CIRCUIT RULES

of the

UNITED STATES COURT OF APPEALS

for the

DISTRICT OF COLUMBIA CIRCUIT

(Together with the corresponding Federal Rules of Appellate Procedure)

AND

HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES

Circuit Rules and Handbook
As Amended Through December 1, 2005

JUDGES OF THE COURT

Chief Judge

Douglas H. Ginsburg

Circuit Judges

David B. Sentelle
Karen LeCraft Henderson
A. Raymond Randolph
Judith W. Rogers
David S. Tatel
Merrick B. Garland
Janice Rogers Brown
Thomas B. Griffith

Senior Circuit Judges

Harry T. Edwards
Laurence H. Silberman
Stephen F. Williams
James L. Buckley (Retired)

OFFICERS OF THE COURT

Circuit Executive

Jill C. Sayenga

Clerk

Mark J. Langer

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Nancy Padgett

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FEDERAL RULES OF APPELLATE PROCEDURE
AND CORRESPONDING CIRCUIT RULES
OF THE DISTRICT OF COLUMBIA CIRCUIT

Federal Rules Adopted Effective July 1, 1968,
As Amended Through December 1, 2005

Circuit Rules Effective January 1, 1994,
As Amended Through December 1, 2005

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TITLE I. APPLICABILITY OF RULES

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 procedure must comply with the practice of the district court.

(b) [Abrogated effective December 1, 2002.]

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

Circuit Rule 1

Scope of Rules; General Provisions

The Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit are adopted pursuant to Rule 47, Federal Rules of Appellate Procedure ("FRAP"), to replace all General Rules heretofore adopted by this court. Circuit Rules are keyed to correspondingly numbered provisions of the FRAP. (Several rules dealing with miscellaneous subjects are included after Circuit Rule 47.)

The court's Handbook of Practice and Internal Procedures ("Handbook") should also be consulted. In the event of any conflict between the Circuit Rules and the Handbook, the Circuit Rules prevail.

(a) Name, Seal, and Process.

(1) **Name.** The name of this court, as fixed by Chapter 3 of Title 28 of the United States Code, is "United States Court of Appeals for the District of Columbia Circuit."

(2) **Seal.** The seal of the court will contain the words "United States" on the upper part of the outer edge, preceded and followed by a star; the words "Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "for the District of Columbia Circuit" in 5 lines in the center.

(3) **Process.** Writs, process, orders, and judgments of this court must be signed by a judge or judges of the court, or by the clerk at the direction of the court.

(b) Sessions.

(1) **No Formal Terms—Court Always Open.** The court does not hold formal terms but is open the year round for such purposes as docketing appeals; filing pleadings, records, and opinions; and entering orders and judgments.

(2) **Regular Sessions.** Regular sessions of the court are held at Washington, D.C., commencing on such day in September as the court may designate, and terminating at such time as the court may designate, and are adjourned as the court may from time to time direct.

(3) **Special Sessions.** Special sessions may be held at any time by order of the court.

(c) Court Employees Not to Practice Law. No one employed in any capacity by the court may engage in the practice of law while continuing in such position; no former employee may practice as an attorney in any matter connected with any case pending in the court during his or her term of service. For the purposes of this rule, a case is pending in this court upon the docketing of a notice of appeal, or the filing of a petition, in this court. See also FRAP 45(a).

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 any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Circuit Rule 2

Suspension of Rules

In the interest of expediting decisions or for other good cause, the court may suspend the requirements of these Circuit Rules.

Rule 2

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

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 only 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 furnish the clerk with 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 affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other 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 only 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 their interests make joinder 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 or consolidated by the court of 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, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs,""the defendants," "the plaintiffs 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 and minor children (if they are 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 if it names one person qualified 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 for failure to name a party whose 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's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date 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 4(c), the district 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 note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

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

Circuit Rule 3

Appeal as of Right—How Taken

There is no corresponding Circuit Rule.

Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case

[Abrogated effective December 1, 1998.]

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 required by Rule 3 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 by any party within 60 days 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 an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry 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 of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(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 would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(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 it disposes of any 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 a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by 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; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that 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 ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the 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 appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of 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 after the moving party receives notice under Federal Rule of Civil 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) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment 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 10 days after the later of:

(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 court within 30 days after the later of:

(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, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision 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 made no later than 10 days 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 it disposes of any of the motions referred to in Rule 4(b)(3)(A)—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 any of the motions referred to 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—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days 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 a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal 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, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state 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 provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(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 district court's docketing of the defendant's notice of appeal, whichever is later.

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

Circuit Rule 4

Appeal as of Right—When Taken

There is no corresponding Circuit Rule.

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 other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is 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 do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended 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;

(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 are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(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(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or 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 serves as 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 receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

Circuit Rule 5

Appeal by Permission

(a) Certificate of Parties and Disclosure Statement to be Attached. A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the petition. Any required disclosure statement must also be attached to any answer to the petition.

(b) Reply. A party may file a reply to an answer within 5 days after the answer is served. A reply may not exceed 10 pages.

(c) Number of Copies. Unless the court directs otherwise, the original and 4 copies of every petition, cross-petition, answer, and reply must be filed with the clerk.

(d) Motions to Extend Time or Exceed Page Limits. Motions to extend time for filing answers or replies and motions to exceed page limits for petitions, answers, and replies are governed by Circuit Rule 27(h).

Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5)

[Abrogated effective December 1, 1998.]

Rule 5

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 in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising 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.

(1) **Applicability of Other Rules**. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction 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 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in any applicable rule, means "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 all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when 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 Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—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 possessing the record assembled in accordance with Bankruptcy Rule 8006—and serve on the appellee—a statement of the

issues to be presented on appeal 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 after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(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).

(C) **Forwarding the record.**

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks 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 court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

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

Circuit Rule 6

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

There is no corresponding Circuit Rule.

Rule 6

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 in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

Circuit Rule 7

Bond for Costs on Appeal in a Civil Case

There is no corresponding Circuit Rule.

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 the following relief:

(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 Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(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 the relief requested and state 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; and

(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 panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

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

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on

the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

Circuit Rule 8

Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court

(a) Criteria; Service.

(1) A motion for a stay of a judgment or of an order of the district court or any other motion seeking emergency relief must state whether such relief was previously requested from the district court and the ruling on that request. The motion must state the reasons for granting the stay or other emergency relief sought and discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(2) Except in extraordinary circumstances, the motion must be served by hand or, in the case of counsel located outside the greater Washington metropolitan area, by other form of expedited service. Counsel must attempt to notify opposing counsel by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify opposing counsel.

(3) There must be attached to each copy of the motion a copy of the judgment or order involved, and of any pertinent decision, memorandum, opinion, or findings issued by the district court. If the district court's reasons were given orally, the pertinent extract from the reporter's transcript must be attached, if available.

(4) A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the appeal in its entirety. When a response to a motion for a stay or other emergency relief is

combined with a dispositive motion, the combined pleading may not exceed 30 pages. The response to such a combined pleading may not exceed 15 pages, and the final reply may not exceed 10 pages.

See also Circuit Rule 18 (Stay Pending Review of an Agency Order), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions).

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 regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

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

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

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

Circuit Rule 9

Release in a Criminal Case

(a) Appeal from a Pretrial Release or Detention Order. An appeal from a pretrial release or detention order must be expedited. Appellant must make immediate arrangements for preparation of all necessary transcripts, including the transcript of proceedings before a magistrate judge, and notify the court in writing of those arrangements. Unless otherwise ordered by the court or a judge thereof, the following schedule will apply:

(1) Not later than 5 days after the transcript of record is filed, the appellant must serve and file an original and 4 copies of a memorandum of law and fact setting forth as many of the matters required by Circuit Rule 9(b) as are relevant. The memorandum of law and fact must be accompanied by a copy of the order under review and the statement of reasons (including related findings of fact and conclusions of law) entered by the district court.

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(2) The appellee may file a responsive memorandum not later than 5 days after the filing of appellant's memorandum.

(3) The appellant may file a memorandum in reply within 3 days after the filing of appellee's memorandum.

(4) The memorandum, any response thereto, and the reply must comply with FRAP 27(d)(1)-(2).

(5) The appeal will be determined by a panel of the court on the record and pleadings filed, unless oral argument is directed by the court.

(b) Release Pending Appeal from a Judgment of Conviction. The applicant must file an original and 4 copies of an application pertaining to release pending appeal from a judgment of conviction. The application, any response thereto, and a reply to the response must comply with FRAP 27(d)(1)-(2). The space limitations imposed by FRAP 27(d)(2) may be exceeded only if authorized by order of the court, or a judge thereof, on motion showing good cause. The application must contain, in the following order:

(1) The name of the applicant, the district court number of the case, the offense of conviction, and the date and terms of sentence.

(2) The reasons given by the district court for the denial or, in the absence of reasons stated by the district court, an account of the facts and reasons relevant to that court's failure to grant the relief sought by the applicant.

(3) Where the applicant is the defendant, a concise statement of the question or questions involved in the appeal, with a showing that the appeal raises a substantial question of law or fact likely to result in reversal or in an order for a new trial. See also FRAP 9(c). Sufficient facts must be set forth to present the essential background and the manner in which the question or questions arose in the district court.

(4) Where the applicant is the defendant, a certificate by counsel, or by the applicant if acting pro se, that the appeal is not taken for delay.

(5) The application will be ruled upon by a panel of the court.

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 disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers 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, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(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 all evidence relevant to 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 that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(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 on the appellant 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, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

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

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, 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 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(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 difference must be 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, the omission 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

The Record on Appeal

There is no corresponding Circuit Rule.

Rule 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, 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 as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the 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 reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

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

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to 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 docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, 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 copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties. The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record for a Preliminary Motion in the Court of Appeals. If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- 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 designated by any party.

Circuit Rule 11

Forwarding the Record on Appeal from a Judgment or Order of the District Court

(a) When Forwarded. Except as provided in Circuit Rule 47.2, the record in all cases must be forwarded to this court by the clerk of the district court at a time designated by the clerk of this court.

(b) Transcript in Criminal Case. The court reporter must expedite the preparation and furnishing of the transcript. A copy of any order of the district court directing that transcripts be furnished to appellant must be forwarded by the clerk of the district court to this court.

See also Circuit Rule 47.1 (Matters Under Seal).

Rule 11

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 entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

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

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

Circuit Rule 12

Docketing Statement in Appeal from a Judgment or Order of the District Court; Statement by Appellee, Intervenor, or Amicus Curiae

(a) Timing. As directed by the court, appellant must file an original and one copy of a docketing statement and serve a copy on all parties and amici curiae appearing at that time.

(b) Docketing Statement Form. The docketing statement must be on a form furnished by the clerk's office and contain such information as the form prescribes. An incomplete docketing statement will be lodged, and the party submitting it will be directed to provide a conforming one.

(c) Provisional Certificate. Attached to the docketing statement must be a provisional certificate prepared by appellant setting forth the information required by Circuit Rule 28(a)(1).

(d) Knowledge and Information. The docketing statement and the provisional certificate will be prepared on the basis of the knowledge and information reasonably available to appellant at the time of filing.

(e) Errors in Docketing Statement. Any party or amicus curiae must bring any errors in the docketing statement or provisional certificate to the attention of the clerk by letter served on all parties and amici within 7 calendar days of service of the docketing statement.

(f) Statement by Appellee, Intervenor, or Amicus Curiae. Within 7 calendar days of service of the docketing statement, an appellee must file with the court any statement required by Circuit Rule 26.1.

Any disclosure statement required by Circuit Rule 26.1 must accompany a motion to intervene, a written representation of consent to participate as amicus curiae, or a motion for leave to participate as amicus.

See also Circuit Rule 46 (Attorneys; Appearance by Law Student).

Rule 12

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

Rule 13. Review of a Decision of the Tax Court

(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 with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may 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 to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) Notice of Appeal; How Filed. The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) Contents of the Notice of Appeal; Service; Effect of Filing and Service. Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a 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 from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

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

Circuit Rule 13

Review of a Decision of the Tax Court

There is no corresponding Circuit Rule.

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.

Circuit Rule 14

Applicability of Other Rules to the Review of a Tax Court Decision

There is no corresponding Circuit Rule.

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons 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 "et al.," "petitioners," 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 respondent if required by 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 enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application 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 authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 20 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

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

(c) Service of the Petition or Application. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different 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, except for the respondents;

(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 a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise 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 the circuit clerk all required fees.

Circuit Rule 15

Petition for Review or Appeal from Agency Action; Docketing Statement

(a) Service of Petition for Review. In carrying out the service obligations of FRAP 15(c), in cases involving informal agency rulemaking such as, for example, those conducted pursuant to 5 U.S.C. § 553, a petitioner or appellant need serve copies only on the respondent agency, and on the United States if required by statute, see, e.g., 28 U.S.C. § 2344.

(b) Intervention. For purposes of FRAP 15(d), a motion to intervene in a case before this court regarding review of agency action must be served on all parties to the case before the court. A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.

(c) Docketing Statement.

(1) **Timing.** As directed by the court, appellant or petitioner must file an original and one copy of a docketing statement and serve a copy on all parties (including intervenors) and amici curiae appearing before this court at that time.

(2) **Docketing Statement Form.** The docketing statement must be on a form furnished by the clerk's office and contain such information as the form prescribes. An incomplete docketing statement will be lodged, and the party submitting it will be directed to provide a conforming one.

Rule 15

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(3) **Provisional Certificate.** Attached to the docketing statement must be a provisional certificate prepared by appellant or petitioner setting forth the information required by Circuit Rule 28(a)(1).

(4) **Knowledge and Information.** The docketing statement and the provisional certificate will be prepared on the basis of the knowledge and information reasonably available to appellant or petitioner at the time of filing.

(5) **Errors in Docketing Statement.** Any party or amicus curiae must bring any errors in the docketing statement or provisional certificate to the attention of the clerk by letter served on all parties and amici within 7 calendar days of service of the docketing statement.

(6) **Statement by Respondent, Appellee, Intervenor, or Amicus Curiae.** Within 7 calendar days of service of the docketing statement, a respondent or appellee must file with the court any statement required by Circuit Rule 26.1. Any disclosure statement required by Circuit Rule 26.1 must accompany a motion to intervene, a written representation of consent to participate as amicus curiae, or a motion for leave to participate as amicus.

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 proceeds first on briefing and at oral argument, unless the court orders otherwise.

Circuit Rule 15.1

Briefs and Oral Argument in National Labor Relations Board and Federal Labor Relations Authority Proceedings

The provisions of FRAP 15.1 also apply to parties adverse to the Federal Labor Relations Authority in an enforcement or a review proceeding.

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, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

Circuit Rule 16

The Record on Review or Enforcement

There is no corresponding Circuit Rule.

Rule 17. Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing. The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(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 other material constituting the 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 stipulation is filed with 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 retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

Circuit Rule 17

Filing the Record for Review or Enforcement of an Agency Order

(a) Immigration Case. On petition for review in immigration matters, the Executive Office for Immigration Review must transmit the record to this court within 40 days after the filing of the petition for review.

(b) Other Agency Case. On petition for review or on direct appeal of any other agency action, the agency must transmit a certified list of the contents of the administrative record to the court within 40 days after the filing of the petition for review or direct appeal, and transmit no other portion of the record to this court unless the court so requests.

See also Circuit Rule 47.1 (Matters Under Seal).

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 for a stay pending review of its decision or order.

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

(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 relief requested and state any 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; and

(iii) relevant parts of the record.

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

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

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

Circuit Rule 18

Stay and Emergency Relief Pending Review of an Agency Order

(a) Criteria; Service.

(1) A motion for a stay of an order of an agency or any other motion seeking emergency relief must state whether such relief was previously requested from the agency and the ruling on that request. The motion must

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state the reasons for granting the stay or other emergency relief sought and discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(2) Except in extraordinary circumstances, the motion must be served by hand or, in the case of counsel located outside the greater Washington metropolitan area, by other form of expedited service. Counsel must attempt to notify opposing counsel by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify opposing counsel.

(3) There must be attached to each copy of the motion a copy of the order involved, and of any pertinent rule, decision, memorandum, opinion, or findings issued by the agency.

(4) A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the petition for review or direct appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion, the combined pleading may not exceed 30 pages. The response to such a combined pleading may not exceed 15 pages, and the final reply may not exceed 10 pages.

See also Circuit Rule 8 (Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions).

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 agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 7 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

Circuit Rule 19

Settlement of a Judgment Enforcing an Agency Order in Part

There is no corresponding Circuit Rule.

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. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

Circuit Rule 20

Applicability of Rules to the Review or Enforcement of an Agency Order

There is no corresponding Circuit Rule.

TITLE V. EXTRAORDINARY WRITS

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 with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. 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;

(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 essential to understand the matters set forth in the petition.

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

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

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed 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 invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or 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 for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must 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(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Circuit Rule 21

Writs of Mandamus and Prohibition and Other Extraordinary Writs and Complaints of Unreasonable Delay

(a) No responsive pleading to a petition for an extraordinary writ to the district court or an administrative agency, including a petition seeking relief from unreasonable agency delay, is permitted unless requested by the court. No such petition will be granted in the absence of such a request.

(b) A petition for a writ of mandamus or a writ of prohibition to the district court must not bear the name of the district judge, but instead be titled, "In re _____, Petitioner." Unless otherwise ordered, the district judge will be represented pro forma by counsel for the party opposing the relief, who will appear in the name of such party and not that of the judge.

(c) Unless the court directs otherwise, the original and 4 copies of a petition for an extraordinary writ, and of any responsive pleading or reply authorized by the court, must be filed with the clerk.

(d) A certificate of parties and amici, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the petition, unless such documents have been filed previously with the court. Any required disclosure statement must also be attached to any answer to the petition.

(e) Motions to extend time for filing and to exceed page limits for petitions, answers, and replies are governed by Circuit Rule 27(h).

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

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 appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(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 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district-court proceedings. 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 judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

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

Circuit Rule 22

Habeas Corpus and Section 2255 Proceedings

See Circuit Rule 47.2 (Appeal Expedited by Statute; Habeas Corpus Proceeding).

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 commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

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

(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 release of a prisoner is under review, the prisoner must—unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety.

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

Circuit Rule 23

Custody or Release of a Prisoner in a Habeas Corpus Proceeding

There is no corresponding Circuit Rule.

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 action who desires to appeal in 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 pay or to give security for fees 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 appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) **Prior Approval.** A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) **Notice of District Court's Denial.** The district clerk must immediately notify the parties and the court of appeals when the 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 in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party 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 Proceeding. When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion 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 request that the appeal be heard on the original record without reproducing any part.

Circuit Rule 24

Proceeding in Forma Pauperis

(a) All appeals in forma pauperis will be considered on the record without the necessity of an appendix. With the brief, appellant must furnish the following items:

(1) The pages of the court reporter's transcript to be called to the attention of the court (any method of duplication may be used which produces a clear black image on light paper), and a list setting forth the page numbers of the transcripts so furnished.

(2) Other portions of the record to be presented for the court's consideration, which must in every case include the findings of fact, conclusions of law, and opinion, if any, of the district court.

The appellant is required to submit one copy of the above-listed documents; however, appellants are encouraged to submit 4 copies of each if they are able to do so.

(b) With the brief, appellee must furnish 4 copies of any pages of the transcript, or of other portions of the record, to be called to the court's attention and which were not furnished by appellant.

See also Circuit Rule 30 (Appendix to the Briefs), and Circuit Rule 31 (Serving and Filing Briefs).

TITLE VII. GENERAL PROVISIONS

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 unless the clerk receives the papers 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, postage prepaid; or

(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 institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) **Electronic filing.** A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance 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 judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) **Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service may be 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 service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

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

(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, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also 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, a court may require a different number by local rule or by order in a particular case.

Circuit Rule 25

Filing and Service

A non-emergency paper may be filed at the United States court house after the regular hours of the clerk's office pursuant to procedures established by the clerk's office. See Circuit Rule 27(f). In emergencies or other compelling circumstances, the clerk may authorize that papers be filed with the court through facsimile transmission. Except when specifically so permitted, such filing is not authorized.

See also Circuit Rule 27(a)(1) (Motions), and Circuit Rule 45(b) (Clerk's Duties, Office Hours).

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any local rule, 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 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act to be done is filing a paper in 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, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered 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 rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

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

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

Circuit Rule 26

Computing and Extending Time

For the purpose of computing response and reply periods, all filed papers will be presumed to have been served by mail unless the certificate of service clearly indicates that service was made by hand or other means authorized by FRAP 25(c).

Rule 26

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 that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party 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(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

Circuit Rule 26.1

Disclosure Statement

(a) A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus curiae in any proceeding must file a disclosure statement, at the time specified in FRAP 26.1; Circuit Rules 5, 8, 12, 15, 18, 21, 27, and 35(c); or as otherwise ordered by the court, identifying all parent companies and any publicly-held company that has a 10% or greater ownership interest (such as stock or partnership shares) in the entity. A revised corporate disclosure statement must be filed any time there is a change in corporate ownership interests that would affect the disclosures required by this rule. For the purposes of this rule, "parent companies" include all companies controlling the specified entity directly, or indirectly through intermediaries.

(b) The statement must identify the represented entity's general nature and purpose, insofar as relevant to the litigation. If the entity is an unincorporated entity whose members have no ownership interests, the statement must include the names of any members of the entity that have issued shares or debt securities to the public. No such listing need be made, however, of the names of members of a trade association or professional association. For purposes of this rule, a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

See also Circuit Rule 5 (Appeal by Permission), Circuit Rule 8 (Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court), Circuit Rule 12(f) (Docketing Statement in Appeal from a Judgment or Order of the District Court; Statement by Appellee, Intervenor, or Amicus Curiae), Circuit Rule 15(c)(6) (Petition for Review or Appeal from Agency Action; Docketing Statement), Circuit Rule 18 (Stay Pending Review), Circuit Rule 21 (Extraordinary Writs), Circuit Rule 27 (Motions), and Circuit Rule 35(c) (Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc).

Rule 26.1

Rule 27. Motions

(a) In General.

(1) **Application for Relief.** An application for an order or other relief is made by motion unless these rules prescribe another 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, the relief sought, 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 agency's decision as a separate 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 contents. The response must be filed within 8 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 8-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) **Request for affirmative relief.** A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert 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 response. A reply must not 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—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case 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 black image on light 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 name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

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

(D) **Paper size, line spacing, and margins.** The document must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) **Typeface and type styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style 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 corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

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

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

Circuit Rule 27

Motions

(a) Form of Pleadings.

(1) **In Writing; Service.** Every motion must be in writing and signed by counsel of record or by the movant if not represented by counsel, with proof of service on all other parties to the proceeding before this court, unless the motion is made in open court in opposing counsel's or movant's presence or this court provides otherwise.

(2) **Format.** Motions, responses thereto, and replies to responses must comply with FRAP 27(d)(1)-(2).

(3) **Reference to Oral Argument and Submission Without Oral Argument.** If a case has been scheduled for oral argument, has already been argued, or is being submitted without oral argument, a motion, and any response or reply, must so state in capital letters at the top of the first page and, where applicable, include the date of argument.

(4) **Certificate of Parties and Disclosure Statement to be Attached.** A certificate of parties and amici, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

(b) Number of Copies. Unless the court directs otherwise, the original and 4 copies of every motion, response, and reply must be filed with the clerk.

(c) Response That Also Seeks Affirmative Relief. When a party opposing a motion also seeks affirmative relief, that party must submit with the response a motion so stating. Such a combined motion and response may not exceed 30 pages, the response to such a combined filing may not exceed 20 pages, and the final reply for such a combined filing may not exceed 10 pages.

(d) Reply to Response That Also Seeks Affirmative Relief; Limits on Further Pleadings. When a response includes a motion for affirmative relief, the reply may be joined in the same pleading with a response to the motion for affirmative relief. That combined pleading must be filed within 8 days of service of the motion for affirmative relief.

After a party files a reply, no further pleading pertaining to the motion may be filed by that party except upon leave of the court.

(e) Clerk May Dispose of Certain Motions.

(1) **Procedural Motions.** The clerk may dispose of procedural motions, in accordance with the court's instructions. Instead of granting or denying a motion under the authority afforded by this subparagraph, the clerk may submit it to a panel or to an individual judge of the court.

(2) **Reconsideration of Clerk's Orders on Procedural Motions.** Any interested party adversely affected by an order of the clerk disposing of a motion may move for reconsideration thereof within 8 days after entry of the order. The clerk will submit the motion for reconsideration to a panel or an individual judge of the court.

(f) Requests for Expeditious Consideration. Any party may request expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would ordinarily be required for this court to receive and consider a response. The motion on which expedited action is sought must be labeled an "Emergency Motion" and the request for expedition must state the nature of the emergency and the date by which court action is necessary. The motion must be filed at least 7 calendar days before the date by which court action is necessary or counsel must explain why it was not so filed. Counsel for the party seeking expedition must communicate the request and the reasons therefor in person or by telephone to the clerk's office and to opposing counsel.

(g) Dispositive Motions.

(1) **Timing.** Any motion which, if granted, would dispose of the appeal or petition for review in its entirety, or transfer the case to another court, must be filed within 45 days of the docketing of the case in this court, unless, for good cause shown, the court grants leave for a later filing. This requirement does not apply to a motion by an appellant to dismiss its own appeal, or by a petitioner to dismiss its own petition, either of which may be filed at any time.

(2) **Required Attachments.** There must be attached to each copy of a dispositive motion a copy of any pertinent opinion or findings issued by the district court or agency or, if the reasons were given orally, the pertinent extract from the reporter's transcript must be attached, if available.

(3) **Deferral of Briefing Pending Resolution of Dispositive Motion.** Unless otherwise ordered by the court, briefing, if scheduled, will be deferred pending resolution of any dispositive motion filed within 45 days of the docketing of the case in this court. If such a motion is filed more than 45 days after the docketing of the case in this court, briefing will be deferred only if ordered by the court.

(4) **Response to an Untimely Motion.** When a substantive motion is filed along with a procedural motion for leave to file out of time or to exceed the length limitations, no response is required to the substantive motion until a decision is rendered on the procedural motion to file out of time or to exceed length limitations.

(h) Motions to Extend Time for Filing and to Exceed Page Limits.

(1) **Timeliness of Request.** A motion to extend the time for filing motions, or to exceed the page limits for such pleadings, must be filed at least 10 calendar days before the due date of such pleadings. A motion to extend the time for filing a response to a motion, or to exceed the page limits for such pleading, must be filed at least 3 calendar days before the due date of such pleading. A motion to extend the time for filing a reply to a response to a motion, or to exceed the page limits for such pleading, must be filed at least 2 calendar days before the due date of such pleading.

(2) **Consultation with Counsel.** Before filing a motion to extend the time for filing a pleading or for leave to exceed page limits, counsel for the moving party must attempt to obtain the consent of other counsel. If consent is not obtained, counsel for the moving party must attempt to inquire whether an opposition or other form of response will be filed. In the opening paragraph of any such motion, counsel must recite the position taken by other counsel in response to these inquiries, or the efforts made to obtain responses.

If other counsel have stated an intention to file an opposition or other response, or have not been reached after reasonable effort, counsel for the moving party must serve the motion by personal service or, if personal service is not feasible, give other counsel telephone notice of the filing and serve the motion by the most expeditious form of service. If counsel is unable to effect personal service or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

(3) **Pleadings in Excess of Page Limits.** The court disfavors motions to exceed page limits; such motions will be granted only for extraordinarily compelling reasons.

(4) **Automatic Extensions for Timely Filed Motions.** If a motion is filed in accordance with the requirements of subparagraphs (1) and (2) above and the court does not act on the motion by the end of the second business day before the filing deadline, the time for filing the pleading is automatically extended until the court rules on the motion. If the motion is denied by the court under these circumstances, the time for filing will be extended automatically for the following periods after the date of the order denying the motion: for responsive pleadings that must be filed within 3 calendar days of the pleadings to which they respond, 4 calendar days; and for all other pleadings, 6 calendar days. If a timely filed motion to exceed length limitations is not acted upon by the filing date for the document, the overlong document may be filed; if the motion is subsequently denied, the movant will be given a short period in which to file a document that conforms to the rules. This rule does not apply to the filing of briefs. See Circuit Rule 28.

See also Circuit Rule 25 (Filing and Service), and Circuit Rule 47.1 (Matters Under Seal).

Rule 28. Briefs

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

(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 references to the pages of 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 applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts 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 information establishing the court of appeals' jurisdiction 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, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in 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 parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or 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)-(9) and (11), except that none of 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 permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original 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 controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved.]

(h) [Reserved.]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference 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 the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Circuit Rule 28

Briefs

(a) Contents of Briefs: Additional Requirements. Briefs for an appellant/petitioner and an appellee/respondent, and briefs for an intervenor and an amicus curiae, must contain the following in addition to the items required by FRAP 28:

(1) **Certificate.** Immediately inside the cover and preceding the table of contents, a certificate titled "Certificate as to Parties, Rulings, and Related Cases," which contains a separate paragraph or paragraphs, with the appropriate heading, corresponding to, and in the same order as, each of the subparagraphs below.

(A) **Parties and Amici.** The appellant or petitioner must furnish a list of all parties, intervenors, and amici who have appeared before the district court, and all persons who are parties, intervenors, or amici in this court. An appellee or respondent, intervenor, or amicus may omit from its certificate those persons who were listed by the appellant or petitioner, but must state: "[Except for the following,] all parties, intervenors, and amici appearing [before the district court and] in this court are listed in the Brief for _____."

Any party or amicus curiae that is a corporation, association, joint venture, partnership, syndicate, or other similar entity must make the disclosure required by Circuit Rule 26.1.

(B) **Rulings Under Review.** Appropriate references must be made to each ruling at issue in this court, including the date, the name of the district court judge (if any), the place in the appendix where the ruling can be found, and any official citation in the case of a district court or Tax Court opinion, the Federal Register citation and/or other citation in the case of an agency decision, or a statement that no such citation exists. Such

references need not be included if they are contained in a brief previously filed by another person, but the certificate must state: "[Except for the following,] references to the rulings at issue appear in the Brief for ____."

(C) **Related Cases.** A statement indicating whether the case on review was previously before this court or any other court and, if so, the name and number of such prior case. The statement must also contain similar information for any other related cases currently pending in this court or in any other court of which counsel is aware. For purposes of this rule, the phrase "any other court" means any other United States court of appeals or any other court (whether federal or local) in the District of Columbia. The phrase "any other related cases" means any case involving substantially the same parties and the same or similar issues. If there are no related cases, the certificate must so state.

(2) **Principal Authorities.** In the left-hand margin of the table of authorities in all briefs, an asterisk must be placed next to those authorities on which the brief principally relies, together with a notation at the bottom of the first page of the table stating: "Authorities upon which we chiefly rely are marked with asterisks." If there are no such authorities, the notation must so state. The table of authorities must identify each page of the brief on which the authority is cited; *passim* or similar terms may not be used.

(3) **Glossary.** All briefs containing abbreviations, including acronyms, must provide a "Glossary" defining each such abbreviation on a page immediately following the table of authorities. Abbreviations that are part of common usage need not be defined.

(4) **Statements of Jurisdiction and the Case.** The brief of the appellant or petitioner must set forth the jurisdictional statement required by FRAP 28(a)(4). Any party, intervenor, or amicus curiae may include in its brief a counter statement regarding jurisdiction. The parties need not include in their briefs a statement of the case.

(5) **Statutes and Regulations.** Pertinent statutes and regulations must be set forth either in the body of the brief following the statement of the issues presented for review or in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case a statement must appear in the body of the brief referencing the addendum. If the statutes and regulations are included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the pertinent statutes and regulations are contained in a brief previously submitted by another party, they need not be repeated but, if they are not repeated, a statement must appear under this heading as follows: "[Except for the following,] all applicable statutes, etc., are contained in the Brief for _____."

(6) **Summary of Argument.** In each brief, including a reply brief, a summary of argument must immediately precede the argument; the summary of argument must contain a succinct, clear statement of the arguments made in the body of the brief and not merely repeat the argument headings.

(7) **Reference to Oral Argument and Submission Without Oral Argument.** If a case has been scheduled for oral argument, has already been argued, or is being submitted without oral argument, a brief must so state in capital letters at the top of the first page and, where applicable, include the date of the argument.

(b) Citation to Published Opinion and to Statute. Citations to decisions of this court must be to the Federal Reporter. Dual or parallel citation of cases is not required. Citations of state court decisions included in the National Reporter System must be to that system in both the text and the table of authorities. Citations to all federal statutes, including those statutes applicable to the District of Columbia, must refer to the current official code or its supplement, or if there is no current official code, to a current unofficial code or its supplement. Citation to the official session laws is not required unless there is no code citation.

(c) Citation to Unpublished Dispositions.

(1) **Unpublished Dispositions of this Court.**

(A) **Unpublished dispositions entered before January 1, 2002.** Unpublished orders or judgments of this court, including explanatory memoranda and sealed opinions, entered before January 1, 2002, are not to be cited as precedent. Counsel may refer to an unpublished disposition, however, when the binding (i.e., the res judicata or law of the case) or preclusive effect of the disposition, rather than its quality as precedent, is relevant.

(B) **Unpublished dispositions entered on or after January 1, 2002.** All unpublished orders or judgments of this court, including explanatory memoranda (but not including sealed opinions), entered on or after January 1, 2002, may be cited as precedent. Counsel should review the criteria governing published and unpublished opinions in Circuit Rule 36, in connection with reliance upon unpublished dispositions of this court.

(C) **Applicability to pending cases.** The provisions of Rule 28(c)(1)(B) apply to any appeal or other proceeding pending in this court on or after January 1, 2002.

(2) **Unpublished Opinions of Other Courts.** Unpublished dispositions of other courts of appeals and district courts may be cited when the binding (i.e., the res judicata or law of the case) or preclusive effect of the disposition is relevant. Otherwise, unpublished opinions by other courts of appeals may be cited only under the circumstances and for the purposes permitted by the court issuing the disposition, and unpublished dispositions of district courts may not be cited.

(3) **Procedures Governing Citation to Unpublished Dispositions**. Counsel must include in an appropriately labeled addendum to the brief a copy of each unpublished disposition cited in the brief. The addendum may be bound together with the brief, but separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the addendum is bound separately, it must be filed and served concurrently with, and in the same number of copies as, the brief itself.

(d) References to Authorities and Other Material. When citing to the record, authorities, or any other material, citations must refer to specific pages of the source; *passim* or similar terms may not be used.

(e) Length of Briefs. The length of briefs is governed by FRAP 28.1, 32(a)(7), and Circuit Rule 32(a).

(f) Briefs for Intervenors. The rules stated below apply with respect to the brief for an intervenor in this court. For purposes of this rule, an intervenor is an interested person who has sought and obtained the court's leave to participate in an already instituted proceeding.

(1) Except by permission or direction of the court, the brief must conform to the brief lengths set out in Circuit Rule 32(a)(3).

(2) The brief must avoid repetition of facts or legal arguments made in the principal (appellant/petitioner or appellee/respondent) brief, and focus on points not made or adequately elaborated upon in the principal brief, although relevant to the issues before this court.

(3) Except as otherwise directed by the court, the brief must be filed in accordance with the time limitations described in FRAP 29.

(4) Intervenors on the same side must join in a single brief to the extent practicable. This requirement does not apply to a governmental entity. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) Any separate brief for an intervenor must contain a certificate of counsel plainly stating why the separate brief is necessary. Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.

(5) A reply brief may be filed for an intervenor on the side of appellant or petitioner at the time the appellant's or petitioner's reply brief is due.

(g) Request to Exceed the Limits on the Length of Briefs and for Extension of Time for Filing.

(1) The court disfavors motions to exceed limits on the length of briefs, and motions to extend the time for filing briefs; such motions will be granted only for extraordinarily compelling reasons.

(2) A motion to exceed the limits on length of briefs or to extend the filing time for a brief must be filed at least 10 calendar days before the main briefs are due to be filed, and at least 5 calendar days before a reply brief is due to be filed.

(3) Before filing a motion to exceed the limits on length of briefs, or to extend the time for filing, counsel for the moving party must attempt to obtain the consent of other counsel. If consent is not obtained, counsel for the moving party must attempt to inquire whether an opposition or other form of response will be filed. In the opening paragraph of any such motion, counsel must recite the position taken by other counsel in response to these inquiries, or the efforts made to obtain responses.

If other counsel have stated an intention to file an opposition or other response, or have not been reached after reasonable effort, counsel for the moving party must serve the motion by hand, or if such service is not

feasible, by giving other counsel telephone notice of the filing and serving the motion by the most expeditious form of service. If counsel is unable to effect service by hand or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

(4) Submission of a motion to exceed the limits on length of briefs or extend the filing time for a brief does not toll the time for compliance with filing requirements. Movants will be expected to meet all filing requirements in the absence of an order granting a waiver.

(h) Citation of Supplemental Authorities. After briefing has been completed, a party may file an original and 4 copies of a letter pursuant to FRAP 28(j).

See also Circuit Rule 28.1 (Cross-Appeals), Circuit Rule 29 (Brief of an Amicus Curiae), and Circuit Rule 47.1 (Matters Under Seal).

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(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 the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations 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. That brief must comply with Rule 28(a).

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need 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 principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;
(B) the statement of the issues;
(C) the statement of the case;
(D) the statement of the 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. That brief must comply with Rule 28(a)(2)-(3) and (11) and must be limited to the issues presented by the cross-appeal.

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

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by 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 must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's 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 specified in Rule 28.1(e)(2)(A).

(3) **Certificate of Compliance.** A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

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

(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 brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.

Circuit Rule 28.1

Cross-Appeals

(a) Designation of Appellant. When, pursuant to FRAP 28.1, the parties agree that a party other than the first one to file a notice of appeal will be deemed the appellant for purposes of this rule, they must so notify the court. In a civil case, this notice must be given at the time the docketing statement is filed. In a criminal case, the parties must so notify the court at the time of the filing of the final transcript status report.

(b) Contents of Briefs. Briefs in cross-appeals must comply with all applicable provisions of FRAP 28, FRAP 28.1, and D.C. Cir. Rule 28.

(c) Time to Serve and File a Brief. Parties must serve and file their briefs in accordance with the scheduling order issued by the court.

Rule 28.1

Rule 29. Brief of an Amicus Curiae

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file 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 state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not 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 references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of 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 the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying 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.

Circuit Rule 29

Brief of an Amicus Curiae

The rules stated below apply with respect to the brief for an amicus curiae not appointed by the court. A brief for an amicus curiae appointed by the court is governed by the provisions of Circuit Rule 28.

(a) Contents of Brief. The brief must avoid repetition of facts or legal arguments made in the principal (appellant/petitioner or appellee/respondent) brief and focus on points not made or adequately elaborated upon in the principal brief, although relevant to the issues before this court.

(b) Leave to File. Any individual or non-governmental entity seeking leave to participate as amicus curiae must, within 60 days of the docketing of the case in this court, file either a written representation that all parties consent to such participation, or, in the absence of such consent, a motion for leave to participate as amicus curiae. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) The court may extend this time on a showing of good cause. A governmental entity planning to participate as amicus curiae must, within the same 60 days, or as promptly thereafter as possible, submit a notice of intent to file an amicus brief. A motion for leave to participate as amicus curiae, filed more than 60 days after the appeal or petition has been docketed, may be granted by the clerk as long as the motion is unopposed and as long as the brief will be filed within the time allowed by FRAP 29(e) and this rule. Any disclosure statement required by Circuit Rule 26.1 must accompany a written representation of consent to participate as amicus curiae or a motion for leave to participate as amicus.

(c) Timely Filing. Generally, a brief for amicus curiae will be due as set by the briefing order in each case. In the absence of provision for such a brief in the order, the brief must be filed in accordance with the time limitations described in FRAP 29(e).

(d) Single Brief. Amici curiae on the same side must join in a single brief to the extent practicable. This requirement does not apply to a governmental entity. Any separate brief for an amicus curiae must contain a certificate of counsel plainly stating why the separate brief is necessary. Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.

See Circuit Rule 28(e) (Briefs for Intervenors), and Circuit Rule 34(e) (Participation in Oral Argument by Amici Curiae).

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 though not included in the appendix.

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(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 the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is 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 the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including 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 by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a 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. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places 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 brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. 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 a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

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

Circuit Rule 30

Appendix to the Briefs

(a) Filing and Form. Except as provided in Circuit Rules 9 or 24, an appendix must be prepared as prescribed by FRAP 30. Appellant or petitioner must file 10 copies of the appendix with the court, and serve one copy on counsel for each separately represented party, at the time the brief for appellant or petitioner is filed, unless filing is to be deferred pursuant to FRAP 30(c). The appendix must be reproduced on light paper by any duplicating or copying process capable of producing a clear black image; such duplication may be made on both sides of each page.

(b) Record Items to Be Included. The appendix must contain a copy of relevant portions of all pleadings, transcripts, and exhibits that are cited in the briefs. Counsel must not, however, burden the appendix with material of excessive length or items that do not bear directly on the issues raised on appeal. Costs will not be awarded for unnecessary reproduction of items such as discovery materials, memoranda, pretrial briefs, or interlocutory motions or rulings that lack direct relevance to the appeal; appropriate sanctions will be imposed, after notice and opportunity to respond, if the court finds counsel to have been unreasonable in including such material. Any portion of the record, whether or not included in an appendix, may be relied upon by the parties and by the court.

(c) Deferred Appendix Option. If all parties consent, they may utilize the deferred appendix option described at FRAP 30(c).

(d) Motion to Dispense With Appendix. For good cause shown, appellant or petitioner may be excused from the requirement of producing an appendix or any part thereof.

(e) Supplementing the Appendix. If anything material to the appeal or petition is omitted from the appendix, the clerk, on the duly served and filed written request of any party, may allow the appendix to be supplemented.

See also Circuit Rule 47.1 (Matters Under Seal).

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 service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, 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 proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

Circuit Rule 31

Serving and Filing Briefs

(a) Time to Serve and File a Brief. Parties must serve and file their briefs in accordance with the scheduling order issued by the court.

(b) Number of Copies. Except for unrepresented persons proceeding in forma pauperis, the original and 14 copies of every brief must be filed. When the deferred appendix method is used, only 7 copies of the initial briefs must be filed, followed by the original and 14 copies in final form. An unrepresented person proceeding in forma pauperis must file with the clerk one original brief, and the clerk will duplicate the necessary copies.

See also Circuit Rule 47.1(d)(1) (Matters Under Seal).

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) **Reproduction.**

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and 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 good copy of the original; 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 blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must 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, agency, or board below;

(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 the brief is filed.

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

(4) **Paper Size, Line Spacing, and Margins.** The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear 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 and captions. 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 for emphasis. Case names must be italicized or underlined.

(7) **Length.**

(A) **Page limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (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 Rule 32(a)(7)(B)(i).

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

(C) **Certificate of compliance.**

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of 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 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).

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

(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 printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 ½ 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 hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). 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 party filing the paper or, if the party is represented, by one of the party's attorneys.

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

Circuit Rule 32

Form of Briefs, Appendices, and Other Papers

(a) Form of Briefs. Except as provided below, the form of briefs is governed by FRAP 28.1 and 32(a).

(1) **Typeface.** If a brief uses a proportionally spaced face as allowed by FRAP 32(a)(5), the court will accept a proportionally spaced face of 11-point or larger.

(2) **Length of Briefs.** In calculating the number of words and lines that do not count toward the word and line limitations, the certificate required by Circuit Rule 28(a)(1) and the glossary may be excluded, in addition to the items listed in FRAP 32(a)(7)(B)(iii).

(3) **Length of Briefs for Intervenors.**

(A) **Page limitation.** A principal brief for an intervenor may not exceed 19 pages, and a reply brief 9 pages, unless it complies with Circuit Rule 32(a)(3)(B).

(B) **Type-volume limitation.**

(i) A principal brief is acceptable if:

- it contains no more than 8,750 words; or
- it uses a monospaced face and contains no more than 813 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Circuit Rule 32(a)(3)(B)(i).

(C) **Certificate.** If a type-volume limitation is used, the brief must contain the certificate of compliance required by FRAP 32(a)(7)(C).

(4) **Length of Briefs for Amici Curiae not Appointed by the Court.** See FRAP 29(d).

(b) Pleading by Letter. Except as prescribed by FRAP 28(j), parties, other than pro se litigants proceeding in forma pauperis, may not plead by letter.

(c) Nonconforming Papers. If the court receives any submission that does not conform substantially to the requirements of the FRAP or these rules, the clerk will promptly notify the person making the submission and direct that person to cure the defect or submit an appropriate motion. See FRAP 25(a)(4).

See also Circuit Rule 28 (Briefs).

Rule 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other 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 authority as feasible to settle 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

Appeal Conferences

There is no corresponding Circuit Rule.

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 examined the briefs and 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 decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer 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 must not read at length 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 or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear 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, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

Circuit Rule 34

Oral Argument

(a) Substance and Style of Oral Argument. Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs. This court will not entertain any oral argument that is read from a prepared text.

(b) Time Allowed for Argument. Counsel will be afforded such time for oral argument as the court may provide and will be so advised by order. Requests for enlargement of time may be made by motion filed reasonably in advance of the date fixed for the argument.

(c) Notice by Counsel. No less than 5 days before the date of scheduled argument, the court must be notified of the names of counsel who will argue. Not more than 2 counsel may be heard for each side except by leave of the court, granted on motion for good cause shown. Such requests are not favored. In cases in which 15 minutes or less per side is allotted for argument, only one counsel may be heard for each side except by leave of the court, granted on motion for good cause shown.

(d) Apportionment of Time Among Parties. In the absence of an order of this court, and subject to the provision as to number of counsel stated in paragraph (c), counsel for the parties on each side of a case, including counsel for any intervenor, may agree on the apportionment of the time allotted. In the event of a failure to agree, the court will allocate the time upon motion duly filed and served. Unless otherwise ordered, counsel for an intervenor will be permitted to argue only to the extent that counsel for the party whose side the intervenor supports is willing to share allotted time.

(e) Participation in Oral Argument by Amici Curiae. An amicus curiae, other than one appointed by the court, will not be permitted to participate in the oral argument without leave of the court granted for extraordinary reasons on motion, except that counsel for the party supported by amicus curiae may consent to such participation subject to the provision as to number of counsel stated in paragraph (c) above. A motion by amicus curiae seeking leave to participate in oral argument must be filed at least 14 days prior to the date oral argument is scheduled.

(f) Failure to File Brief. A party who fails to file a brief will not be heard at the time of oral argument except by permission of the court.

(g) Continuance of Oral Argument. When a case has been set for oral argument, it may not be continued by stipulation of the parties, but only by order of the court upon a motion evidencing extraordinary cause for a continuance.

(h) Consolidation. Where 2 or more cases are consolidated under FRAP 3(b) or for other reason by this court, the consolidated cases will be considered as one case for the purpose of this rule unless the court directs otherwise.

(i) Exhibits and Handouts. If counsel intends to use exhibits during argument or to hand out prepared materials, notice of this intent must be provided to the court and all other counsel presenting argument by letter received not less than 5 days before the date of the argument. The letter must set forth justification for the use of the exhibits or handouts.

(j) Disposition Without Oral Argument.

(1) **Procedure.** Whenever the court, on its own motion, or on the motion of a party or stipulation of the parties, concludes that oral argument is not needed, the court may, after causing notice of that determination to be given to the parties by the clerk, proceed to dispose of the case without oral argument.

(2) **Reconsideration.** Motions for reconsideration of a decision to dispose of a case without oral argument may be made within 10 calendar days of the date of the order advising counsel of this court's determination that the case is to be decided without oral argument. Such motions are disfavored.

Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en 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 decisions; or

(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 rehearing en banc.

(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 court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

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

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding 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 filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially 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 within the time prescribed by Rule 40 for filing a petition for rehearing.

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

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

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

Circuit Rule 35

Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc

(a) Time Within Which to File. A petition for panel rehearing or a petition for rehearing en banc, in a case in which neither the United States nor an agency or officer thereof is a party, must be filed within 30 days after entry of judgment or other form of decision. In all cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek panel rehearing or rehearing en banc is 45 days after entry of judgment or other form of decision. The time for filing a petition for panel rehearing or rehearing en banc will not be extended except for good cause shown.

(b) Number of Copies and Length. An original and 4 copies of a petition for panel rehearing, and an original and 19 copies of a petition for hearing or rehearing en banc must be filed. Such petitions must conform to the page limits of FRAP 35. This court disfavors motions to exceed page limits, and such motions will be granted only for extraordinarily compelling reasons.

(c) Panel Opinion, Certificate of Parties, and Disclosure Statement to be Attached. A copy of the opinion of the panel from which rehearing is being sought; a certificate of parties and amici, as described in Circuit Rule 28(a)(1)(A); and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the petition. Any required disclosure statement must also be attached to any response to a petition.

(d) Disposition of Petition. A petition for rehearing ordinarily will not be granted, nor will an opinion or judgment be modified in any significant respect in response to a petition for rehearing, in the absence of a request by the court for a response to the petition.

A petition for panel rehearing will not be acted upon until action is ready to be taken on any timely petition for rehearing en banc. If rehearing en banc is granted, the panel's judgment, but ordinarily not its opinion, will be vacated, and the petition for panel rehearing may be acted upon without awaiting final termination of the en banc proceeding. Upon termination of the en banc proceeding, a new judgment will be issued. If the en banc court divides evenly, a new judgment affirming the decision under review will be issued.

(e) Filing Copies of Brief. When a petition for rehearing is granted, the court will issue an appropriate order if further briefing is needed or if more copies of the original briefs are required.

(f) Brief of an Amicus Curiae. No amicus curiae brief in response to or in support of a petition for rehearing en banc will be received by the clerk except by invitation of the court.

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 enter the judgment:

(1) after receiving the court's opinion—but if settlement of the judgment's form is required, after final settlement; or

(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 of the opinion—or the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

Circuit Rule 36

Decisions of the Court; Opinions and Abbreviated Dispositions

(a) Opinions of the Court.

(1) **Policy.** It is the policy of this court to publish opinions and explanatory memoranda that have general public interest.

(2) **Published Opinions.** An opinion, memorandum, or other statement explaining the basis for the court's action in issuing an order or judgment will be published if it meets one or more of the following criteria:

(A) with regard to a substantial issue it resolves, it is a case of first impression or the first case to present the issue in this court;

(B) it alters, modifies, or significantly clarifies a rule of law previously announced by the court;

(C) it calls attention to an existing rule of law that appears to have been generally overlooked;

(D) it criticizes or questions existing law;

(E) it resolves an apparent conflict in decisions within the circuit or creates a conflict with another circuit;

(F) it reverses a published agency or district court decision, or affirms a decision of the district court upon grounds different from those set forth in the district court's published opinion;

(G) it warrants publication in light of other factors that give it general public interest.

All published opinions of the court, prior to issuance, will be circulated to all judges on the court; printed prior to release, unless otherwise ordered; and rendered by being filed with the clerk.

(b) Abbreviated Dispositions. The court may, while according full consideration to the issues, dispense with published opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, e.g., affirmance by order of a decision or judgment of a court or administrative agency, a judgment of affirmance or reversal, containing a notation of precedents or accompanied by a brief memorandum. If the parties have agreed to such disposition, they may so state in their briefs or may so stipulate at any time prior to decision. In any such case the court will promptly issue a judgment unless compelling reasons dictate otherwise.

(c) Unpublished Opinions.

(1) An opinion, memorandum, or other statement explaining the basis for this court's action in issuing an order or judgment under subsection (b) above, which does not satisfy any of the criteria for publication set out in subsection (a) above, will nonetheless be circulated to all judges on the court prior to issuance. A copy of each such unpublished opinion, memorandum, or statement will be retained as part of the case file in the clerk's office and be publicly available there on the same basis as any published opinion.

(2) While unpublished orders and judgments may be cited to the court in accordance with Circuit Rule 28(c)(1)(B), a panel's decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition.

(d) Motion to Publish. Any person may, by motion made within 30 days after judgment or, if a timely petition for rehearing is made, within 30 days after action thereon, request that an unpublished opinion be published. Motions filed out of time will not be considered unless good cause is shown. Motions for publication must be based upon one or more of the criteria listed in subsection (a). Such motions are not favored and will be granted only for compelling reasons.

Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

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

Circuit Rule 37

Interest on Judgment

There is no corresponding Circuit Rule.

Rule 38. Frivolous Appeal—Damages and Costs

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

Circuit Rule 38

Sanctions

When any party to a proceeding before this court or any attorney practicing before the court fails to comply with the FRAP, these rules, or an order of this court, or takes an appeal or files a petition or motion that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay, the court may, on its own motion, or on motion of a party, impose appropriate sanctions on the offending party, the attorney, or both. Sanctions include dismissal for failure to prosecute; imposition of costs, expenses, and attorneys' fees; and disciplinary proceedings. See 28 U.S.C. §§ 1912, 1927.

Rule 39. Costs

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

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

(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 only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(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, with proof of service, 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 extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—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

(a) Allowable Items. Costs will be allowed for the docketing fee and for the cost of reproducing the number of copies of briefs and appendices to be filed with the court or served on parties, intervenors, and amici curiae, plus 3 copies for the prevailing party. The costs of reproducing the required copies of briefs and appendices will be taxed at actual cost or at a rate periodically set by the clerk to reflect the per page cost for the most economical means of reproduction available in the Washington metropolitan area, whichever is less. Charges incurred for covers and fasteners may also be claimed, at actual cost not to exceed a rate similarly determined by the clerk. The rates set by the clerk will be published by posting in the clerk's office and on the court's web site, and publication in The Daily Washington Law Reporter.

(b) Procedure for Requesting Taxation of Costs. Forms furnished by the clerk's office, or facsimiles thereof, must be used in requesting taxation of costs. Parties submitting bills of costs that are not itemized as required by the clerk or not presented on clerk's office forms or reasonable facsimiles thereof will be directed to provide a conforming request.

(c) No Costs Taxed for Briefs for Amici or Intervenors. No taxation of costs for briefs for intervenors or amici curiae or separate replies thereto will be assessed unless allowed by the court on motion.

(d) Costs of Producing Separate Briefs and Appendices Where Record is Sealed. The costs under Circuit Rule 47.1 of preparing 2 sets of briefs, and/or 2 segments of appendices, may be assessed if such costs are otherwise allowable.

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 may 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, the time within which any party may seek rehearing is 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 believes the court has 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. But ordinarily rehearing will not 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 served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

Circuit Rule 40

Petition for Panel Rehearing

See Circuit Rule 35.

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

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate.

(1) **On Petition for Rehearing or Motion.** The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) **Pending Petition for Certiorari.**

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

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

Circuit Rule 41

Issuance of Mandate; Stay of Mandate; Remand

(a) Mandate.

(1) **Time for Issuance.** While retaining discretion to direct immediate issuance of its mandate in an appropriate case, the court ordinarily will include as part of its disposition an instruction that the clerk withhold issuance of the mandate until the expiration of the time for filing a petition for rehearing or a petition for rehearing en banc and, if such petition is timely filed, until 7 calendar days after disposition thereof. Such an instruction is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

(2) **Stay of Mandate.** A motion for a stay of the issuance of mandate will not be granted unless the motion sets forth facts showing good cause for the relief sought. If the motion is granted, the stay ordinarily will not extend beyond 90 days from the date that the mandate otherwise would have issued. If a timely motion to stay issuance of the mandate has been filed, the mandate will not issue while the motion is pending. If a party obtains a stay of issuance of the mandate, that party must inform the clerk of this court whether a petition for a writ of certiorari has been filed with the Supreme Court within the period of the stay.

The clerk may grant an unopposed motion to stay issuance of the mandate for a period not longer than 90 days from the date that the mandate otherwise would have issued. No motion to stay issuance of the mandate will be granted by the clerk until after the response time has passed, unless the moving party represents in the motion that all other parties either consent to the stay or do not object thereto. The clerk may submit any motion governed by this subparagraph to the panel of the court that decided the case.

(3) **Writs.** No mandate will issue in connection with an order granting or denying a writ of mandamus or other special writ, but the order or judgment granting or denying the relief sought will become effective automatically 21 days after issuance in the absence of an order or other special direction of this court to the contrary.

(4) **Mandate Recall if Rehearing En Banc Granted.** When rehearing en banc is granted, the court will recall the mandate if it has issued.

(b) Remand. If the record in any case is remanded to the district court or to an agency, this court retains jurisdiction over the case. If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the proceedings conducted on remand.

Rule 42. Voluntary Dismissal

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

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Circuit Rule 42

Voluntary Dismissal

See Circuit Rule 27(g) (Motions, Dispositive Motions).

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 a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct 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 attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) **Before Notice of Appeal Is Filed—Potential Appellee.** If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the 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 an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

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

Circuit Rule 43

Substitution of Parties

There is no corresponding Circuit Rule.

Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute. If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

Circuit Rule 44

Case Involving a Constitutional Question When the United States or the Relevant State Is Not a Party

There is no corresponding Circuit Rule.

Rule 45. Clerk's Duties

(a) General Provisions.

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

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

(b) Records.

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

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

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

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

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

Circuit Rule 45

Clerk's Duties; Fees for Services

(a) Attendance at Sessions. The clerk or a deputy of the clerk will attend in person the sessions of this court.

(b) Office Hours. The clerk's office will be open for the transaction of business from 9:00 A.M. until 4:00 P.M. daily, except Saturdays, Sundays, and legal holidays, and the court is always open for the receipt of emergency papers and the transaction of emergency business.

(c) Fees for Services. Fees, as prescribed by the Judicial Conference of the United States, are to be charged for the following services performed by the clerk, except that no fees are to be charged for services rendered on behalf of the United States. The schedule of currently applicable fees will be posted on the court's web site and distributed periodically as an appendix to these rules.

(1) Docketing a case or docketing any other proceeding. A separate fee must be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee will not be charged for the docketing of a petition for permission to appeal under FRAP 5, unless the appeal is allowed.

(2) Search of the records of this court and certifying the results.

(3) Certifying any document or paper, whether certification is made directly on the document or by separate instrument.

(4) Reproducing any record or paper.

(5) Comparing with the original thereof any copy of any transcript of record, entry, or paper, when such copy is furnished by any person requesting certification.

(d) Printed Copies of Opinions. For each printed copy of the decision in a case, including all separate and dissenting opinions, the clerk will charge such sum as the court may from time to time direct, and copies may be supplied without charge or at such reduced charge as the court may from time to time designate. Each party in a case will receive 2 copies of the decision without charge.

(e) Other Fees Not Authorized. No fees for services other than those authorized pursuant to law may be charged.

See also Circuit Rule 1 (Scope of Rules; General Provisions), and Circuit Rule 25 (Filing and Service).

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 is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, 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 that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

> "I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of 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 will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(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, why 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 requested, or after 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 reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

Circuit Rule 46

Attorneys; Appearance by Law Student

(a) Appearances. Except as otherwise provided by law, the docketing statement and all papers filed thereafter in this court must be signed by at least one member of the bar of this court, and only members of the bar of this court may present oral argument. However, on motion for good cause shown, the court may allow argument to be presented in a case by an attorney who is not a member of the bar of this court.

(b) Admission. Each applicant for admission to the bar of this court must file with the clerk an application for admission on a form approved by the court and furnished by the clerk and append an original certificate, executed not more than 60 days prior to the date of the application, from the court upon which the application is based, evidencing the applicant's admission to practice before that court and current good standing. Upon the court's grant of an application for admission, the clerk will mail to the applicant a certificate of admission. Applicants for admission to the bar of this court need not appear in person for the purpose of taking the oath or affirmation of admission. The fee for admission will be set periodically by order of the court and must be tendered with the application.

(c) Change of Address. Changes in the address of counsel and pro se litigants must be immediately reported to the clerk in writing.

(d) Change of Name of Attorney After Admission. Any member of the bar of this court may file with the clerk a certificate that he or she is engaged in practice under a new name. The clerk will note such change of name on the roll of attorneys and on the records of this court.

(e) Disbarment and Suspension. For provisions governing the discipline of members of the bar of this court, see the court's Rules of Disciplinary Enforcement.

(f) Committee on Admissions and Grievances. For provisions governing the Committee on Admissions and Grievances and the referral of matters to that committee, see the court's Rules of Disciplinary Enforcement.

(g) Appearance by Law Student.

(1) **Entry of Appearance on Written Consent of Party.** An eligible law student may enter an appearance in this court on behalf of any party including the United States or a governmental agency, provided that the party on whose behalf the student appears has consented thereto in writing, and that a supervising lawyer has also indicated in writing approval of that appearance. In each case, the written consent and approval must be filed with the clerk.

(2) **Appearance on Briefs and Participation in Oral Argument.** A law student who has entered an appearance in a case pursuant to paragraph (1) may appear on the brief, provided the supervising attorney also appears on the brief; may participate in oral argument, provided the supervising attorney is present in court; and may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(3) **Eligibility.** In order to be eligible to make an appearance pursuant to this rule, the law student must:

(A) be duly enrolled in a law school accredited by the American Bar Association;

(B) have completed legal studies amounting to at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;

(C) be enrolled in or have passed a clinical program of an accredited law school for credit, held under the direction of a faculty member of such law school, in which a law student obtains practical experience by participating in cases and matters pending before the courts;

(D) be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

(4) **Students Not to Be Compensated by Parties.** A law student appearing pursuant to this rule may neither ask for nor receive any compensation or remuneration of any kind for services from any party on whose behalf the services are rendered; this rule does not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor does it prevent any agency from making such charges for its services as may otherwise be proper.

(5) **Withdrawal or Termination of Certification.** The certification of a student by the law school dean must be filed with the clerk of this court and, unless it is sooner withdrawn, will remain in effect for 18 months, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination, or who is admitted to the bar without taking an examination, the certification will continue in effect until the date the student is admitted to the bar. The certification may be withdrawn by the dean at any time by mailing a notice to that effect to the student and to the clerk of this court. It is not necessary that the notice state the cause for withdrawal, unless requested by the student. The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(6) **Supervising Attorney.** An attorney under whose supervision an eligible law student undertakes any activity permitted by this rule must:

(A) be a member in good standing of the bar of this court;

(B) assume responsibility for the quality of the student's work;

(C) guide and assist the student in preparation to the extent necessary or appropriate under the circumstances.

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 giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure 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 party to lose rights because of a nonwillful failure to comply with the requirement.

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

Circuit Rule 47

Local Rules by Courts of Appeals

(a) Amendment—Notice and Opportunity for Comment. These rules may be amended by the court as provided herein. The court will give notice and opportunity for comment as provided in this rule with respect to any proposed changes in these rules except where emergency or other conditions render it impractical or unnecessary.

(b) Proposal for Change. Any person may propose a change in these rules by submitting a written suggestion to the court or to its Advisory Committee on Procedures.

(c) Notice of Proposed Amendment by Court. Upon consideration of a proposal from any person or from the Advisory Committee on Procedures, or upon its own motion, the court will, whenever necessary or appropriate, give notice of a proposed change in these rules. Such notice will consist of the text of the

proposed change, or a description of the subjects and issues involved, together with a brief explanation of the purpose of the proposal. The notice will be made public as follows:

(1) by posting a copy on the bulletin board next to the public counter in the clerk's office and on the court's website;

(2) by delivering a copy to The Daily Washington Law Reporter for publication;

(3) by sending a copy to the chair of the Advisory Committee on Procedures;

(4) by sending copies to:

(A) the president of the District of Columbia Bar;

(B) the president of the Bar Association of the District of Columbia;

(C) the president of the Washington Bar Association;

(D) the president of the Women's Bar Association;

(E) the presidents of any nationwide bar associations, local chapters of nationwide bar associations, or other voluntary groups of lawyers or citizens that notify the clerk of this court in writing that they wish to receive copies of these notices.

(d) Comments by Public and Advisory Committee on Procedures. The notice will specify a period of not less than 45 days from the date of its publication in The Daily Washington Law Reporter within which any person may submit written comments on the proposed changes to the Advisory Committee on Procedures. That committee must give consideration to all written comments timely received and within 45 days from the close of the comment period transmit to this court its recommendations with respect to the proposal and the written comments it has received.

(e) Final Action by Court. Following receipt of the committee's recommendation, this court may determine that the proposed change should be adopted, that it should be amended and adopted, or that it should be withdrawn. The court will publish notice of its final action respecting the proposal, including the effective date of any change in these rules, in the manner provided in paragraph (c).

(f) Publication of Amendments Made Without Opportunity for Comment. If an amendment to these rules is made without notice or opportunity for comment, it will be made public in the manner provided in paragraph (c). Such publication will state the effective date of the amendment, which may not be earlier than the date of publication.

Circuit Rule 47.1

Matters Under Seal

(a) Case with Record Under Seal. Any portion of the record that was placed under seal in the district court or before an agency remains under seal in this court unless otherwise ordered. Parties and their counsel are responsible for assuring that materials under seal remain under seal and are not publicly disclosed.

(b) Agreement to Unseal. In any case in which the record in the district court or before an agency is under seal in whole or in part and a notice of appeal or petition for review has been filed, each party must promptly review the record to determine whether any portions of the record under seal need to remain under seal on appeal. If a party determines that some portion should be unsealed, that party must seek an agreement on the unsealing. Such agreement must be presented promptly to the district court or agency for its consideration and issuance of an appropriate order.

(c) Motion to Unseal. A party or any other interested person may move at any time to unseal any portion of the record in this court, including confidential briefs or appendices filed under this rule. On appeals from the district court, the motion will ordinarily be referred to the district court, and, if necessary, the record remanded for that purpose, but the court may, when the interests of justice require, decide that motion, and, if unsealing is ordered, remand the record for unsealing. Unless otherwise ordered, the pendency of a motion under this rule will not delay the filing of any brief under any scheduling order.

(d) Briefs Containing Material Under Seal.

(1) **Two Sets of Briefs.** If a party deems it necessary to refer in a brief to material under seal, 2 sets of briefs must be filed which are identical except for references to sealed materials. One set of briefs must bear the legend "Under Seal" on the cover, and each page containing sealed material must bear the legend "Under Seal" at the top of the page. The second set of briefs must bear the legend "Public Copy—Sealed Material Deleted" on the cover, and each page from which material under seal has been deleted must bear a legend stating "Material Under Seal Deleted" at the top of the page. The party must file the original and 6 copies of the sealed brief and the original and 14 copies of the public brief. Both sets of briefs must comply with the remainder of these rules, including Circuit Rule 32(a) on length of briefs.

(2) **Service.** Each party must be served with 2 copies of the public brief and 2 copies of the brief under seal, if the party is entitled to receive the material under seal. See, e.g., Fed. R. Crim. P. 6(e).

(3) **Non-availability to the Public.** Briefs filed with the court under seal are available only to authorized court personnel and will not be made available to the public.

(e) Appendices Containing Matters Under Seal.

(1) **Sealed Supplement to the Appendix; Number of Copies.** If a party deems it necessary to include material under seal in an appendix, the appendix must be filed in 2 segments. One segment must contain all sealed material and bear the legend "Supplement—Under Seal" on the cover, and each page of that supplement containing sealed material must bear the legend "Under Seal" at the top of the page. The second appendix segment must bear the legend "Public Appendix—Sealed Material in Separate Supplement" on the cover; each page from which material under seal has been deleted must bear the legend "Material Under Seal Deleted" at the top of the page. The party must file 7 copies of the sealed supplement and 7 copies of the public appendix.

(2) **Service; Number of Copies.** Each party must be served with one copy of the public appendix and one copy of the sealed supplement, if the party is entitled to receive the material under seal. See, e.g., Fed. R. Crim. P. 6(e).

(3) **Non-availability to the Public.** Supplements to appendices filed with the court under seal are available only to authorized court personnel and will not be made available to the public.

(f) Disposal of Sealed Records.

(1) In any case in which all or part of the record of this court (including briefs and appendices) has been maintained under seal, the clerk will, in conjunction with the issuance of the mandate (or the entry of the final order, in a case in which no mandate will issue), order the parties to show cause why the record (or sealed portions) should not be unsealed. If the parties agree to unsealing, the record will be unsealed by order of the court, issued by the clerk. No order to show cause will be issued in cases where the nature of the materials themselves (e.g., grand jury materials) makes it clear that unsealing would be impermissible. If the parties do not agree to unsealing, the order to show cause, and any responses thereto, will be referred to the court for disposition.

(2) Any record material not unsealed pursuant to this rule will be designated "Temporary Sealed Records," and transferred to the Federal Records Center under applicable regulations. The records will be returned to the court for reconsideration of unsealing after a period of 20 years.

(3) The court may, on its own motion, issue an order to show cause and consider the unsealing of any records in the court's custody, at any time.

(4) Counsel to an appeal involving sealed records must promptly notify the court when it is no longer necessary to maintain the record or portions of the record under seal.

Circuit Rule 47.2

Appeal Expedited by Statute; Habeas Corpus Proceeding; Sentencing Appeal

(a) Appeal Expedited by Statute and Habeas Corpus Proceeding. Upon filing a notice of appeal in a case invoking 18 U.S.C. § 3145 or § 3731, 28 U.S.C. chapter 153, or 28 U.S.C. § 1826, the appellant must so advise the clerks of this court and of the district court immediately both orally and by letter. Pursuant to 28 U.S.C. § 1657, this practice will also be followed in an action seeking temporary or preliminary injunctive relief. In such cases, the clerk of the district court must transmit a copy of the notice of appeal and a certified copy of the docket entries to the clerk of this court forthwith. The clerk of this court will thereupon enter the appeal upon the docket and prepare an expedited schedule for briefing and argument. If a hearing occurred, appellant must order the necessary portions of the transcript on an expedited basis and make arrangements with the clerk of the district court for prompt transmittal of the record to this court.

(b) Sentencing Appeal Pursuant to 18 U.S.C. § 3742.

(1) In an appeal from a sentence the court will, where appropriate upon motion, establish an expedited briefing and argument schedule. Memoranda and replies as provided below must be filed and served in accordance therewith. An original and 14 copies must be filed in each case.

(2) The appellant must file and serve a memorandum of law and fact setting forth appellant's challenge to the sentence. Appellee must file and serve a memorandum of law and fact setting forth the response to appellant's challenge. Appellant may file and serve a reply.

(3) Except by permission or direction of this court, the memoranda of law may not exceed 20 pages, exclusive of pages containing the certificate required by Circuit Rule 28(a)(1). The reply memorandum may not exceed 10 pages. The documents must comply with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

(4) The memoranda need not contain a table of authorities, a statement of jurisdiction, or a summary of argument.

(5) The filings will be placed in the public record. Parties should avoid matters that could compromise the confidentiality of the presentence report. Where inclusion of confidential matters is unavoidable, the party should move to have the submission placed under seal.

(6) Where the court is reviewing both sentence and conviction in the same proceeding, the rules set out above, except for Circuit Rule 47.2(b)(5), will not apply.

Circuit Rule 47.3

Judicial Conference

(a) Purpose. In accordance with 28 U.S.C. § 333, the chief judge of this circuit may summon biennially, and may summon annually, a conference of all the circuit, district, and bankruptcy judges of the circuit in active service, for the purpose of considering the business of the courts and means to improve the administration of justice within the circuit. The conference will be called "The Judicial Conference of the District of Columbia Circuit."

(b) Conference Arrangements and Procedures.

(1) The chief judge of the circuit will appoint a committee on arrangements for the conference to submit for approval of the circuit judicial council a conference plan including the proposed location and program for the conference. The committee on arrangements will include both district and circuit judges, and members of the bar.

(2) The chief judge of the circuit presides at the conference. The circuit executive of this circuit serves as conference secretary, and will make and preserve a record of conference proceedings. The chief judge may appoint committees to pursue or carry out conference actions or advice, and may fill vacancies in or reconstitute or, upon completion of their assignments, discharge such committees.

(c) Composition. In addition to the circuit, district, and bankruptcy judges, persons invited to participate in the conference must include:

(1) the senior and retired judges of this court and of the district court;

(2) the United States magistrate judges of the District of Columbia;

(3) the circuit executive of this circuit;

(4) the clerks of this court, the district court, and the bankruptcy court;

(5) the librarian of this circuit;

(6) the director of this court's legal division;

(7) the chief United States probation officer of the District of Columbia;

(8) the chief judge of the United States Tax Court, or such representative of the tax court as the chief judge of that court designates;

(9) the director of the Administrative Office of the United States Courts;

(10) the director of the Federal Judicial Center;

(11) the United States Attorney for the District of Columbia;

(12) the Federal Public Defender for the District of Columbia;

(13) the director of the District of Columbia Public Defender Service;

(14) the deans of law schools located in the District of Columbia;

(15) the Attorney General of the District of Columbia;

(16) members of the bar in such numbers as will permit and promote participation by those engaged in the various fields of federal court practice;

(17) other individuals whose background, position, or achievement will contribute to the purpose and program of the conference.

Circuit Rule 47.4

Advisory Committee on Procedures

(a) Establishment of Committee; Membership. In accordance with 28 U.S.C. § 2077(b), there will be an Advisory Committee on Procedures which consists of not less than 15 members of the bar of this court selected by the judges of the court in regular active service in such a way as to represent a broad cross section of those appearing in the federal courts of the District of Columbia, including representatives from government agencies, law schools, public interest groups, and private practitioners.

(b) Committee Functions. The committee will, among other things:

(1) provide a forum for study of the internal operating procedures and rules of this court;

(2) serve as a conduit from the bar and the public to the court regarding procedural matters and suggestions for changes;

(3) draft, consider, and recommend, for the court's adoption, rules and internal operating procedures, and amendments thereto;

(4) render reports from time to time, on its own initiative and on request, to the court and to the Judicial Conference of the District of Columbia Circuit on the activities and recommendations of the committee.

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(c) Terms of Members. The members of the committee will serve 3-year terms that will be staggered in such a way as to enable the court to appoint or reappoint one-third of the committee each year. The court will appoint one of the members to chair the committee.

Circuit Rule 47.5

Processing Direct Criminal Appeals

Absent extraordinary circumstances, a direct criminal appeal will not be held in abeyance pending resolution of a postconviction proceeding in district court.

Circuit Rule 47.6

Appeals from the Alien Terrorist Removal Court

(a) In General.

(1) **Perfection.** A party seeking to appeal from a decision of the Alien Terrorist Removal Court must do so by filing a notice of appeal in the office of the clerk of the court of appeals.

(2) **Appeals Treated as Motions.** Unless otherwise specified herein or ordered by the court, appeals will be treated and processed by the court as motions. See generally FRAP 27(d); Circuit Rule 27. The appellant must file, simultaneously with the notice of appeal, 5 copies of a memorandum in support of the appeal, not to exceed 20 pages in length. No response will be permitted unless specified by this rule. All submissions must be filed and, if served, served by hand. An alien not represented by counsel who is unable to file or serve submissions by hand must do so by the most expeditious means available to the alien that are effective to reach the Department of Justice promptly.

(3) **Submissions to be Filed Under Seal.** Unless otherwise specified herein, all submissions filed in the court in an appeal from the Alien Terrorist Removal Court must be filed under seal. In addition, any submission containing or referring to classified information must so indicate in an appropriate legend on the face of the submission. The court and all parties to a removal proceeding must comply with all applicable statutory provisions for the protection of classified information, and with the "Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information."

(4) **Appointment of Counsel.** Counsel appointed to represent or assist an alien in the Alien Terrorist Removal Court, including any "special attorney" designated under 8 U.S.C. § 1534(e)(3), must continue to represent or assist the alien in any proceedings in this court, without additional appointment.

(5) **Expedition.** All appeals from the Alien Terrorist Removal Court must be disposed of by this court as expeditiously as practicable. Any party to an appeal seeking disposition within a definite time period may move for such relief, stating the grounds in support.

(b) Appeal from the Denial of a Removal Application (8 U.S.C. § 1535(a)).

(1) **Perfection.** The United States may appeal the denial of an application to use the alien terrorist removal procedure, by filing in the court of appeals clerk's office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Record.** The United States must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit, under seal, the entire record of the application proceeding to the court of appeals.

(3) **Ex Parte Appeal.** An appeal from the denial of a removal application must be conducted ex parte and under seal. No submissions, including the notice of appeal and the memorandum in support of the appeal, will be served on the alien.

(c) Interlocutory Appeal from Discovery Orders (8 U.S.C. § 1535(b)).

(1) **Perfection.** The United States may appeal a determination of the Removal Court regarding a request for approval of an unclassified summary of evidence, or refusing to make requested findings under 8 U.S.C. § 1534(e)(3), by filing in the court of appeals clerk's office a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Record.** The United States must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court must be transmitted to and maintained by this court under seal.

(3) **Ex Parte Appeal.** An appeal from a discovery determination will be conducted ex parte and under seal. No submissions, except the notice of appeal, will be served on the alien.

(d) Appeal from a Decision After a Removal Hearing (8 U.S.C. § 1535(c)).

(1) **Perfection.** The United States or the alien may appeal the decision of the Removal Court after a removal hearing, by filing in the court of appeals clerk's office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Automatic Appeal.** In the case of a permanent resident alien in which the alien was denied an unclassified summary of evidence under 8 U.S.C. § 1534(e)(3), and in which appeal is automatic unless waived, the alien must file, within 20 days of the date of the Removal Court's order, a memorandum in support

of the appeal, or a notice that the appeal has been waived. Failure to file a timely memorandum in support of the appeal, or a timely notice of waiver, will result in dismissal of the automatic appeal for lack of prosecution.

(3) **Record.** The appellant (except in the case of an automatic appeal) must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court must be transmitted to and maintained by this court under seal.

In the case of an automatic appeal, the Removal Court must, upon the filing of the court's order after the removal hearing, transmit a certified copy of the order, together with the record of the removal proceedings, to the court of appeals.

(4) **Briefing.** Within 10 days of the filing of the appellant's memorandum in support of the appeal, the appellee must file a responsive brief, not to exceed 20 pages in length. Appellant's reply, if any, is due 5 days after the date the response is filed, and may not exceed 10 pages in length. Briefs or memoranda must be filed under seal, to the extent necessary to comply with subsection (a)(3) of this rule.

(5) **Hearing and Disposition.** As soon as practicable after the filing of the appeal, the court will inform the parties whether it will hear argument on the appeal or dispose of the appeal on the written submissions. The court will dispose of the appeal as expeditiously as practicable.

(e) Appeal from a Release or Detention Order (8 U.S.C. § 1535(e)). Any appeal from a release or detention order of the Removal Court will be governed by Circuit Rule 9, except that the appellant's memorandum in support of the appeal must be filed simultaneously with the notice of appeal.

Rule 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master 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 order;

(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 the master's compensation and whether the cost is to be charged to any party.

Circuit Rule 48

Masters

There is no corresponding Circuit Rule.

APPENDIX OF FORMS

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., Plaintiff)
)
v.) Notice of Appeal
)
C.D., Defendant)

Notice is hereby given that _____ (here name all parties taking the appeal), (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the ___ day of _____, ____.

(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.	)	Docket No. _____
	)	
Commissioner of	)	
Internal Revenue,	)	
Respondent	)	

Notice of Appeal

Notice is hereby given that _____ (here name all parties taking the appeal)* hereby appeal to the United States Court of Appeals for the ____ Circuit from (that part of) the decision of this court entered in the above captioned proceeding on the ____day of _____, ____ (relating to _____).

(s)_____
Counsel for _____
Address: _____

* See Rule 3(c) for permissible ways of identifying appellants.

Form 3. Petition for Review of Order of an Agency, Board, Commission, or Officer

United States Court of Appeals for the _____ Circuit

A.B., Petitioner	)	
	)	
v.	)	Petition for Review
	)	
XYZ Commission,	)	
Respondent	)	

_____ (here name all parties bringing the petition)* hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on _____, ____.

(s)_____
Attorney for Petitioners
Address: _____

* See Rule 15.

Form 4. Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis

United States District Court for the _____ District of _____

A.B., Plaintiff
v. Case No. _____
C.D., Defendant

. . . . . .

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: _____ Date: _____

. . . . . .

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$_____	$_____	$_____	$_____
Self-employment	$_____	$_____	$_____	$_____

	You	Spouse	You	Spouse
Income from real property (such as rental income)	$_____	$_____	$_____	$_____
Interest and dividends	$_____	$_____	$_____	$_____
Gifts	$_____	$_____	$_____	$_____
Alimony	$_____	$_____	$_____	$_____
Child support	$_____	$_____	$_____	$_____
Retirement (such as social security, pensions, annuities, insurance)	$_____	$_____	$_____	$_____
Disability (such as social security, insurance payments)	$_____	$_____	$_____	$_____
Unemployment payments	$_____	$_____	$_____	$_____
Public-assistance (such as welfare)	$_____	$_____	$_____	$_____
Other (specify): _____	$_____	$_____	$_____	$_____
Total monthly income:	$_____	$_____	$_____	$_____

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? $_____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

If you are a prisoner, seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle # 1 _____(Value)
_____	_____	Make & year: _____
_____	_____	Model: _____
_____	_____	Registration #._____

Motor vehicle #2 _____(Value)	Other Assets (Value)	Other Assets (Value)
Make & year _____	_____	_____
Model: _____	_____	_____
Registration #: _____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$_____	$_____
Are real-estate taxes included?	[ ] Yes [ ] No	
Is property insurance included?	[ ] Yes [ ] No	

Appendix of Forms for the Federal Rules of Appellate Procedure

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	You	Spouse
Utilities (electricity, heating fuel, water, sewer, and telephone)	$_____	$_____
Home maintenance (repairs and upkeep)	$_____	$_____
Food	$_____	$_____
Clothing	$_____	$_____
Laundry and dry-cleaning	$_____	$_____
Medical and dental expenses	$_____	$_____
Transportation (not including motor vehicle payments)	$_____	$_____
Recreation, entertainment, newspapers, magazines, etc.	$_____	$_____
Insurance (not deducted from wages or included in mortgage payments)	$_____	$_____
Homeowner's or renter's	$_____	$_____
Life	$_____	$_____
Health	$_____	$_____
Motor Vehicle	$_____	$_____
Other: _____	$_____	$_____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	$_____	$_____
Installment payments	$_____	$_____
Motor Vehicle	$_____	$_____
Credit card (name): _____	$_____	$_____
Department store (name): _____	$_____	$_____
Other: _____	$_____	$_____
Alimony, maintenance, and support paid to others	$_____	$_____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$_____	$_____
Other (specify): _____	$_____	$_____
Total monthly expenses:	$_____	$_____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
[ ] Yes [ ] No If yes, describe on an attached sheet.

10. Have you paid—or will you be paying—an attorney any money for services in connection with this case, including the completion of this form? [ ] Yes [ ] No

If yes, how much? $_____

If yes, state the attorney's name, address, and telephone number:
_____
_____
_____

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?
[ ] Yes [ ] No

If yes, how much? $_____

If yes, state the person's name, address, and telephone number:
_____
_____
_____

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.
_____
_____
_____

Your daytime phone number: (____) _____
Your age: _____ Your years of schooling: _____
Your social-security number: _____

[Amended December 1, 1998.]

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	)	
	)	File No. ___
_____,	)	
Plaintiff	)	
	)	
v.	)	
_____,	)	
Defendant		

Notice of Appeal to United States Court of Appeals for the _____ Circuit

_____, 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 district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, ____ [here describe the judgment, order, or decree] _____.

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____

Signed _____
Attorney for Appellant
Address: _____

_____

[Amended effective December 1, 1989.]

Form 6. Certificate of Compliance with Rule 32(a)

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

G this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

G this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts 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 the type style requirements of Fed. R. App. P. 32(a)(6) because:

G this brief has been prepared in a proportionally spaced typeface using [*state name and version of word processing program*] in [*state font size and name of type style*], *or*

G this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

(s)_____

Attorney for _____

Dated:_____

APPENDIX OF THE CIRCUIT RULES OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I. COURT OF APPEALS FEE SCHEDULES.

II. RULES OF DISCIPLINARY ENFORCEMENT FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

III. APPELLATE MEDIATION PROGRAM.

I. COURT OF APPEALS FEE SCHEDULES

COURT OF APPEALS MISCELLANEOUS FEE SCHEDULE

(Issued in accordance with 28 U.S.C. § 1913)

Following are fees to be charged for services provided by the courts of appeals. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4 and 5. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

(1) For docketing a case on appeal or review, or docketing any other proceeding, $250. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory 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 thereof, $26. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(3) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, $9.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of recordings of proceedings, regardless of the medium, $26, including the cost of materials. This fee shall apply to services rendered on behalf of the United States if the reproduction of the recording is available electronically.

(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), F.R.A.P., a flat fee of $71.

(7) For each microfiche or microfilm copy of any court record, where available, $5.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

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(9) For a check paid into the court which is returned for lack of funds, $45.

(10) Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

(11) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(12) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) Upon the filing of any separate or joint notice of appeal or application for appeal from the Bankruptcy Appellate Panel, or notice of the allowance of an appeal from the Bankruptcy Appellate Panel, or of a writ of certiorari, $5 shall be paid by the appellant or petitioner.

(14) The court may charge and collect a fee of $200 per remote location for counsel's requested use of videoconferencing equipment in connection with each oral argument.

(15) For original admission of attorneys to practice, $150 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $15.

Appendix: Fee Schedules

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

As directed by Congress, the Judicial Conference has determined that the following fees are necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records. These fees shall apply to the United States unless otherwise stated. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrator programs.

I. For electronic access to court data via dial up service: sixty cents per minute. For electronic access to court data via a federal judiciary Internet site: eight cents per page, with the total for any document, docket sheet, or case-specific report not to exceed the fee for thirty pages – provided however that transcripts of federal court proceedings shall not be subject to the thirty-page fee limit. Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is owed under this provision until an account holder accrues charges of more than $10 in a calendar year. Consistent with Judicial Conference policy, courts may, upon a showing of cause, exempt indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501(c)(3) not-for-profit organizations and pro bono ADR neutrals from payment of these fees. Courts must find that parties from the classes of persons or entities listed above seeking exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Any user granted an exemption agrees not to sell for profit the data obtained as a result. Exemptions may be granted for a definite period of time and may be revoked at the discretion of the court granting the exemption.

II. For printing copies of any record or document accessed electronically at a public terminal in the courthouse: ten cents per page. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.

III. For every search of court records conducted by the PACER Service Center, $20.

JUDICIAL CONFERENCE POLICY NOTES

Courts should not exempt local, state or federal government agencies, members of the media, attorneys or others not members of one of the groups listed above. Exemptions should be granted as the exception, not the rule. A court may not use this exemption language to exempt all users. An exemption applies only to access related to the case or purpose for which it was given.

The electronic public access fee applies to electronic court data viewed remotely from the public records of individual cases in the court, including filed documents and the docket sheet. Electronic court data may be viewed free at public terminals at the courthouse and courts may provide other local court information at no

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cost. Examples of information that can be provided at no cost include: local rules, court forms, news items, court calendars, opinions, and other information – such as court hours, court location, telephone listings – determined locally to benefit the public and the court.

Appendix: Fee Schedules

II. RULES OF DISCIPLINARY ENFORCEMENT FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The United States Court of Appeals for the District of Columbia Circuit, in furtherance of its power and responsibility under Rule 46 of the Federal Rules of Appellate Procedure, and its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or are admitted for the purpose of a particular proceeding (*pro hac vice*), promulgates the following Rules of Disciplinary Enforcement.

RULE I

Standards For Professional Conduct

(a) For misconduct as defined in paragraph (b) below, or for failure to comply with these Rules or any rule or order of this Court, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be reprimanded (publicly or privately), suspended from practice before this Court, disbarred, or subjected to such other disciplinary action as the circumstances may warrant.

(b) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate any Code of Professional Responsibility or other officially-adopted body of disciplinary rules applicable to the conduct of the attorney constitute misconduct. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the District of Columbia Court of Appeals, as amended from time to time by that Court, except as otherwise provided by specific Rule of this Court.

RULE II

Committee On Admissions And Grievances

(a) The Committee. The Court shall appoint a standing committee of six members of the bar of this Court to be known as the Committee on Admissions and Grievances. Each member shall be appointed to serve for a term of three years. A member is eligible for reappointment to one additional term. Each member may serve until a successor has been appointed. If a member holds over after the expiration of the term for which that member was appointed, the period of the member's holdover shall be treated as part of the term of his or her successor. The Court may revoke any appointment at any time. In the case of any vacancy, the successor appointed shall serve the unexpired term of his or her predecessor. The Court shall designate one of the members of the Committee to serve as Chair.

(b) Confidentiality. Except to the extent reasonably necessary to carry out its responsibilities and unless otherwise ordered by the Court, the Committee shall treat in confidence the referral to it of an application for admission or a grievance, its consideration of such a matter, and its report to the Court.

Appendix: Rules of Disciplinary Enforcement

(c) Admissions.

(1) The Court may refer to the Committee an application for admission to practice before the Court whenever that application or other available information raises a question as to whether the applicant is qualified for admission under the standards set forth in Rule 46(a) of the Federal Rules of Appellate Procedure.

(2) Upon referral by the Court of any such application for admission, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. The Committee shall provide the applicant with a copy of its findings and recommendations if the Committee recommends denial of the application.

(3) In considering applications for admission referred to it by the Court, the Committee may solicit relevant information from the applicant or from others. In addition, the applicant may submit to the Committee any information that he or she deems to be relevant, and shall be entitled to be represented by counsel.

(4) The applicant shall have the burden of establishing that he or she has the character and qualifications necessary for admission and shall cooperate with the Court and the Committee in their consideration of the application.

(d) Grievances.

(1) The Court may refer to the Committee any accusation or suggestion of misconduct on the part of any member of the bar, or any failure to comply with these rules or any rule or order of this Court, for such investigation, hearing and report as the Court deems advisable. Any such matter shall be referred to in these Rules as a Grievance.

(2) Upon referral by the Court of any Grievance, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. In such matters, the Committee shall be guided by Rule I of these Rules.

(3) The Committee shall consider each Grievance referred to it and, if in its opinion further action is warranted, it shall serve a statement thereof on the member of the bar of this Court to whom the Grievance relates, by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. As respondent thereto, the member shall file an answer with the Chair of the Committee subscribed and sworn to under oath on or before thirty (30) days after the date of mailing. The Chair of the Committee, upon good cause shown, may extend the time to answer.

(4) If the Committee concludes after investigation and review that a hearing is unnecessary because (a) the facts are not in dispute, (b) sufficient evidence to support the Grievance is not present, (c) there is pending another proceeding against the respondent, the disposition of which in the judgment of the Committee should be awaited before further action is considered, or (d) a hearing is otherwise not warranted under the circumstances presented, the Committee shall report to the Court its recommendation for disposition of the matter.

Appendix: Rules of Disciplinary Enforcement

(e) Hearings by the Committee.

(1) The Committee may sit as a fact-finding body and upon reasonable notice to the respondent may hold hearings on the Grievance.

(2) The respondent shall be entitled to be represented by counsel. The respondent may submit to the Committee all relevant information he or she deems appropriate and may request that the Committee consider the testimony of witnesses. The Committee may require that witnesses, including the respondent, testify under oath.

(3) The persons who may be present at the hearing are the members of the Committee, the respondent, the respondent's counsel, if any, and a witness providing testimony.

(4) At the respondent's request and expense, the hearing will be recorded.

(5) The Committee shall report its findings and recommendations to the Court. A copy of its findings and recommendations shall be forwarded simultaneously to the respondent.

(f) Duty of Respondent to Cooperate. It shall be the duty and responsibility of the respondent and his or her counsel to cooperate with the Committee. If a respondent fails to respond to the Committee, the Committee may recommend to the Court that discipline be imposed.

(g) Show Cause Order or Hearing by the Court.

(1) Upon receipt of the Committee's finding that misconduct occurred, the Court may issue an order requiring the respondent to show cause why discipline should not be imposed. The Court may invite the Committee or any member of the bar of this Court to reply to the respondent's answer to the show cause order or to pursue the Grievance against the respondent at a show cause hearing.

(2) If the Grievance is sustained, the Court may reprimand, suspend, disbar or otherwise discipline the respondent.

RULE III

Attorneys Convicted Of Crimes

(a) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or of the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as defined in paragraph (f) below, the Clerk shall enter an order immediately suspending that attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. The Clerk shall immediately serve a copy of such order upon the attorney by certified

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mail, return receipt requested, addressed to the last office address filed with the Clerk. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(b) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall refer the matter to the Committee on Admissions and Grievances for a recommendation to the Court on the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that the recommendation for final discipline shall not be made until all appeals from the conviction are concluded.

(c) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to the Committee for a recommendation to the Court for appropriate action, including the institution of a disciplinary proceeding.

(d) In any disciplinary proceedings instituted against an attorney based upon a conviction, a certified copy of a judgment of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime.

(e) An attorney suspended under the provisions of this Rule shall be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement shall not terminate any disciplinary proceeding then pending against the attorney. In any such proceeding, evidence relating to the conduct which resulted in the conviction may be considered despite the reversal of the conviction.

(f) The term "serious crime" includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

RULE IV

Discipline Imposed By Other Courts Or Agencies

(a) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined for professional misconduct as defined in Rule I.B to another court, or by an agency of the United States as defined in 5 U.S.C. § 551, this Court may refer the matter to the Committee on Admissions and Grievances for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

(1) a copy of the judgment or order from the other court or agency; and

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Appendix: Rules of Disciplinary Enforcement

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(2) an order to show cause directing that the attorney inform this Court within the time specified of any claim by the attorney predicated upon the grounds set forth in paragraph (c) below that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court may be deferred until such stay expires.

(c) After consideration of the response called for by the order issued pursuant to paragraph (a) above or after expiration of the time specified in the order, this Court shall impose the identical discipline unless the attorney demonstrates, or this Court is satisfied that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) the imposition of the same discipline by this Court would result in grave injustice; or

(4) the misconduct warrants substantially different discipline.

When this Court determines that any of these elements exists, it shall enter such other order as it deems appropriate.

(d) Except as provided in paragraph (c) above, a final adjudication in another court or in an agency of the United States that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(e) This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court or by an agency.

RULE V

Disbarment On Consent Or Resignation In Other Courts

Any attorney admitted to practice before this Court who is disbarred on consent or resigns from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, be disbarred.

Appendix: Rules of Disciplinary Enforcement

RULE VI

Disbarment On Consent While Under Disciplinary Investigation Or Prosecution

(a) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practicing law before this Court, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subject to coercion or duress; the attorney is fully aware of the implications of so consenting;

(2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(3) the attorney acknowledges that the material facts so alleged are true or that he has no defense to the allegations; and

(4) the attorney so consents because the attorney knows that if a Grievance were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

(b) Upon receipt of the required affidavit, the Clerk shall enter an order disbarring the attorney.

(c) An order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

RULE VII

Reinstatement

(a) After Disbarment or Suspension. An attorney who is suspended for a definite period shall automatically be reinstated at the end of the period of suspension upon the filing with the Clerk of an affidavit of compliance with the provisions of the order. An attorney who is suspended indefinitely or disbarred may not resume practice until reinstated by order of this Court. A suspension may be directed to run concurrently with a suspension mandated by another court, in which event the attorney shall be eligible for reinstatement in this Court when that suspension expires, and will automatically be reinstated upon filing with the Clerk an affidavit indicating that the period of suspension has run and that the attorney has been reinstated by the other court.

(b) Hearing on Application. Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this Rule shall be filed with the Clerk. Upon receipt of the petition, the Clerk shall promptly refer the

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petition to the Committee, which shall assign the matter for prompt hearing before the Committee. At the hearing the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she possesses the moral and professional qualifications required for admission to practice law before this Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice. The Committee shall make its recommendation to the Court, which may adopt its findings, schedule a hearing on the matter, or take such other action as it deems appropriate.

(c) Conditions of Reinstatement. If the petitioner is found by the Court to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the petitioner will be ordered reinstated. Reinstatement may be conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the misconduct which led to the suspension or disbarment. If the petitioner has been suspended or disbarred for five years or more, reinstatement may also be conditioned upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(d) Successive Petitions. No petition for reinstatement under this Rule may be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

RULE VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of, in the preparation for, or in connection with such proceedings.

RULE IX

Proceedings Where An Attorney Is Declared To Be Mentally Incompetent Or Is Alleged To Be Incapacitated

(a) Attorneys Declared Mentally Incompetent. Where an attorney who is a member of the bar of this Court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Court, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon the attorney, his guardian and the Director of the mental health hospital in such a manner as the Court may direct.

Appendix: Rules of Disciplinary Enforcement

(b) Attorneys Alleged to be Incapacitated. Whenever it appears to the Court that a member of the bar may be incapacitated by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate, and including reference of the matter to the Committee. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If the Court concludes that the attorney is incapacitated and should not be permitted to continue to practice law before the Court, it shall enter an order suspending the attorney for an indefinite period and until further order of the Court. The Court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if the respondent is without representation.

(c) Claim of Disability During Disciplinary Proceedings. If during the course of a disciplinary proceeding the respondent contends that he or she is suffering from a disability by reason of a mental or physical infirmity or illness or because of the use of drugs or intoxicants, and that this disability makes it impossible for the respondent to make an adequate defense, the Court shall enter an order immediately suspending the respondent from continuing to practice law before this Court until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (B) above.

(d) Application for Reinstatement. Any attorney suspended for incompetency, mental illness or because of the use of drugs or intoxicants may apply to the Court for reinstatement once a year or at such shorter intervals as the Court may direct in the order of suspension. The application shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he or she is fit to resume the practice of law. The Court may take or direct such action as it deems necessary or proper to make a determination of whether the attorney's disability has been remedied, including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. The Court may direct that the expenses of such an examination shall be paid by the attorney.

Where an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the court may dispense with further evidence and direct the reinstatement of the attorney upon such terms as are deemed proper and advisable.

(e) Waiver of Physician-Patient Privilege. The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability for the condition underlying the suspension. The attorney may be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since his suspension for the condition underlying the suspension, and may be required to furnish the Court with written consent for such psychiatrists, psychologists, physicians or hospitals to divulge such information or records as may be requested by the medical experts designated by the Court.

Appendix: Rules of Disciplinary Enforcement

RULE X

Duty Of Attorneys To Notify The Court Of Convictions Or Discipline By Other Courts Or Agencies

If an attorney admitted to practice before this Court (a) is subjected to public discipline for professional misconduct as defined in Rule I.B; (b) is indicted or charged with a felony or serious crime as defined in Rule III.F; (c) is convicted of a felony or misdemeanor; (d) is disbarred on consent; or (e) resigns from the bar of any court while an investigation into an allegation of misconduct is pending, the attorney shall so notify the Clerk of this Court in writing within ten days of such discipline, indictment, charge, conviction, disbarment on consent or resignation.

RULE XI

Duties Of The Clerk

(a) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime or has been subjected to discipline by another court, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred or in which such discipline was imposed has forwarded a certificate of such conviction or discipline to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(b) Whenever it appears that any person disbarred, suspended, publicly reprimanded, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within ten days of that action transmit a certified copy of the order of disbarment, suspension, reprimand, or disbarment on consent to the disciplinary authority for each other jurisdiction or court, and the administrative tribunal, if any, affected by the misconduct.

(c) The Clerk of this Court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order of this Court imposing public discipline upon any attorney admitted to practice before this Court.

RULE XII

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of criminal Procedure, or to deprive the Court of its inherent disciplinary powers.

Appendix: Rules of Disciplinary Enforcement

RULE XIII

Effective Date

These Rules shall become effective on July 1, 1984, and shall apply to proceedings brought thereafter and also shall apply to pending proceedings unless their application would not be feasible or would be unjust.

Appendix: Rules of Disciplinary Enforcement

III. APPELLATE MEDIATION PROGRAM

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT APPELLATE MEDIATION PROGRAM

The Appellate Mediation Program was created in 1987. Originally conceived as a one-year experiment, it has become an integral part of the Court's case management system. Mediation was originally intended to supplement the Court's 1986 Case Management Plan, which was undertaken to accommodate a sixty percent increase in filings and pending cases over a two-year period. It was also intended to help parties by curtailing the expense involved in protracted appeals and by providing a forum to stimulate the development of creative resolution options that are not likely to be achieved through Court order or through the independent action of the parties.

The Appellate Mediation Program uses mediation to achieve settlement of cases. It also encourages the settlement of some issues in a case and the procedural streamlining of cases to simplify briefing and to reduce motions activity. Mediation efforts that are unsuccessful initially may result, weeks or even months later, in settlement.

Mediation differs considerably from arbitration and negotiation. In arbitration, an outcome is imposed upon the parties. In negotiation, discussion takes place between the parties, usually with no assistance from a neutral. In mediation, a neutral helps parties reach a resolution that is acceptable to them. Cases are settled only if the parties agree to a course of action that will terminate their case so that no further Court involvement is required.

The Appellate Mediation Program has had a significant impact on the Court's workload. Cases that are settled do not proceed to oral argument, thus saving the time of judges and law clerks who would otherwise prepare for argument. Issues and positions are clarified in the mediation process so that, even if settlement is not achieved, the Court benefits from more efficient briefing. Finally, mediation frequently saves time and money for the litigants themselves. It can also produce agreements that meet their needs more effectively than the relief that could be provided through judicial disposition. Mediation is offered at no cost to the parties.

CASE SELECTION

Cases filed with the Court of Appeals are selected for mediation by attorneys in the Legal Division of the Clerk's Office. Screening occurs after dispositive motions have been decided and, in any event, no sooner than 45 days after a case has been docketed in the Court of Appeals.

No criminal cases enter the program. Civil cases are reviewed on an individual basis, with a number of factors considered in making the eligibility determination. These factors include the nature of the underlying dispute, the relationship of the issues on appeal to the underlying dispute, the availability of incentives to reach settlement or limit the issues on appeal, the susceptibility of these issues to mediation, the possibility of effectuating a resolution, the number of parties, and the number of related pending cases. Uncounseled cases, while not categorically excluded, are rarely referred to mediation.

Appendix: Appellate Mediation Program

Parties are encouraged to request mediation by completing a "Request to Enter Appellate Mediation Program" form and sending it to the Clerk *in duplicate.* The Court treats such requests as confidential. Although requests to enter mediation are not automatically granted, the Legal Division staff give them special consideration.

PROGRAM MEDIATORS

The Court has selected distinguished senior members of the bar, academicians from local law schools, and attorneys with broad experience mediating complex civil cases to serve as mediators. The mediators are experienced attorneys who enjoy the Court's full confidence.

The mediators protect the confidentiality of all proceedings and do not communicate with the Court about what transpires during mediation sessions. Mediators are required to recuse themselves from handling any cases in which they perceive a conflict of interest.

Mediators are not paid for their services, but are reimbursed by the Court for minor out-of-pocket expenses such as trips to the Courthouse. The Court also provides parking, administrative support and limited secretarial services if needed.

The primary role of program mediators is to make every effort to help parties reach a settlement or, at a minimum, to help parties resolve some issues in the case. If settlement is not possible, the mediators will help parties clarify or eliminate issues to expedite the litigation process.

CONFIDENTIALITY

Confidentiality is ensured throughout the mediation process. Attorneys in the Legal Division do not confer with judges in selecting cases for mediation. Mediators protect the confidentiality of all proceedings and are prohibited from complying with subpoenas or other requests for information about mediated cases. Papers generated by the mediation process are not included in Court files, and information about what transpires in the mediation process is not at any time made known to the Court. The Circuit Executive's Office, which is responsible for program administration and evaluation and liaison between the mediators and Court personnel, maintains strict confidentiality about the content of the mediation in particular cases. The Court expects participating counsel to refrain from commenting publicly about the fact that a case is in mediation or from disclosing any information about the parties' discussions or the status of the talks to anyone who is not, directly or indirectly, a party to the negotiations.

The above is not intended to guarantee absolute secrecy about the identity of the cases that are chosen for mediation. Nor is it meant to preclude dissemination of information about the types of cases going through the mediation process and about overall program results. Generic information about the program and cases entering it is available, and reports are generated for analysis and evaluation. Individual cases that have been resolved through mediation may be publicly identified or brought to the Court's attention as program successes if the litigants consent to such a disclosure.

Appendix: Appellate Mediation Program

MEDIATION PROCEDURES

The Director of the Legal Division of the Clerk's Office identifies cases for mediation no earlier than 45 days after they have been docketed in the Court of Appeals. Lead counsel and intervenors involved in cases selected for mediation receive a letter from the Court describing the program and assigning a mediator. A copy of the Court's *en banc* Order defining the procedures to be followed is included in the mailing. At the same time, the Court sends to the assigned mediator a copy of the judgment or order on appeal, any opinion issued by the District Court or agency, the appellant's or petitioner's statement of issues on appeal, D.C. Cir. Rule 28(a)(1) statements, and all relevant motions.

Within fifteen days of the selection of a case for mediation, counsel are required to submit a position paper, not to exceed ten pages, to the mediator. The position paper will outline the key facts and legal issues in the case and will include a statement of motions filed and their status. Position papers **are not briefs, are not filed with the Court, and need not be served on the other party unless the mediator so directs.**

The mediator sets the date for the initial mediation session, which must be held within 45 days of the selection of the case for mediation, and schedules follow-up sessions as needed. The initial session is normally held at the Court. However, a mediator may decide to hold this or subsequent meetings in his/her office or at another location. All cases in mediation are subject to normal scheduling for briefing and oral argument. If it appears that the briefing schedule will interfere with the mediator's ability to convene necessary sessions or otherwise proceed with the mediation, the attorneys shall file a motion to defer or postpone the briefing and/or oral argument date(s), representing that the mediator, whom they shall not identify by name, concurs in the request. **The motion must indicate, in both the caption and the first paragraph, that the change is needed to accommodate a pending mediation.** Attorneys may not file any other motions that would notify the Court that the case is in mediation.

The Court requires that counsel for parties attend all mediation sessions. All parties are also strongly urged by the Court to attend each mediation session. Each party represented must have counsel or another person present with actual authority to enter into a settlement agreement during the session. In cases involving the United States government or the District of Columbia government, senior attorneys on either side of the case may attend mediation sessions so long as someone with settlement authority can be reached by telephone during conference sessions. It is the responsibility of the United States Department of Justice and the District of Columbia Corporation Counsel attorneys during these sessions to furnish the mediator with the names and titles of the government officials who are authorized under applicable laws and regulations to effectuate settlement, including the Justice Department officials who possess settlement authority under 28 CFR, Part O, Subpart Y. The attorneys who participate in the mediation sessions shall also identify the officials whose participation in the discussions would be helpful, even though such officials may lack ultimate settlement authority. When settlement authority for the United States rests with an official at the rank of Assistant Attorney General, its equivalent or higher, or with members of an independent agency, or when settlement authority for the District of Columbia rests with officials above the rank of Corporation Counsel, the requirement that the official or members be reachable during the mediation session is waived unless the mediator for good reason specifically provides otherwise in writing after reviewing the mediation papers.

Appendix: Appellate Mediation Program

If settlement is reached, the agreement, which shall be binding upon all parties, will be put into writing, and counsel will file a stipulation of dismissal. If the case is not settled, it will remain on the docket and proceed as though mediation had not been initiated. Regardless of the outcome of a case, mediators will complete a case evaluation form for each case mediated. Each attorney participating in the mediation will be asked to complete an evaluation form.

THE MEDIATION PROCESS

Mediation begins at a joint meeting attended by the mediator, counsel for the parties and, whenever possible, the parties themselves. The mediator explains how the mediation is to be conducted. After this introduction, each party is asked to explain to the other party or parties and to the mediator its views on the matter in dispute. The party who filed the appeal typically speaks first. The mediator is likely to refrain from asking questions or allowing the parties to ask questions of each other until all parties have had an opportunity to speak.

Once the views of all parties have been stated in the joint session, the mediator usually caucuses individually with each of the parties. The purpose of these caucuses is to allow the mediator and the parties to explore more fully the needs and interests underlying their stated positions. It is also to help the parties begin thinking about settlement options that perhaps go beyond what could be accomplished in the court proceeding alone. The mediator encourages the parties to think broadly about the problem and helps them explore options for settlement.

After the initial series of meetings, the mediator may convene follow-up sessions to help the parties continue to explore settlement possibilities. These discussions may take place in person or over the telephone, whichever the mediator thinks likely to be most beneficial under the circumstances of the particular case.

Appendix: Appellate Mediation Program

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
ORDER ESTABLISHING APPELLATE MEDIATION PROGRAM

REVISED ORDER

BEFORE: Edwards, Chief Judge; Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, and Garland, Circuit Judges

ORDERED, by the Court, *en banc*, that civil appeals from the United States District Court, petitions for review of agency action, and original actions may be referred to a mediator designated by the Court to meet with counsel and parties to facilitate settlement of the case, to simplify issues or otherwise to assist in the expeditious handling of an appeal. It is

FURTHER ORDERED that mediation sessions must be attended by counsel for each party or another person with actual authority to settle the case. Additionally, the parties themselves are strongly encouraged to attend the sessions. In cases involving the United States government or the District of Columbia government, senior attorneys on either side of the case may attend mediation sessions so long as someone with settlement authority can be reached by telephone during conference sessions. When settlement authority for the United States rests with officials of the rank of Assistant Attorney General (or its equivalent) or higher, or with the members of an independent agency, or in cases in which settlement authority for the District of Columbia rests with officials above the rank of Corporation Counsel, the requirement that the officials or members be reachable during the mediation session is waived unless the mediator for good reason specifically provides otherwise in writing after reviewing the mediation papers. Failure of counsel to attend sessions may result in the imposition of sanctions.

The Circuit Executive for the D.C. Circuit shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Director of the Legal Division of the Clerk's Office will ultimately determine which cases are appropriate for mediation. Case selection will take place no sooner than 45 days after a case has been docketed in the Court of Appeals. Lead counsel will receive notice of case selection and of the mediator assigned.

An initial mediation session will be held by the mediator within 45 days of a case's selection for mediation. The mediator will schedule additional sessions as needed. Mediation sessions will normally be held at the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. The mediator has discretion, however, to hold sessions at any other location he/she thinks appropriate.

The Court will send the mediator a copy of the judgment or order on appeal, any opinion issued by the District Court or agency, the appellant's or petitioner's statement of issues on appeal, D.C. Cir. Rule 28(a)(1) statements, and all relevant motions. Within fifteen days of the case's selection for mediation, counsel shall prepare and submit to the mediator a position paper of no more than ten pages, stating their views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their

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Appendix: Appellate Mediation Program

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disposition. Mediation statements shall not be filed with the Court and need not be served on opposing counsel unless the mediator so directs.

All motions filed or decided while mediation is underway are to be identified for the mediator and submitted to him/her upon request. Like mediation statements, documents submitted to the mediator or prepared for mediation sessions need not be served on opposing counsel unless the mediator so directs and shall not be filed with the Clerk's Office.

All cases in mediation remain subject to normal scheduling for briefing and oral argument by the Clerk's Office. If the mediator, in consultation with the parties, believes that additional mediation sessions or discussions are required and that the briefing schedule in the case would interfere with such efforts, the attorneys shall request an extension by filing a joint motion to defer or postpone the briefing and/or oral argument date(s). The motion must indicate, in both the caption and the first paragraph, that the change is needed to accommodate a pending mediation. The attorneys shall represent that the mediator, whom they shall not identify by name, concurs in the request. Attorneys may not file any other motions that would notify the Court that the case is in mediation, nor may they use information obtained through the mediation as a basis for any other motion.

The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney or other participant, is privileged and shall not be disclosed to the Court or construed for any purpose, in any proceeding in any forum, as an admission against interest. Mediators shall not comply with requests for information about mediated cases and, if subpoenaed, are hereby instructed not to testify. Participating counsel and their clients will refrain from commenting publicly about the fact that a case is in mediation or from disclosing any information about the parties' discussions or the status of the talks to anyone who is not, directly or indirectly, a party to the negotiations.

No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

Mediators who have been selected by the Court to serve in the Appellate Mediation Program are highly experienced members of the bar who have been involved in the types of litigation that come before the Court. Mediators, who will serve without compensation, have received special training to help parties reach agreement and avoid the time, expense and uncertainty of further litigation. Mediation is offered to parties at no cost.

Mediators may, in their discretion, call or write to private clients or to representatives of government agencies to request their attendance at mediation sessions. Any communication by the mediator with such persons must, however, be fully disclosed to the counsel of record. Mediators may communicate, in the presence of counsel, settlement offers or other appropriate information to private clients or to representatives of government agencies. If a mediator makes any oral or written suggestion as to the advisability of a change in any party's position with respect to settlement, counsel for that party shall promptly transmit the suggestion to his or her client if that client is not present at the mediation session. Counsel shall explain to clients, whether present at mediation or not, the suggestions put forward by mediators and their import. It is

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Appendix: Appellate Mediation Program

FURTHER ORDERED that if a case is settled, counsel shall file a stipulation of dismissal. Such stipulation must be filed within 30 days after the settlement is reached unless a short extension is requested by the attorneys by motion. If a case cannot be resolved through mediation, it will remain on the docket and proceed as if mediation had not been initiated; therefore, no notification to the Court is necessary.

A copy of this Order will be posted in the Office of the Clerk of the United States District Court for the District of Columbia and the Office of the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

EFFECTIVE: April 14, 1998

Per Curiam

Appendix: Appellate Mediation Program
