed. R. App. P. 32\(a\)\(6\)](#) because:

\_\_this brief has been prepared in a proportionally spaced typeface using [state name  
processing program] in [state font size and name of type style], or

\_\_this brief has been prepared in a monospaced typeface using [state name and ver:  
program] with [state number of characters per inch and name of type style].

(s) \_\_\_\_\_

Attorney for \_\_\_\_\_

Dated: \_\_\_\_\_

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**APPENDIX OF FORMS TO THE CIRCUIT RULES**

# visited 1/8/2009

**NOTICE RE: DEFENDANT COUNSEL'S  
MOTION FOR LEAVE TO WITHDRAW  
UNDER CIRCUIT RULE 51(b)**

To: \_\_\_\_\_  
(Name)  
  
\_\_\_\_\_  
(Street Address or Prison Box)  
  
\_\_\_\_\_  
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No. \_\_\_\_\_

\_\_\_\_\_

v.

\_\_\_\_\_

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appointed for you who will argue your appeal.

If you want to write to this court, you should address your letter to:

Clerk of the Court  
United States Court of Appeals  
219 South Dearborn Street  
Chicago, Illinois 60604

Be sure, when writing, to show clearly the name and number of your case.

Notice mailed , 20\_\_

\_\_\_\_\_  
Deputy Clerk, U.S. Court of Appeals

Attorney for appellant

\_\_\_\_\_  
(Name)

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## APPENDIX II

### FORM OF NOTICE FOR MOTION FOR DISMISSAL UNDER CIRCUIT RULE 51(d)

To: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address or Prison Box)

\_\_\_\_\_  
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No. \_\_\_\_\_

\_\_\_\_\_  
v.  
\_\_\_\_\_

A motion was filed by the opposing party on , 20\_\_, which asks the court to dismiss you in which to answer the motion. Please be advised as follows:

- 1) You have a right to answer. You can either agree to the requested dismissal or object
- 2) If you object, you should explain your objections carefully and show why you contend case.
- 3) If you agree that your case should be dismissed, you should write the court immediately
- 4) If you do not respond within 30 days after this notice was mailed, the court may affirm affirmance or dismissal would mean that your case would be finally decided against you
- 5) If you want to file objections and feel that there is a very good reason why you will not objections with the court within the 30-day limit, you should immediately write to the court



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## APPENDIX III

### FORM OF ACKNOWLEDGMENT OF ATTORNEY'S MOTION FOR DISMISSAL AND CONSENT TO THE DISMISSAL OF THE APPEAL

Case No. \_\_\_\_\_

\_\_\_\_\_

v.

\_\_\_\_\_

To: Clerk of the Court  
United States Court of Appeals  
219 South Dearborn Street  
Chicago, Illinois 60604

I have been informed of my attorney's intention to move to dismiss my appeal. I concur in and  
hereby waive all rights to object or raise any points on appeal.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address or Firm Name)

\_\_\_\_\_  
(City, State, Zip Code)

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## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT OPERATING PROCEDURES

(As of December 1, 2001.)

1. <a href="#">Motions</a>	6. <a href="#">Panel Assignments</a>
2. <a href="#">Titles and Precedence of Judges</a>	7. <a href="#">Routine Action</a>
3. <a href="#">Issuance of Opinions</a>	8. <a href="#">Multiple /</a>
4. <a href="#">Inclusion of Costs [abrogated]</a>	9. <a href="#">Presumptive Tir</a>
5. <a href="#">Hearings and Rehearings En banc</a>	10. <a href="#">Sealing Portion</a>

These are procedures for the court's internal operations. The court may dispense with their use. Parties do not acquire no rights under these procedures.

### 1. Motions

#### (a) *Number of Judges Necessary to Determine Motions.*

(1) *Ordinary Practice.* At least two judges shall act on requests for bail, denials of certiorari, denials of leave to proceed on appeal in forma pauperis. Ordinarily three judges shall act to finally determine an appeal or other proceeding, unless the dismissal is by stipulation or otherwise. Three judges shall also act to deny a motion to expedite an appeal when the denial may be appealed. All other motions shall be entertained by a single judge in accordance with the procedures set forth in these rules. (c). In the interest of expediting a decision or for other good cause, a fewer number of judges may decide any motion.

(2) *En Banc Requests.* If en banc consideration of a motion is requested, no more than the number of judges required for such a motion need act on it. If en banc reconsideration of the decision on a motion will be considered by the same judge or judges who acted on the motion originally, the number of judges necessary to constitute a panel of three, one or more members of the motions panel. A motion may be considered by the court en banc.

(b) *Selection of Judges to Determine Motions.* The responsibility to handle motions shall be assigned to a single judge to whom a motion is presented. If a judge orders a response, the motion and response will be handled by that judge.

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same judge for ruling.

(c) *Motion Practice.*

(1) *Motions That May Require Immediate Action.* A staff attorney will read upon filing the labeled emergency or not): (i) for bond; (ii) for injunction; (iii) for stay of injunction; (iv) for to dismiss appeals not by agreement; (vi) for leave to appeal from an interlocutory order 1292(b); (vii) to stay or recall the mandate; (viii) to supplement the record; and (ix) all other motion requires immediate action, it will be taken to the motions judge and, if necessary, require immediate action, the staff attorney will wait up to ten days for a response to be filed to the motions judge or panel.

(2) *Routine Motions.* Routine motions (see subparagraph (7)) will be given to court staff with any affidavit in support thereof as well as any response to the motion. The designated staff member authorized, acting pursuant to such general directions and criteria as the court prescribes, the name of the court either granting or denying the motion or requesting a response to the motion. If a member has any questions about what action should be taken, the motions judge will be consulted. If a member has been assigned for the oral argument or submission of an appeal, or after an appeal has been argued or submitted for decision without oral argument, the court staff should consult the motions judge that would otherwise be considered routine.

(3) *Nonroutine Motions.* A staff attorney shall read each nonroutine motion (see subparagraph (7)) to the motions judge and, if necessary, the motions panel. The judge or panel will then announce the decision and direct that an order be prepared accordingly. The staff attorney will then prepare the order states detailed reasons for the decision, the staff attorney will take the original of the order to the motions judge or one of the judges on the motions panel to read and approve. The same procedure will be followed if the judge asks to see the prepared order before it is released.

(4) *Duties of Clerk of Court.* When an order is in final form and ready for release, copies shall be reproduced and mailed to the litigants and to any other persons who are affected by the order. The court clerk, the district judge, the United States Marshal, *et al.* The clerk will make certain that the order is technically proper.

(5) *Automatic Reconsideration When Response Filed After Ruling.* If a response to a motion is filed after the court has ruled on the motion adversely to the respondent, the motion and response will be reviewed. An order stating this fact and ruling on the motion shall be issued.

(6) *Record Keeping.* The clerk shall keep a record of all orders by date of entry and also maintain a file folder of the appeal.

(7) *Classification of Motions and Actions by Court.* Motions and actions of the court are classified in this paragraph as follows:

## Type

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- To extend time or to file instanter
- To consolidate appeals
- To hold briefing in abeyance
- To expedite or schedule briefing  
(But see 1(a) *supra*.)
- To intervene as of right
- To withdraw exhibits for preparation of a brief by counsel of record or party appearing *pro se* prior to case being scheduled for oral argument
- To listen to tapes of oral argument under supervision of the clerk's office
- To withdraw as counsel in criminal cases when other counsel has filed or is simultaneously fil appearance
- To withdraw as counsel in civil cases
- To correct error in the caption of a case
- To withdraw a previously filed motion before the court has acted upon it
  
- To file a deferred appendix
  
- To dismiss by agreement, except in cases to which panels have already been assigned
- To supplement record
  - (if no objection)
  - (with an item before district court)
  - (with item not clearly before district court)
  - (to deny with leave to renew after moving to correct record in district court pursuant to [Fed. R. App. P.10\(e\)](#))
- For leave to appeal in forma pauperis (if denied without prejudice to renewal after district court denial)
  - (if denied for any other reason)
  - (if granted)
- For leave to file brief amicus curiae
- For leave to file oversized brief
- To stay or recall mandate
- For appointment of counsel
- To postpone oral argument
- For certificate of appealability
  - (if denied)
  - (if granted) Nonroutine
- For leave to commence second or successive collateral attack
- To dismiss, not by agreement
- For bond, injunction, or stay of injunction
- To reconsider any order of court (other than pursuant to subparagraph (5))
- For leave to appeal from interlocutory order, pursuant to 28 U.S.C. § 1292(b)
- All other motions

The following actions by the court shall be handled similarly to the stated procedures for routi

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Issuance of orders to show cause pursuant to [Circuit Rule 31\(c\)](#) and (d)  
Discharge of rules to show cause under [Fed. R. App. P. 31 \(c\)](#) and  
[Circuit Rule 31 \(c\)](#) and (d)  
(granting discharge)  
(denying discharge)  
Orders pursuant to [Fed. R. App. P. 34](#)

(8) The clerk is authorized to reject repetitious motions to reconsider.

## 2. Titles and Precedence of Judges

(a) Except to the extent required by law, the court does not distinguish between judges in regular active service with respect to title, precedence, and eligibility to participate in the court's decisions.

(b) Judges hold precedence in this sequence for the purpose of presiding at a session of the Chief Judge of the circuit; (3) the judge of this circuit in regular active service with the greatest seniority; (4) the judge of this circuit in regular active service with the greatest seniority of 28 U.S.C. § 45(b). Every panel includes at least one circuit judge in regular active service, and the selection of a presiding judge is necessary.

(c) Subject to part (b) of this rule, judges have precedence and are listed on opinions in the following order:

(1) Circuit Justice; (2) Chief Judge of the circuit; (3) Associate Justice (Retired); (4) Circuit Judge in regular active service (without distinction between judges of this and other circuits); (5) District Judge in regular active service.

(d) Clerk's office personnel will ensure that all orders and opinions comply with this rule. The description of the panel is consistent and conforms to the appropriate model: "X, Chief Judge"; "X, Y, and Z, Circuit Judges"; "X and Y, Circuit Judges, and Z, District Judge."

## 3. Issuance of Opinions

(a) When an opinion is ready for release, the author will send the opinion (together with any corrections) to the printer immediately.

(b) The Clerk's office will provide each writing judge with page proofs of the opinion. Each judge must return corrected proofs to the Clerk's office within three business days. If within three business days the Clerk's office has not received a response, the Clerk will call the judge to return corrected proofs. If the judge does not return corrected proofs, the Clerk will print the opinion as submitted.

(c) The Clerk's office will release the opinion immediately after receipt of the printed copies, unless the judge requests the clerk to delay release to permit the judge to check the corrected proofs against the printed copies.

## 4. Inclusion of Costs [abrogated]

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## 5. Hearings and Rehearings En Banc

(a) *Request for Answer and Subsequent Request for Vote.* If a petition for rehearing en banc (which may be made by any Seventh Circuit judge in regular active service or by any member of the court) is sought, the decision sought to be reheard) must be made within 10 days after the distribution of the en banc decision. If a request for a rehearing en banc is requested, the clerk shall notify the prevailing party that an answer be filed within 14 days from the distribution of the petition. Within 10 days of the distribution of the answer, any judge entitled to request an answer, may request a rehearing en banc.

(b) *Request for Vote When No Answer Requested.* Ordinarily an answer will be requested prior to a request for a vote on the petition (which may be made by any judge entitled to request an answer). If a vote is so requested, the clerk shall notify the prevailing party that the petition is due within 14 days.

(c) *Notification to File Answer.* The judge who requests an answer pursuant to paragraph (a) or paragraph (b) shall be responsible for having the clerk notify the prevailing party to file an answer.

(d) *Voting.*

(1) *Majority.* A simple majority of the voting active judges is required to grant a rehearing en banc.

(2) *Time for Voting.* Judges are expected to vote within 10 days of the request for a vote or within 10 days of the distribution of the answer pursuant to the request for a vote, whichever is later.

(e) *Preparation of Order.* After the vote is completed, the authoring judge, or the presiding judge, or the visiting judge, will prepare and send to the clerk an appropriate order. Minority positions will be noted in orders granting a rehearing en banc or the denial of a petition for rehearing unless the judges in the minority positions will not be noted in orders granting a rehearing or rehearing en banc unless so requested. An order granting rehearing en banc should specifically state that the original panel's decision is affirmed.

(f) *Participants in Rehearings En Banc.* Only Seventh Circuit active judges and any Seventh Circuit member of the original panel may participate in rehearings en banc.

(g) *Similar Procedures for Hearings En Banc.* Similar voting procedures and time limits shall apply to hearings en banc except that a staff attorney may circulate such a request.

(h) *Distribution of Petitions.* Petitions for rehearing that do not suggest rehearing en banc are distributed to all judges entitled to vote on the petition. Petitions for rehearing en banc are distributed to all judges entitled to vote on the petition.

## 6. Panel Assignments in Certain Cases

(a) *Remands from the Supreme Court.* A case remanded by the Supreme Court to this court is ordinarily be reassigned to the same panel that heard the case previously. If a member of that panel is inconvenient for the visitor to participate further, that judge may be replaced by designation.

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directs.

(b) *Successive Appeals.* Briefs in a subsequent appeal in a case in which the court has heard the panel that heard the prior appeal. That panel will decide the successive appeal on the merits of the issues presented. When the subsequent appeal presents different issues but involves the earlier appeal, the panel will decide the subsequent appeal unless it concludes that considerations support retaining the case. If the panel elects not to decide the new appeal, it will return the case. If the original panel retains the successive appeal, it will notify the circuit executive whether oral argument is scheduled, any visiting judge will be replaced by a member of this court designated by the court en banc are outside the scope of this procedure, and successive appeals heard by the court en banc are outside the scope of this procedure, and successive appeals heard by the en banc court directs otherwise.

(c) *Successive Collateral Attacks.* An application for leave to file a second or successive petition under §2255 (see also 28 U.S.C. §2244(b) and [Circuit Rule 22.2](#)) will be assigned to the panel that heard the appeal in the prior case, the application will be assigned to the current motions panel.

(d) *Certain Cases before Motion Panels.* When a motion panel decides that a motion or petition should be granted or the appeal expedited, it may recommend to the chief judge that the matter be assigned for hearing by the same panel. In the absence of such a recommendation, the matter will ordinarily be assigned to the motions panel.

## 7. Routine Action by the Clerk

(a) *Dismissal for Failure to Prosecute.* Statutes and rules of court call for the parties to take steps to prosecute and the court treats failure to take some of these steps as failure to prosecute, leading to dismissal, failure to file the docketing statement required by [Circuit Rule 3\(c\)](#), and failure by the appellant to pay the amount to abandonment of the appeal.

(1) Seven days after the docket fee, docketing statement, or brief is due, the Clerk will send a notice reminding the party of the obligation. The notice will inform the party about the consequences of failure to meet the obligation.

(2) If the party or counsel does not respond within 21 days of the date of the notice, the Clerk will dismiss the appeal for want of prosecution. In a criminal appeal with appointed counsel, however, the Clerk will instead discharge the lawyer and appoint new counsel. When counsel is discharged under this rule, the court will enter an order requiring the lawyer to show cause why abandonment of the client should be excused.

(3) If the party responds within 21 days but does not comply with the obligation, or if the Clerk determines that the party is not complying with the obligation, showing delivery of the notice, a staff attorney will present the papers to the motions panel for consideration.

(b) *Removal from the List of Attorneys Authorized to Practice.* States within the jurisdiction of the court maintain lists of attorneys who have been suspended from practice, disbarred, or resigned to prevent consideration of a complaint. As a rule, these attorneys have had ample opportunity to contest that adverse action by other jurisdictions, leading to routine handling in this court.

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(1) Promptly after learning that a member of this court's bar has been suspended for a year or has resigned from the bar of a jurisdiction in which the attorney is authorized to practice, the court shall send the lawyer by certified mail, directing the lawyer to explain within 30 days why this court should not strike his or her name from the roll of attorneys authorized to practice.

(2) If the lawyer does not respond within 30 days, or if the lawyer consents to the proposed disposition, the court shall enter an order removing the lawyer from the roll of attorneys authorized to practice in this court.

(3) If the lawyer responds within 30 days but does not consent to the proposed disposition, or if the court has not received a receipt showing delivery of the notice, a staff attorney will present the papers to the court.

(c) *Review of the Clerk's Action.* A petition for rehearing contesting the entry of a routine order will be treated as a motion and referred to the motions panel. An order by the motions panel granting the petition has the effect of reinstating the appeal, and the Clerk will reset the briefing schedule accordingly.

## 8. Multiple Appeals

When multiple parties to the same case have taken appeals, the court's senior staff attorney will review the statements filed under [Circuit Rule 3](#) and issue a scheduling order governing the filing of briefs.

When multiple appellants have the same or a closely related interest in the appeal, the court will provide for the filing of a joint opening brief, with provision in appropriate cases for separate issues that do not concern all appellants. When the parties have filed cross appeals, the court will schedule the opening brief principally aggrieved by the judgment to file the opening brief. For example, when the judgment is against the plaintiff's cross appeal concerns the amount of damages or an award of attorney's fees, the plaintiff's opening brief.

## 9. Presumptive Times for Action

Expedient preparation and release of opinions and orders is important not only to litigants but also to the operation of the court. Delay in the preparation of or response to opinions means that the court must re-study the record in order to act conscientiously on their colleagues' drafts. Delay in responding to a colleague's circulations therefore reduces duplicative work and improves the quality of the court's considerations in mind, the court establishes the following presumptive times for action, anticipating that circumstances may make it imprudent to adhere to the times. A judge should, and may, take the time required for adequate study and reflection.

(a) A judge assigned to write a draft after a case has been identified at conference as suitable for publication should circulate the draft to the other members of the panel within 10 days of the date the case was argued or submitted.

(b) A judge assigned to write a published opinion should circulate the draft to the other members of the panel within 90 days of the date the case was argued or submitted. When the case is unusually complex, or other special circumstances apply, however, the writing judge may extend the time.

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appropriate notice to the other members of the panel.

(c) Responding to drafts circulated by other judges is the first order of business. Every judge should provide a response, approval, memorandum suggesting changes, or notice that a separate opinion is under consideration within 10 days of the circulation of a draft.

(d) As a rule, writing separate concurring or dissenting opinions takes precedence over responses to newly circulated drafts. Separate opinions should be circulated to the panel within 10 days of the initial response described in part (c) of this procedure.

(e) Once the opinion has issued, judges should act promptly on any further motions. In a three-judge panel, the panel should vote within 10 days on any petition for rehearing. Under Operating Procedure 10.1, a judge may request a response to a petition for rehearing en banc, and 10 days to call for a vote on the petition. Once a response has been received. Once a judge has called for a vote, all other judges should respond within 10 days. Once this time (including extensions described below) has passed, and sufficient votes have been cast to grant or deny the petition for rehearing or petition for rehearing en banc, the court will enter its order without waiting for additional responses.

(f) Each judge should establish a tickler system designed to ensure adherence to these procedures. If a judge does not receive a draft, vote or response within the time presumptively established, the judge should inquire. This step not only catches communications lost in transmission but also serves as a reminder of the system.

(g) A judge who believes that additional time is required to permit full consideration should request a delay of the panel to that effect. If the judge believes that more than 30 days (in the case of operations or other actions), in addition to the time presumptively established by this procedure, is required, the judge should notify the chief judge of the delay and the reasons for it.

(h) The presiding judge of a panel should reassign the case if the judge initially assigned to the case has not circulated the draft within the time provided by parts (a) and (b) of this procedure or if the judge, by part (g), unless in consultation with the assigned author and the chief judge the presiding judge determines that reassignment would delay disposition still further.

(i) If two members of the panel have agreed on an opinion, and the third member does not provide a response within the time provided by part (c), or does not complete a separate opinion within the time presumptively established by part (c) and (g), the writing judge should inquire of the third member whether a response is imminent. If a response is anticipated, the majority should issue the opinion with a notation that the third judge reserved the right to file a separate opinion later.

(j) When the presumptive time for action established by this procedure is 10 days, the time for action is extended if notice that a judge is unavailable to act on judicial business. The time specified by this procedure is extended to the time presumptively established by this procedure.

## 10. Sealing Portions of the Record

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(a) *Requirement of Judicial Approval.* Except to the extent portions of the record are required (e.g., 18 U.S.C. §3509(d)) or a rule of procedure (e.g., Fed. R. Crim. P. 6(e), [Circuit Rule](#) filed in or by this court (whether or not the document was sealed in the district court) is in the judge of this court orders it to be sealed.

(b) *Delay in Disclosure.* Documents sealed in the district court will be maintained under seal to afford time to request the approval required by section (a) of this procedure.

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## THE PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT TO SUPPLEMENT THE PLANS OF THE SEVERAL UNITED STATES DISTRICT COURTS WITHIN

### THE SEVENTH CIRCUIT

<b>INTRODUCTION</b>			
<b>I</b> <b><u>STATEMENT OF</u></b> <b><u>POLICY</u></b>	<b>II</b> <b><u>PREPARATION OF</u></b> <b><u>PANEL OF ATTORNEYS</u></b>	<b>III</b> <b><u>DETERMINATION OF</u></b> <b><u>NEED FOR</u></b> <b><u>APPOINTMENT OF</u></b> <b><u>COUNSEL</u></b>	<b>AF</b>
<b>V</b> <b><u>DUTIES OF</u></b> <b><u>APPOINTED</u></b> <b><u>COUNSEL</u></b>	<b>VI</b> <b><u>PAYMENT OF CLAIMS</u></b> <b><u>FOR</u></b> <b><u>COMPENSATION AND</u></b> <b><u>EXPENSES</u></b>	<b>VII</b> <b><u>MISCELLANEOUS</u></b>	<b>EI</b>

### INTRODUCTION

Pursuant to the approval of the Judicial Council of the Seventh Circuit, the United States Court of Appeals for the Seventh Circuit adopts the following Plan for furnishing representation for persons financially unable to obtain representation in the cases and situations defined in the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 848(q), and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *General Procedures* ("CJA Guidelines"). This Plan supplements the plans heretofore adopted by the United States District Courts within the Seventh Circuit and approved in final form by the Judicial Council of the Seventh Circuit.

Representation shall include counsel and investigative, expert, and other services necessary

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## I STATEMENT OF POLICY

The Judicial Council recognizes that the successful operation of this plan will require the active members of the bar, appropriate bar associations and legal aid agencies. In particular, it is expected that the assistance of the Seventh Circuit Bar Association will contribute greatly to the successful work of the Court.

The judges, circuit executive, clerk, all federal public defender organizations and community organizations, and private attorneys appointed under the CJA should comply with the *CJA Guidelines* approved by the United States and/or its Committee on Defender Services and with the Plan.

The payment of compensation to counsel under the Act, in most cases, probably will be some form of honorarium. Service of counsel by appointment under the Act will continue to require a substantial measure of public service. The responsibility of members of the bar to accept appointments and to serve in these positions has traditionally been in the past and is in no way lessened by the passage of the Act. We have confidence in the professional integrity of the bar to fulfill this responsibility.

In the administration of this Plan, the Court will be particularly careful to safeguard against the possibility of fiscal laxity, favoritism or other abuse which may cast a shadow on the general judicial system. Funds to be expended with characteristic judicial responsibility.

It is deemed advisable at all times to coordinate efficiently the operation of this Plan with the operation of the state judicial system so that there be a proper cooperation between the federal and state judicial systems.

The Court will welcome any proper and approved plan of cooperation whereby the services of the bar may be made available to provide legal research assistance to appointed counsel, thereby to assist appointed counsel who may find it helpful and to broaden the interest and capabilities of law firms in the area of criminal law.

Finally, and most important, the Plan shall be administered so that those accused of crime who are unable to pay for adequate representation, be deprived of any element of representation necessary to a fair opportunity to be heard on appeal in this Court.

## II PREPARATION OF PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision and with approval of the Court, shall maintain a panel of practicing attorneys, or attorneys from a bar association, legal aid agency or other organization furnishing representation pursuant to the Plan, in areas of the principal places of holding district court in the Circuit, who are deemed competent to provide adequate representation on appeal for persons who are unable to pay. The Clerk of this Court shall reexamine the panel of attorneys annually to assure that it is kept current.

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2. Attorneys for the panel shall be selected without regard to race, color, creed, or membership association.
3. The Clerk shall solicit the assistance of the Seventh Circuit Bar Association, law schools, a bar association, in the preparation and maintenance of the panel of attorneys.
4. Additions to and removals from the panel of attorneys may be made at any time by the Court.
5. The clerk of court shall provide each appointed attorney a copy of this Plan upon the attorney's appointment by the Court or designation as a member of the panel and shall also make available to them a current list of attorneys on the panel.

### III

#### DETERMINATION OF NEED FOR APPOINTMENT OF COUNSEL

1. In all cases where the defendant was found by the district court to be financially unable to employ counsel, the Court may accept this finding and appoint an attorney without further proof. *But see* [Fed. R. Cr. P. 44](#).
2. At any time before or after the appointment of counsel, the Court may examine or reexamine the defendant. If the Court finds upon such inquiry that the defendant is financially able to employ counsel for his representation, then the Court may make an order appropriate under the circumstances, including an order of appointment pursuant to subsection (c) of the Act, or requiring such partial payment to be made as the Act, as the interests of justice may dictate.
3. In determining the need for appointment of counsel under the Act, the Courts shall not be guided by indigence on the part of the defendant, but rather by his financial inability to employ counsel, and the intent in formulating this program of assistance to those found to be in need within the spirit and purpose of the Act.

### IV

#### APPOINTMENT OF COUNSEL

1. Counsel furnishing representation under the Plan shall be selected from a panel of attorneys appointed by the Court, or from a bar association, legal aid agency, or defender organization furnishing representation. When the Court determines that the appointment of an attorney who is not a member of the panel is necessary for the judicial economy, or continuity of representation, or there is some other exceptional circumstance, the attorney may be admitted to the panel and appointed to represent the individual. Such order of appointment shall conform with the directives of the Judicial Conference of the United States, at least 25% of all such appointments shall be made from the private bar. Such order of appointment of counsel may be entered by the current motion of the Court.
2. In all cases on appeal where the defendant was represented in the district court by court appointed counsel, the Court may, at its discretion, appoint the same attorney to represent the defendant on appeal.

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shall continue to represent the defendant on appeal, unless and until relieved by order of this appropriate cases, designate such counsel to continue on appeal.

3. At the time such appeals are docketed in this Court, the Clerk shall notify defendant's court shall continue such representation of defendant in this Court unless and until relieved by order such trial counsel to advise the Court whether he desires to continue such representation through

4. In appeals under the Act involving more than one defendant, if the Court finds the need, be certain defendants or where circumstances otherwise warrant, separate counsel may be appointed for defendants as may be required for their adequate representation.

5. The Court may, in its discretion, at any stage of the proceedings on appeal, substitute one

6. If, at any stage of the proceedings on appeal, the Court finds the defendant is financially unable to retain counsel, the Court may appoint counsel as provided in subsection (b) of the Act and subsection (d) of the Act and the *CJA Guidelines*, pursuant to subsection (c) of the Act.

7. More than one attorney may be appointed in any case determined by the Court to be extremely complex. At least two attorneys should be appointed. Except as provided by section 848(q)(7) of title 21, U.S.C., attorneys appointed in a capital case shall meet the experience qualifications required by section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who does not meet the requirements of section 848(q)(6), but who has the background, knowledge, and experience necessary to represent the defendant in the case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the case.

8. The selection of counsel to represent any person under the Act shall remain the sole and exclusive responsibility of the Court.

## V

### DUTIES OF APPOINTED COUNSEL

1. The services to be rendered to a defendant by counsel appointed under the Act shall be reasonable and shall be the same as would be rendered if counsel were privately employed, having regard for the circumstances of each case and the services that may require.

2. If, at any stage of the proceedings on appeal, appointed counsel obtains information that a payment, in whole or in part, for legal or other services in connection with his or her representation of the defendant is not protected as a privileged communication, counsel shall advise the Court of such information.

3. After an adverse decision on appeal by this Court, appointed counsel shall advise the defendant of the right to seek review of such decision by the Supreme Court of the United States. If, after consultation (by counsel or the represented person requests it and there are reasonable grounds for counsel properly to do so), the defendant prepares and file a petition for writ of certiorari and other necessary and appropriate documents.

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the defendant until relieved by the Supreme Court. Counsel who conclude that reasonable grounds for certiorari do not exist must promptly inform the defendant, who may by motion request this certiorari.

4. Attorneys appointed pursuant to any provisions of the Act shall conform to the highest standards including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct.

5. Appointed appellate attorneys have a duty to continue to represent their clients after remarriage. An attorney appointed for the appeal who is unable to continue at the trial level should move in the district court for the appointment of trial counsel.

6. Attorneys appointed in a federal death penalty case, unless replaced by similarly qualified counsel upon motion or upon motion of the defendant, shall represent the defendant throughout every stage of the proceedings, including all available post-conviction process, together with applications for state habeas corpus proceedings, appropriate motions and procedures, and shall also represent the defendant in proceedings for habeas corpus that may be available to the defendant.

## VI

### PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

1. An attorney, bar association, legal aid agency, or community defender organization appointed under the Plan shall be compensated for their services and reimbursed for their expenses reasonably incurred, subject to the conditions of subsection (d) of the Act.

2. The hourly rates of compensation fixed by the Act are designated and intended to be maximum rates and shall be treated as such.

3. No appointed representative under the Plan shall accept a payment from or on behalf of the defendant without prior authorization by a United States circuit judge on the form provided for such purpose. All payments shall be received subject to the directions contained in such order and pursuant to the Act.

4. Each appointed representative under the Plan shall be entitled to reimbursement for expenses incurred and out-of-pocket expenditures. Travel by privately owned automobile should be claimed at the actual cost in accordance with the *Travel and Transportation* regulations, Volume I, *Guide to Judiciary Policies and Procedures*, Part 101. Transportation other than by privately owned automobile should be claimed on an actual cost basis. Subsistence is not allowable. Meals and lodging expenses, which are reasonably incurred based on the actual cost, are reimbursable. Telephone toll calls, telegrams and copying (except printing), are reimbursable. Non-reimbursable expenses include office overhead, personal items for the person represented, filing fees, and printing. (A person is not required to pay filing fees.)

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5. An appointed attorney or other authorized legal entity shall not incur any expense subject to an excess of \$300 except for necessary travel and maintenance to and from this Court for hearing without Court approval. In the event it is deemed necessary to provide an appendix of the record on appeal, they shall first petition the Court for authority to incur such expense and obtain approval therefrom.

6. All claims for compensation and reimbursement for expenses reasonably incurred shall be submitted on prescribed forms and filed with the Clerk of this Court. All such claims should be filed promptly, not later than 30 days after the conclusion of such services.

7. A panel of judges hearing an appeal, or any active member of the Court if designated by such panel, shall fix the compensation and allow the reimbursement for expenses to be paid to the appointed attorney. After such approval, the Clerk of this Court shall forthwith forward such claims to the Director of the United States Courts for payment.

8. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari to the case before this Court, and should be vouchered as such.

## **VII MISCELLANEOUS**

1. The United States Court of Appeals shall submit a report of the appointment of counsel to the United States Courts in such form and at such times as the Judicial Conference of the United States shall prescribe. Such reports shall comply with such rules, regulations, and guidelines governing the operation of Plans formulated by the United States, pursuant to subsection (h) of the Act.

2. Where standard forms have been prescribed and distributed by the Director of the Administrative Office of the United States Courts, such forms shall be used, where applicable, in all proceedings under this Plan.

3. Amendments to the Plan may be made from time to time by the Judicial Council of this circuit. Such amendments shall be forwarded immediately to the Administrative Office of the United States Courts.

## **VIII EFFECTIVE DATE**

This Plan shall become effective January 1, 1991.

Approved and adopted by the Seventh Circuit Judicial Council on December 3, 1990. As amended

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## STANDARDS FOR PROFESSIONAL CONDUCT WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

<a href="#">Preamble</a>	<a href="#">Lawyers' Duties to Other Counsel</a>	<a href="#">Lawyers' Duties to the Court</a>
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### Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional competence. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of the administration of justice, which is a truth-seeking process designed to resolve human and societal disputes in a peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants in a legal proceeding. A judge should exhibit respect, diligence, punctuality, and protection against unjustified delay.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the efficient and peaceful resolution of disputes. Such conduct tends to delay and increase the cost of litigation.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to the system of justice, and thereby achieve the twin goals of civility and professionalism. We are a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. We expect these standards to be adopted as part of a commitment by all participants to improve the administration of justice throughout the Seventh Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards adds to or detracts from existing disciplinary codes or alters existing standards of conduct against which discipline may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in a legal proceeding. Copies may be made available to clients to reinforce our obligation to maintain and foster the highest quality of the legal profession.

### Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the public interest. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all others with respect in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct toward parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that is prohibited by these standards.

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we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and under circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or written, in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decision, the drafter will endeavor in good faith to state the oral understanding accurately and completely. We will provide an opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, all drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not raise matters to which there has been no agreement without explicitly advising other counsel in writing.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not use the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith objection is stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters containing requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's ability to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, discovery conferences, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If accommodation because of a calendar conflict, we will notify those who have accommodated us and any other counsel who have been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time if depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary expense of counsel and may enable the court to use the previously reserved time for other matters.

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17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities. Legitimate rights will not be materially or adversely affected.
18. We will not cause any default or dismissal to be entered without first notifying opposing counsel of the default or dismissal and its identity.
19. We will take depositions only when actually needed to ascertain facts or information or to take depositions for the purposes of harassment or to increase litigation expenses.
20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of the court.
21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary to preserve an objection or privilege for resolution by the court.
22. During depositions we will ask only those questions we reasonably believe are necessary to the case and will not engage in an action.
23. We will carefully craft document production requests so they are limited to those documents necessary for the prosecution or defense of an action. We will not design production requests to place an undue expense on a party.
24. We will respond to document requests reasonably and not strain to interpret the request to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a way that obscures the existence of particular documents.
25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an expense or undue burden on a party.
26. We will respond to interrogatories reasonably and will not strain to interpret them in an artful way to avoid disclosure of relevant and non-privileged information.
27. We will base our discovery objections on a good faith belief in their merit and will not object to discovery on the basis of withholding or delaying the disclosure of relevant information.
28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that completely reflects the court's ruling. We will promptly prepare and submit a proposed order to the court and will reconcile any differences before the draft order is presented to the court.
29. We will not ascribe a position to another counsel that counsel has not taken or otherwise infer a position based on counsel's statements or conduct.
30. Unless specifically permitted or invited by the court, we will not send copies of correspondence to the court.

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## Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.
2. We will be punctual and prepared for all court appearances so that all hearings, conference time; if delayed, we will notify the court and counsel, if possible.
3. We will be considerate of the time constraints and pressures on the court and court staff in administer justice.
4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We v witnesses appearing in court of the proper conduct expected and required there and, to the b clients and witnesses from creating disorder or disruption.
5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authoriti communication to the court.
6. We will not write letters to the court in connection with a pending action, unless invited or p
7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such c to verify the availability of necessary participants and witnesses so we can promptly notify the
8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law they, too, are an integral part of the judicial system.

## Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maint recognizing that judges have both the obligation and the authority to insure that all litigation p civil manner.
2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or ora parties, or witnesses.
3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we w
4. In scheduling all hearings, meetings and conferences we will be considerate of time sched witnesses.
5. We will make all reasonable efforts to decide promptly all matters presented to us for decis
6. We will give the issues in controversy deliberate, impartial, and studied analysis and consi
7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constr

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lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, an fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present p complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and v

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.