

# Federal Rules of Appellate Procedure

## First Circuit Local Rules

Effective with amendments through December 27, 2005

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# Federal Rules of Appellate Procedure and First Circuit Local Rules

## 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]

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

### 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).

## 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.
- (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.

***Local Rule 3. Docketing Statement Required; Dismissals for Want of Diligent Prosecution***

**(a) Docketing Statement Required.** *To provide the clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management, within 14 days of filing the notice of appeal, the person or persons taking the appeal must submit a separate statement listing all parties to the appeal, the last known counsel, and last known addresses for counsel and unrepresented parties. Errors or omissions in this separate statement alone shall not otherwise affect the appeal if the notice of appeal itself complies with this rule.*

- (1) **Form.** *Counsel filing an appeal must complete and file a docketing statement, using the form provided by the clerk of the appeals court.*
- (2) **Service.** *A copy of the docketing statement and any attachments must be served on the opposing party or parties at the time the docketing statement is filed.*
- (3) **Duty of Opposing Party.** *If an opposing party concludes that the docketing statement is in any way inaccurate, incomplete, or misleading, the clerk's office must be informed in writing of any errors and any proposed additions or corrections within seven days of service of the docketing statement, with copies to all other parties.*

- (b) *If appellant does not pay the docket fee within 7 days of the filing of the notice of appeal, or does not file the docketing statement or any other paper within the time set by the court, the appeal may be dismissed for want of diligent prosecution.*

**Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case**  
[Abrogated]

**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(c), nor does the filing of a motion under 35(c) 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 docketed 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.

## **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.
- (2) 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.
- (3) 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.
- (4) 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).

**Rule 5.1 Appeal by Leave Under 28 U.S.C. § 636 (c) (5)**  
[Abrogated]

**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.

## **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.

## **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.

## **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).

### ***Local Rule 9. Recalcitrant Witnesses***

- (a) *A recalcitrant witness who is held in contempt for refusal to testify is entitled to disposition of the recalcitrant witness's appeal within thirty days if the recalcitrant witness is denied bail, and the government is entitled to equal promptness if bail is granted. The unsuccessful party on the bail issue may waive the thirty day statutory requirement by filing a written waiver with the clerk of this court.*
- (b) *The district court shall allow bail, with or without surety, unless the appeal appears frivolous, but a condition shall be the filing of a notice of appeal forthwith, and obedience to all subsequent orders with respect to briefing and argument. Except for cause shown the district court shall not, in any case, order a witness committed for the first forty-eight hours after the date of the order.*

*(c) The appeal shall be docketed immediately, and the district court's order on bail may be reviewed by the court of appeals or a judge thereof.*

## **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.

### **Local Rule 10. Ordering Transcripts**

- (a) **Timely Filing.** *Fed. R. App. P. 10(b) requires that the transcript be ordered within 10 days of the filing of the notice of appeal. Parties are nevertheless urged to order any necessary transcript immediately after the filing of the notice. If the appellant fails to timely order a transcript in writing from the court reporter, the appeal may be dismissed for want of diligent prosecution.*
- (b) **Transcript Order/Report.** *A Transcript Order/Report, in the form prescribed by this court, shall be used to satisfy the requirements of Fed. R. App. P. 10(b).*
- (c) **Transcripts under the Criminal Justice Act.** *If the cost of the transcript is to be paid by the United States under the Criminal Justice Act, counsel must complete and attach CJA form 24 to the Transcript Order/Report so as to satisfy the requirement of Fed. R. App. P. 10(b) (4).*
- (d) **Caveat.** *The court is of the opinion that in many cases a transcript is not really needed, and makes for delay and expense, as well as unnecessarily large records. The court urges counsel to endeavor, in appropriate cases, to enter into stipulations that will avoid or reduce transcripts. See Fed. R. App. P. 30(b). However, if an agreed statement of the evidence is contemplated, counsel are reminded of Fed. R. App. P. 10(c) requiring submission to the district court for approval. The ten-day ordering rule will not be suspended because of such activity, however, except by order of the court for good cause shown.*

### **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.

### ***Local Rule 11. Transmission of the Record, Sealed Documents***

**(a) Duty of Appellant.** *In addition to an appellant's duties under Fed. R. App. P. 11(a), it is an appellant's responsibility to see that the record, as certified, is complete.*

**(b) Transmission of Original Papers and Exhibits.** *The district courts are to transmit the original papers and exhibits when complete without waiting for the filing of the transcript.*

**(c) Sealed Materials.**

**(1) Materials Sealed by District Court or Agency Order.** *The court of appeals expects that ordinarily motions to seal all or part of a district court or agency record will be presented to, and resolved by, the lower court or agency. Motions, briefs, transcripts, and other materials which were filed with the district court or agency under seal and which constitute part of the record transmitted to the court of appeals shall be clearly labeled as sealed when transmitted to the court of appeals and will remain under seal until further order of court.*

**(2) Motions to Seal in the Court of Appeals.** *In order to seal in the court of appeals materials not already sealed in the district court or agency (e.g., a brief or unsealed portion of the record), a*

*motion to seal must be filed in the court of appeals; parties cannot seal otherwise public documents merely by agreement or by labeling them “sealed.” A motion to seal, which should not itself be filed under seal, must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, that discussion shall be confined to an affidavit or declaration, which may be filed provisionally under seal. A motion to seal may be filed before the sealed material is submitted or, alternatively the item to be sealed (e.g., the brief) may be tendered with the motion and, upon request, will be accepted provisionally under seal, subject to the court’s subsequent ruling on the motion. Material submitted by a party under seal, provisionally or otherwise must be stamped or labeled by the party on the cover “FILED UNDER SEAL.” If the court of appeals denies the movant’s motion to seal, any materials tendered under provisional seal will be returned to the movant.*

- (3) **Limiting Sealed Filings.** *Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in separate supplemental brief, motion, or filing, which may then be sealed in accordance with the procedures in subsection (2).*

**(d) References to Sealed Materials.**

- (1) *Records or materials sealed by district court, court of appeals, or agency order shall not be included in the regular appendix, but may be submitted in a separate, sealed supplemental volume of appendix. The sealed supplemental volume must be clearly and prominently labeled by the party on the cover “FILED UNDER SEAL.”*
- (2) *In addressing material under seal in an unsealed brief or motion or oral argument counsel are expected not to disclose the substance of the sealed material and to apprise the court that the material in question is sealed. If the record contains sealed materials of a sensitive character, counsel would be well advised to alert the court to the existence of such materials and their location by a footnote appended to the “Statement of Facts” caption in the opening or answering brief.*

**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.

### ***Local Rule 12. Appearance, Withdrawal of Appearance***

- (a) **Representation Statement, Appearance.** *A representation statement must take the form of an appearance, in a form prescribed by this court. Attorneys for both appellant and appellee must file appearance forms within 14 days after the case is docketed in the court of appeals. See also Local Rule 46(a). Additional or new attorneys for the parties may enter an appearance outside the 14 day period. However, in no event may any attorney file a notice of appearance without leave of court after the appellee brief has been filed.*
- (b) **Withdrawal of Appearance.** *No attorney who has entered an appearance in this court may withdraw without the consent of the court. An attorney who has represented a defendant in a criminal case in the district court will be responsible for representing the defendant on appeal, whether or not the attorney has entered an appearance in the Court of Appeals, until the attorney is relieved of such duty by the court. Procedures for withdrawal in criminal cases are found in Local Rule 46.6.*

*For requirements applying to court-appointed counsel, reference is made to Loc. R. 46.5, para. (c), the Criminal Justice Plan of this Circuit.*

## **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.

**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.

**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.

### **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.

### **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.

### **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.

## **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.

### **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.

### **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.

## **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.

## ***Local Rule 21. Petitions for Special Writs***

*A petition for a writ of mandamus or writ of prohibition shall be entitled simply "In re \_\_\_\_\_, Petitioner." To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge.*

## **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.

### ***Local Rule 22. Habeas Corpus; Certificate of Probable Cause***

*(Local Rule 22 is applicable to § 2254 petitions in which the appeal was initiated prior to April 24, 1996. See Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595 (2000).)*

**Certificate of Probable Cause.** *In this circuit neither the court nor a judge thereof will initially receive or act on a request for a certificate of probable cause if the district judge who refused the writ is available. The request to the district judge should be made as promptly as possible. If the district judge denies the certificate, and a notice of appeal has been filed, this court will review the district court judge's decision. However, it may decline to make such review unless a memorandum has been filed by the petitioner, either in the district court, or in this court, giving specific reasons and not mere generalizations why such relief should be granted. Ten days after the district court file has been received in this court, the clerk will present the record to the court, with or without a separate request for a certificate of probable cause addressed to that court. If no sufficient memorandum has been filed by that time, the court may deny the certificate without further consideration. The effect of such denial is to terminate the appeal.*

### **Local Rule 22.1. Habeas Corpus; Certificate of Appealability**

*(Local Rule 22.1 is applicable to 28 U.S.C. §§ 2254 and 2255 petitions in which the appeal was initiated on or after April 24, 1996. Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595 (2000).)*

**(a) General Procedures:** *In this circuit, ordinarily neither the court nor a judge thereof will initially receive or act on a request for a certificate of appealability if the district judge who refused the writ is available, unless an application has first been made to the district court judge. A petitioner wishing to appeal from the denial of a § 2254 or § 2255 petition must timely file a notice of appeal and should promptly apply to the district court for a certificate of appealability. If the district court grants a certificate of appealability, it must state which issue or issues satisfy the standard set forth in 28 U.S.C. § 2253(c)(2). If the district court denies a certificate of appealability, it must state the reasons why the certificate should not issue.*

**(b) Denial in Full by District Court:** *If the district court denies a certificate of appealability, the petitioner should promptly apply within the time set by the clerk to the court of appeals for issuance of a certificate of appealability. The motion should be accompanied by a copy of the district court's order and a memorandum giving specific and substantial reasons, and not mere generalizations, why a certificate should be granted. If no sufficient memorandum has been filed by the time set by the clerk, the certificate may be denied without further consideration. The effect of a denial is to terminate the appeal.*

**(c) Partial Denial by District Court:**

- (1) If the district court grants a certificate of appealability as to one or more issues, the petitioner's appeal shall go forward only as to the issue or issues for which the district court granted the certificate. See Grant-Chase v. Commissioner, 145 F.3d 431 (1st Cir. 1998).*
- (2) If the petitioner wants appellate review of an issue or issues as to which the district court has denied a certificate of appealability, petitioner must apply promptly, within the time set by the*



clerk of the court of appeals, to the court of appeals for an expanded certificate of appealability. The request for an expanded certificate of appealability:

- (A) must be explicit as to the additional issues the petitioner wishes the court to consider and
- (B) should be accompanied by a copy of the district court order and a memorandum giving specific and substantial reasons, and not mere generalizations, why an expanded certificate of appealability should be granted.

*If the petitioner fails to apply for an expanded certificate of appealability within the time designated by the clerk, the appeal will proceed only with respect to the issues on which the district court has granted a certificate; this court will not treat an inexplicit notice of appeal, without more, as a request for a certificate of appealability with respect to issues on which the district court has denied a certificate.*

- (d) **Grant in Full by District Court:** *If the district court grants a certificate of appealability on all issues, the petitioner's appeal shall go forward. See Grant-Chase v. Commissioner, 145 F.3d 431 (1st Cir. 1998).*

## **Local Rule 22.2. Habeas Corpus; Successive Petitions**

- (a) **Motion for Authorization.** *Any petitioner seeking to file a second or successive petition for relief pursuant to 28 U.S.C. §§ 2254 or 2255 must first file a motion with this court for authorization. A motion for authorization to file a second or successive § 2254 or § 2255 petition must be sufficiently complete on filing to allow the court to assess whether the standard set forth in 28 U.S.C. §§ 2244(b) or 2255, as applicable, has been satisfied. The motion must be accompanied by both:*

- (1) *a completed application form, available from this court, stating the new claims(s) presented and addressing how Section 2244(b) or Section 2255's standard is satisfied; and*
- (2) *copies of all relevant portions of earlier court proceedings, which must ordinarily include:*
  - (A) *copies of all §2254 or §2255 petitions earlier filed;*
  - (B) *the respondent's answer to the earlier petitions (including any portion of the state record the respondent submitted to the district court);*
  - (C) *any magistrate-judge's report and recommendation in the earlier §2254 or §2255 proceedings;*
  - (D) *the district court's decision in the earlier proceedings; and*

(E) *the portions of the state court record needed to evaluate the claims presented and to show that movant has exhausted state court remedies.*

**(b) Incomplete Motion.** *Failure to provide the requisite application and attachments may result in the denial of the motion for authorization with or without prejudice to refiling. At its discretion, the court may instead treat the motion as lodged, the filing being deemed complete when the deficiency is remedied.*

**(c) Service.** *The movant shall serve a copy of the motion to file a second or successive petition and all accompanying attachments on the state attorney general (§ 2254 cases) or United States Attorney for the federal judicial district in which movant was convicted (§ 2255 cases) and shall comply with Fed. R. App. P. 25.*

**(d) Response.** *The state attorney general (§ 2254 cases) or United States Attorney (§ 2255 cases) is requested to file a response within 14 days of the filing of the motion.*

**(e) Transfer.** *If a second or successive § 2254 or § 2255 petition is filed in a district court without the requisite authorization by the court of appeals pursuant to 28 U.S.C. § 2244(b)(3), the district court will transfer the petition to the court of appeals pursuant to 28 U.S.C. § 1631 or dismiss the petition. If the petition is transferred, the petitioner must file a motion meeting the substantive requirements of Loc. R. 22.2(a) within 45 days of the date of notice from the clerk of the court of appeals that said motion is required. If the motion is not timely filed, the court will enter an order denying authorization for the § 2254 or § 2255 petition.*

## **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.

## **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.

## 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.

***Local Rule 25. Facsimile Filing***

*The Clerk of Court is authorized to accept for filing papers transmitted by facsimile equipment in situations determined by the Clerk to be of an emergency nature or other compelling circumstances, subject to such procedures for follow-up filing of hard copies, or otherwise, as the Clerk may from time to time specify.*

## **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.

### **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.

## **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 8½ 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.

### ***Local Rule 27. Motions***

(a) ***Assent.*** *Motions will not necessarily be allowed even though assented to.*

(b) ***Emergency Relief.*** *Motions for stay, or other emergency relief, may be denied for failure to present promptly. Counsel who envisages a possible need for an emergency filing, or emergency action by the court, or both, during a period when the Clerk's Office is ordinarily closed should consult with the Clerk's Office at the earliest opportunity. Failure to consult with the Clerk's Office well in advance of the occasion may preclude such special arrangements.*

(c) ***Summary Disposition.*** *At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief.*

### **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.

***Local Rule 28. Addendum to Briefs Required***

**(a) Contents.** *In addition to the requirements of FRAP 28, for the court’s convenience, the brief of the appellant must include an addendum containing the following items:*

- (1) The judgment, ruling or order appealed from and any supporting opinion, memorandum, or statement of reason;*
- (2) The portions of any instructions to the jury which are the subject of appeal;*
- (3) Pertinent portions of any document in the record that is the subject of an issue on appeal; and*
- (4) Other items or short excerpts from the record, if any, considered necessary for understanding the specific issues on appeal.*

**(b) Form.** *The addendum must be limited to 20 pages ( exclusive of the judgment, order or opinion appealed from) and shall be bound at the rear of the appellant’s brief.*

- (1) The appellee’s brief may include such an addendum to incorporate materials omitted from the appellant’s addendum, subject to the same limitations on length and content.*
- (2) Material included in the addendum need not be reproduced in the appendix also.*

## ***Local Rule 28.1. References in Briefs to Sealed Material***

*Briefs filed with the court of appeals are a matter of public record. In order to have a brief sealed, counsel must file a specific and timely motion in compliance with Local Rule 11(c)(2) and (3) asking the court to seal a brief or supplemental brief. Counsel must also comply with Local Rule 11(d), when applicable.*

## **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.

## **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.

### **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.

### ***Local Rule 30. Appendix to the Briefs***

- (a) **Number of Copies.** *Pursuant to Fed. R. App. P. 30(a)(3), only five (5) copies of the appendix need be filed with the clerk and on motion, for cause shown, parties may be allowed to file even fewer copies.*
- (b) **Filing of Designation.** *One copy of any designation, statement of issues, or counter-designation served pursuant to Fed. R. App. P. 30(b), or any notice of agreement thereunder, shall be simultaneously filed with the clerk.*
- (c) **In Forma Pauperis.** *All appeals proceeding in forma pauperis shall be considered on the record on appeal as certified by the clerk of the district court without the necessity of filing an appendix unless otherwise ordered by this court in a specific case.*
- (d) **Translations.** *The court will not receive documents not in the English language unless translations are furnished. Whenever an opinion of the Supreme Court of Puerto Rico is cited in a brief or oral argument which does not appear in the bound volumes in English, an official, certified or stipulated translation thereof with three conformed copies shall be filed. Partial translations will be accepted if stipulated by the parties or if submitted by one party not less than 30 days before the oral argument. Where partial translations are submitted by one party, opposing parties may, prior to oral argument, submit translations of such additional parts as they may deem necessary for a proper understanding of the holding.*

*(e) Sanctions.* This court may impose sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix as provided for in Local Rule 38.

*(f) Inclusion of Sealed Material in Appendices.* Appendices filed with the court of appeals are a matter of public record. If counsel conclude that it is necessary to include sealed material in appendix form, then, in order to maintain the confidentiality of materials filed in the district court or agency under seal, counsel must designate the sealed material for inclusion in a supplemental appendix to be filed separately from the regular appendix and must file a specific and timely motion in compliance with Local Rules 11(c)(2), 11(c)(3), and 11(d) asking the court to seal the supplemental appendix.

## **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.

## ***Local Rule 31. Filing Briefs***

### ***(a) Time to File a Brief.***

- (1) *Briefing schedules will be set in accordance with Fed. R. App. P. 31(a) except that a reply brief must be filed within 14 days after service of the brief of the appellee. A reply brief may be*

*rejected by the court if it contains matter repetitive of the main brief, or which, in the opinion of the court, should have been in the main brief.*

- (2) *Unavailability of the transcript shall constitute cause for granting extensions, subject, however, to the provisions of Local Rule 10, ante.*

**(b) Number of copies.** *Only 10 copies of briefs need be filed with the clerk and on motion for cause shown, parties may be allowed to file even fewer copies. The disk required by Local Rule 32 constitutes one copy for the purpose of this rule.*

## **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 10½ 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.

### **Local Rule 32. Briefs, Petitions for Rehearing, and Other Papers: Computer Generated Disk Requirement**

- (a) *Where a party is represented by counsel, one copy of its brief, petition for rehearing, and, in addition, all other papers exceeding 10 pages in length must be submitted on a computer readable disk. The disk shall be filed at the time the party's paper filing is made. The brief on disk must be accompanied by nine paper copies of the brief. The disk shall contain the entire brief exclusive of computer non-generated appendices. The label of the disk shall include the case name and docket number and identify the brief being filed (i.e. appellant's brief, appellee's brief, appellant's reply brief, etc.) and the file format utilized.*
- (b) *The brief, petition for rehearing, and, in addition, all other papers exceeding 10 pages in length must be in WordPerfect on a Windows-based 3 ½" disk, CD, or DVD.*
- (c) *One copy of the disk may be served on each party separately represented by counsel. If a party chooses to serve a copy of the disk, the certificate of service must indicate service of the brief, petition for rehearing, and, in addition, all other papers exceeding 10 pages in length in both paper and electronic format.*
- (d) *A party may be relieved from filing and service under this rule by submitting a motion, within fourteen days after the date of the notice establishing the party's initial briefing schedule, certifying that compliance with the rule would impose undue hardship, that the text of the brief, petition for rehearing, and, in addition, all other papers exceeding 10 pages in length or other papers exceeding 10 pages in length is not available on disk, or that other unusual circumstances preclude compliance with this rule. The requirements of this rule shall not apply to parties appearing pro se. Briefs, petitions for rehearing, and, in addition, all other papers exceeding 10 pages in length or other papers exceeding 10 pages in length tendered by counsel after January 1, 1998 without a computer disk copy or court-approved waiver of the requirements of this rule may be rejected by the clerk's office.*

### **Local Rule 32.2 Citation of State Decisions and Law Review Articles**

*All citations to State or Commonwealth Courts must include both the official state court citation and the National Reporter System citation when such decisions have been published in both reports; e.g., Coney v. Commonwealth, 364 Mass. 137, 301 N.E.2d 450 (1973). Law review or other articles unpublished at the time a brief or memorandum is filed may not be cited therein, except with permission of the court.*

### **Local Rule 32.3. Citation of Unpublished Opinions**

- (a) *An unpublished opinion of this court may be cited in this court only in the following circumstances:*



- (1) **When the earlier opinion is relevant to establish a fact about the case.** *An unpublished opinion of this court may be cited to establish a fact about the case before the court (for example, its procedural history) or when the binding or preclusive effect of the opinion, rather than its quality as precedent, is relevant to support a claim of res judicata, collateral estoppel, law of the case, double jeopardy, abuse of the writ, or other similar doctrine.*
  - (2) **Other circumstances.** *Citation of an unpublished opinion of this court is disfavored. Such an opinion may be cited only if (1) the party believes that the opinion persuasively addresses a material issue in the appeal; and (2) there is no published opinion from this court that adequately addresses the issue. The court will consider such opinions for their persuasive value but not as binding precedent.*
  - (3) **Procedure.** *A party must note in its brief or other pleading that the opinion is unpublished, and a copy of the opinion or disposition must be included in an accompanying addendum or appendix.*
  - (4) **Definition.** *Almost all new opinions of this court are published in some form, whether in print or electronic medium. The phrase "unpublished opinion of this court" as used in this subsection and Local Rule 36(c) refers to an opinion (in the case of older opinions) that has not been published in the West Federal Reporter series, e.g., F., F.2d, and F.3d, or (in the case of recent opinions) bears the legend "not for publication" or some comparable phraseology indicating that citation is prohibited or limited.*
- (b) *Unpublished or non-precedential opinions of other courts, as defined or understood by those courts, may be cited in the circumstances set forth in subsection (a)(1) above. Such opinions may also be cited in circumstances analogous to those set forth in subsection (a)(2) above, unless prohibited by the rules of the issuing court. If an unpublished or non-precedential opinion of another court is cited, the party must comply with the procedure set forth in subsection (a)(3) above.*

#### **Local Rule 32.4. Motions for Leave to File Oversized Briefs**

*The First Circuit encourages short, concise briefs. A motion for leave to file an oversized opening brief must be filed at least ten calendar days in advance of the brief's due date, must specify the additional length sought, and must be supported by a detailed statement of grounds. A motion for leave to file an oversized reply brief must be filed at least seven calendar days in advance. Such motions will be granted only for compelling reasons.*

## **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.

### ***Local Rule 33. Civil Appeals Management Plan***

*Pursuant to Rule 47 of the Federal Rules of Appellate Procedure, the United States Court of Appeals for the First Circuit adopts the following plan to establish a Civil Appeals Management Program, said Program to have the force and effect of a local rule.*

#### **(a) Pre-Argument Filing; Ordering Transcript.**

- (1) *Upon receipt of the Notice of Appeal in the Court of Appeals, the Clerk of the Court of Appeals shall send notice of the Civil Appeals Management Plan to the appellant. Upon receipt of further notice from the Clerk of the Court of Appeals, appellant shall, within ten days:*
  - (A) *file with the Clerk of the Court of Appeals, and serve on Settlement Counsel and all other parties a statement, in the form of the Docketing Statement required by Local Rule 3(a), detailing information needed for the prompt disposition of an appeal;*
  - (B) *certify and file with the Clerk of the Court of Appeals a statement, in the form required by Local Rule 10(b), that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript.*

*The Parties shall thereafter provide Settlement Counsel with such information about the appeals as Settlement Counsel may reasonably request.*

- (2) *Nothing herein shall alter the duty to order from the court reporter, promptly upon filing of the Notice of Appeal in the District Court, a transcript of the proceedings pursuant to Fed. R. App. P. Rule 10(b).*

#### **(b) Pre-Argument Conference; Pre-Argument Conference Order.**

- (1) *In cases where he may deem this desirable, the Settlement Counsel, who shall be appointed by the Court of Appeals, may direct the attorneys, and in certain cases the clients, to attend a pre-argument conference to be held as soon as practicable before him or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues, and any other matters which the Settlement Counsel determines may aid in the handling or the disposition of the proceeding.*
  - (2) *At the conclusion of the conference, the Settlement Counsel shall consult with the Clerk concerning the Clerk's entry of a Conference Order which shall control the subsequent course of the proceeding.*
- (c) **Confidentiality.** *The Settlement Counsel shall not disclose the substance of the Pre-argument Conference, nor report on the same, to any person or persons whomsoever (including, but not limited to, any judge). The attorneys are likewise prohibited from disclosing any substantive information emanating from the conference to anyone other than their clients or co-counsel; and then only upon receiving due assurance that the recipients will honor the confidentiality of the information. See In re Lake Utopia Paper Ltd., 608 F.2d 928 (1st Cir. 1979). The fact of the conference having taken place, and the bare result thereof (e.g., "settled," "not settled," "continued"), including any resulting Conference Order, shall not be considered to be confidential.*
- (d) **Non-Compliance Sanctions.** *If the appellant has not taken each of the actions set forth in section (a) of this Program, or in the Conference Order, within the time therein specified, the appeal may be dismissed by the Clerk without further notice.*
- (e) **Grievances.** *Any grievances as to the handling of any case under the Program will be addressed by the Court of Appeals, and should be sent to the Circuit Executive, One Courthouse Way, Suite 3700, Boston, MA 02210, who will hold them confidential on behalf of the Court of Appeals unless release is authorized by the complainant.*
- (f) **Scope of Program.** *The Program will include all civil appeals and review of administrative orders, except the following: It will not include original proceedings (such as petitions for mandamus), prisoner petitions, habeas corpus petitions, summary enforcement actions of the National Labor Relations Board or any pro se cases. Nothing herein shall prevent any judge or panel, upon motion or sua sponte, from referring any matter to the Settlement Counsel at any time.*

*The foregoing Civil Appeals Management Program shall be applicable to all such cases as set forth above, arising from the District Courts in the Districts of Maine, New Hampshire, Massachusetts, and Rhode Island, in which the Notice of Appeal is received in the Court of Appeals on or after January 1, 1992; and all such cases arising from the District Court in the District of Puerto Rico, in which the Notice of Appeal is received in the Court of Appeals on or after January 1, 1993.*

## 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.

### **Local Rule 34. Oral Argument**

- (a) **Party's Statement.** Any party who desires to do so may include, either in the opening or answering brief as the case may be, a statement limited to one-half page setting forth the reasons why oral argument should, or need not, be heard. If such a statement is included, it must be inserted in the brief immediately after the Table of Contents and Table of Authorities and immediately before the first page of the brief and must be captioned "REASONS WHY ORAL ARGUMENT SHOULD [NEED NOT] BE HEARD" as appropriate. The inclusion of this statement will not be counted in computing the maximum permitted length of the brief.
- (b) **Notice of Argument.** If the court concludes that oral argument is unnecessary based on the standards set forth in Fed. R. App. P. 34(a)(2), counsel shall be so advised. The court's decision to dispense with oral argument may be announced at the time that a decision on the merits is rendered.
- (c) **Argument.**
- (1) **Presentation.** Parties may expect the court to have some familiarity with the briefs. Normally the court will permit no more than 15 minutes per side for oral argument. It is counsel's responsibility to keep track of time. Where more than one counsel argues on one side of a case, it is counsel's further responsibility to assure a fair division of the total time allotted. One or more cases posing the same issues, arising from the same factual context, will be treated as a single case for the purposes of this rule.
  - (2) **Rebuttal.** Although Fed. R. App. P. 34(c) permits an appellant both to open and conclude the argument, the court holds the view that seldom is counsel well served by an advance reservation of time for rebuttal. Not only does such action reduce the limited time allotted but is likely merely to allow repetitious argument. Counsel are expected to cover all anticipated issues in their arguments in chief. Should unexpected matters arise, such as the need for factual correction, the court is prepared to give counsel who have not reserved time a brief additional period for real rebuttal.

### **Local Rule 34.1. Terms and Sittings**

- (a) **Terms.** The court shall not hold formal terms but shall be deemed always open for the purpose of docketing appeals and petitions, making motions, filing records, briefs and appendices, filing opinions and entering orders and judgments. Where a federal holiday falls on a Monday, the general order is that the court shall commence its sitting on Tuesday.

**(b) *Sittings.***

(1) ***Locations.*** *Sittings will be in Boston except that there will also be sittings in Puerto Rico in November and March and at such other times and places as the court orders. Cases arising in Puerto Rico which are assigned to other sessions may be reassigned to sessions scheduled to be conducted in Puerto Rico. All other cases will be assigned for hearing or submission to the next available session after the briefs have been filed or the time therefor has run.*

(2) ***Request for Assignment.*** *Requests for assignment to a specific session, including the March and November sessions, must state reasons justifying special treatment. Assignment to the November and March Puerto Rico session list, so long as space permits, will be made on the basis of statutory priority requirements, hardship that would result from travel to Boston, or other good cause shown.*

(c) ***Calendaring.*** *Approximately six weeks prior to hearing, the clerk will contact counsel concerning assignment of the case to a specific day, and request the name of the person who will present the oral argument. Two weeks before the monthly sitting commences the clerk will prepare and distribute an order assigning the cases for that session for hearing. The court reserves the privilege of reducing the allotted time for argument when the case is presented.*

(d) ***Continuances.*** *Once a case is scheduled for argument, continuances may be allowed only for grave cause.*

## **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.

### ***Local Rule 35. En Banc Determination***

- (a) ***Who May Vote; Composition of En Banc Court.*** *The decision whether a case should be heard or reheard en banc is made solely by the circuit judges of this circuit who are in regular active service. Rehearing en banc shall be ordered only upon the affirmative votes of a majority of the judges of this court in regular active service who are not disqualified, provided that the judges who are not disqualified constitute a majority of the judges who are in regular active service. A court en banc consists solely of the circuit judges of this circuit in regular active service except that any senior circuit judge of this circuit shall be eligible to participate, at that judge's election, in the circumstances specified in 28 U.S.C. § 46(c).*
- (b) ***Petitions for Panel Hearing or Rehearing En Banc.*** *If a petitioner files a petition for panel rehearing and a petition for rehearing en banc addressed to the same decision or order of the court,*

*the two petitions must be combined into a single document and the document is subject to the 15-page limitation contained in Fed. R. App. P. 35 (b)(2), (3).*

- (c) Number of Copies.** Pursuant to Fed. R. App. P. 35(d), ten copies of a petition for hearing or rehearing en banc or combined Fed. R. App. P. 35(b)(3) document must be filed with the clerk, including one copy on a computer generated disk. The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.
- (d) Motions for Leave to File Oversized Petitions.** A motion for leave to file a petition in excess of the page length limitations of Fed. R. App. P. 35(b)(2) and Local Rule 35(b) must be filed at least five calendar days in advance of the petition's due date, must specify the additional length sought, and must contain a detailed statement of grounds. Such motions will be granted only for compelling reasons.

### **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.

### **Local Rule 36. Opinions**

- (a) Opinions Generally.** The volume of filings is such that the court cannot dispose of each case by opinion. Rather it makes a choice, reasonably accommodated to the particular case, whether to use an order; memorandum and order; or opinion. An opinion is used when the decision calls for more than summary explanation. However, in the interests both of expedition in the particular case, and of saving time and effort in research on the part of future litigants, some opinions are rendered in unpublished form; that is, the opinions are directed to the parties but are not otherwise published in the official West reporter; and may not be cited except as provided in Local Rule 32.3. As indicated in Local Rule 36(b), the court's policy, when opinions are used, is to prefer that they be published; but in limited situations, described in Local Rule 36(b), where opinions are likely not to break new legal ground or contribute otherwise to legal development, they are issued in unpublished form.



**(b) Publication of Opinions.** *The United States Court of Appeals for the First Circuit has adopted the following plan for the publication of its opinions.*

**(1) Statement of Policy.** *In general, the court thinks it desirable that opinions be published and thus be available for citation. The policy may be overcome in some situations where an opinion does not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or serve otherwise as a significant guide to future litigants. (Most opinions dealing with claims for benefits under the Social Security Act, 42 U.S.C. § 205(g), will clearly fall within the exception.)*

**(2) Manner of Implementation.**

**(A)** *As members of a panel prepare for argument, they shall give thought to the appropriate mode of disposition (order; memorandum and order; unpublished opinion, published opinion). At conference the mode of disposition shall be discussed and, if feasible, agreed upon. Any agreement reached may be altered in the light of further research and reflection.*

**(B)** *With respect to cases decided by a unanimous panel with a single opinion, if the writer recommends that the opinion not be published, the writer shall so state in the cover letter or memorandum accompanying the draft. After an exchange of views, should any judge remain of the view that the opinion should be published, it must be.*

**(C)** *When a panel decides a case with a dissent, or with more than one opinion, the opinion or opinions shall be published unless all the participating judges decide against publication. In any case decided by the court en banc the opinion or opinions shall be published.*

**(D)** *Any party or other interested person may apply for good cause shown to the court for publication of an unpublished opinion.*

**(E)** *Periodically the court shall conduct a review in an effort to improve its publication policy and implementation.*

**(c) Precedential Value of Unpublished Opinions.** *While an unpublished opinion of this court may be cited to this court in accordance with Local Rule 32.3(a), a panel's decision to issue an unpublished opinion means that the panel sees no precedential value in that opinion.*

**(d) Copies of Opinions.** *Unless subject to a standing order which might apply to classes of subscribers, such as law schools, the charge for a copy of each opinion, after one free copy to counsel for each party, is \$5.00.*

## **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.

## **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.

### ***Local Rule 38. Sanctions for Vexatious Litigation***

*When any party to a proceeding before this court or any attorney practicing before the court files a motion, brief, or other document that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay, or unreasonably or vexatiously increases litigation costs, the court may, on its own motion, or on motion of a party, impose appropriate sanctions on the offending party, the attorney, or both. Any party or attorney on whom sanctions may be imposed under this rule shall be afforded an opportunity to respond within fourteen days of service of a motion or an order to show cause before sanctions are imposed by the court.*

## **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.

### ***Local Rule 39. Fee Applications***

***(a) Fee Applications under the Equal Access to Justice Act.***

- (1) ***Time for Filing.*** *An application to a court of appeals for an award of fees and other expenses pursuant to 28 U.S.C. § 2412, in connection with an appeal, must be filed with the clerk of the court of appeals, with proof of service on the United States, within 30 days of final judgment in the action. For purposes of the 30-day limit, a judgment must not be considered final until the time for filing an appeal or a petition for a writ of certiorari has expired, or the government has given*

*written notice to the parties and to the court of appeals that it will not seek further review, or judgment is entered by the court of last resort.*

(2) **Content.** *The application shall:*

(A) *identify the applicant and the proceeding for which the award is sought;*

(B) *show that the party seeking the award is a prevailing party and is eligible to receive an award;*

(C) *show the nature and extent of services rendered and the amount sought, including an itemized statement from an attorney representing the party or any agent or expert witness appearing on behalf of the party, stating the actual time expended and the rate at which fees are computed, together with a statement of expenses for which reimbursement is sought; and*

(D) *identify the specific position of the United States that the party alleges was not substantially justified. The court of appeals may, in its discretion, remit any such application to the district court for a determination.*

(3) **Objection.** *If the United States has any objection to the application for fees and other expenses, such objection must be filed within 30 days of service of the application.*

**(b) Fee Applications other than under 28 U.S.C. § 2412.** *An application, under any statute, rule or custom other than 28 U.S.C. § 2412, for an award of fees and other expenses, in connection with an appeal, must be filed with the clerk of the court of appeals within 30 days of the date of entry of the final circuit judgment, whether or not attorney fees had been requested in the trial court, except in those circumstances where the court of appeals has ordered that the award of fees and other expenses be remanded to the district court for a determination. For purposes of the 30-day limit, a judgment must not be considered final until the time for filing an appeal or a petition for a writ of certiorari has expired, or judgment is entered by the court of last resort. If any party against whom an award of fees and other expenses is sought has any objection to the application, such objection must be filed within 30 days of service of the application. The court of appeals may, in its discretion, remit any such application to the district court for a determination.*

## **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.

#### ***Local Rule 40. Petition for Panel Rehearing***

- (a) **Number of Copies.** *Ten copies of a petition for panel rehearing must be filed with the clerk, including one copy on computer generated disk. The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.*
- (b) **Motions for Leave to File Oversized Petitions.** *A motion for leave to file a petition for panel rehearing in excess of the page length limitations of Fed. R. App. P. 40(b) must be filed at least five calendar days in advance of the petition's due date, must specify the additional length sought, and must contain a detailed statement of grounds. Such motions will be granted only for compelling reasons.*

#### **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.

***Local Rule 41. Stay of Mandate***

*Whereas an increasingly large percentage of unsuccessful petitions for certiorari have been filed in this circuit in criminal cases in recent years, in the interests of minimizing unnecessary delay in the administration of justice mandate will not be stayed hereafter in criminal cases following the affirmance of a conviction simply upon request. On the contrary, mandate will issue and bail will be revoked at such time as the court shall order except upon a showing, or an independent finding by the court, of probable cause to believe that a petition would not be frivolous, or filed merely for delay. See 18 U.S.C. § 3148. The court will revoke bail even before mandate is due. A comparable principle will be applied in connection with affirmed orders of the NLRB, see NLRB v. Athbro Precision Engineering, 423 F.2d 573 (1st Cir. 1970), and in other cases where the court believes that the only effect of a petition for certiorari would be pointless delay.*

**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.

## **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.

#### **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.

#### **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.

### ***Local Rule 45. Defaults***

- (a) **Appellant.** *When a cause is in default as to the filing of the brief for appellant or petitioner, and the appendix, if one is required, the clerk must enter an order dismissing the appeal for want of diligent prosecution. The party in default may have the appeal reinstated upon showing special circumstances justifying the failure to comply with the time limit. The motion to set aside the dismissal must be filed within ten days.*
- (b) **Appellee.** *When a cause is in default as to the filing of the brief for appellee or respondent, the cause must be assigned to the next list and the appellee will not be heard at oral argument except by leave of the Court.*
- (c) **Local Rule 3.** *Counsel are reminded of Local Rule 3 providing for the dismissal of the appeal for want of diligent prosecution if the docket fee is not paid within 7 days of the filing of the notice of appeal.*

### ***Local Rule 45.1. The Clerk***

- (a) **Business Hours.** *The office of the clerk shall be open for business from 8:30 a.m. to 5:00 p.m. except Saturdays, Sundays, and legal holidays.*
- (b) **Fees and Costs.** *The clerk must charge the fees and costs which are fixed from time to time by the Judicial Conference of the United States, pursuant to 28 U.S.C. § 1913.*

*(c) Copies of Opinions. Unless subject to a standing order which might apply to classes of subscribers, such as law schools, the charge for a copy of each opinion, after one free copy to counsel for each party, is \$5.00.*

## **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.

## **Local Rule 46. Attorneys**

### **(a) Admission.**

(1) **Admission Fee.** *Upon being admitted to practice, an attorney other than government counsel, and court-appointed counsel, must pay a local admission fee of \$50.00 to the clerk. The clerk must maintain the proceeds as a court's discretionary fund for the reimbursement of expenses of non-compensable court-appointed counsel and such other purposes as the court may order. This fee is in addition to the \$150.00 national admission fee imposed by the Court of Appeals Miscellaneous Fee Schedule, promulgated under 28 U. S. C. § 1913. Attorneys may be admitted in open court on motion or otherwise as the court shall determine.*

(2) **Admission as a Prerequisite to Practice.** *In order to file motions, pleadings or briefs on behalf of a party or participate in oral argument, attorneys must be admitted to the bar of this court and file an appearance form. The appearance of a member of the bar of any court designated in Fed. R. App. P. 46(a) will be entered subject to filing an application and subsequent admission to practice in this court. Forms for admission and entry of appearance will be provided by the clerk.*

(3) **Parties.** *A party desiring to appear without counsel shall notify the clerk in writing by completing and filing an entry of appearance on a form approved by the court.*

(b) **Temporary Suspension of Attorneys.** *When it is shown to the Court of Appeals that any member of its bar has been suspended or disbarred from practice by a final decision issued by any other court of record, or has been found guilty of conduct unbecoming of a member of the bar of this court, the member may be temporarily suspended from representing parties before this court pending the completion of proceedings initiated under Fed. R. App. P. 46 and the Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit.*

(c) **Disciplinary Rules.** *The Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit are on file in the clerks's office. A copy may be obtained upon request addressed to the clerk of this court.*

(d) **Library Access.** *The law library of this court shall be open to members of the Bar, to the United States Attorney of the Circuit and their assistants, to other law officers of the government, and persons having a case in this court, but books may be removed only by government employees, who shall sign therefor.*

**(e) Staff Attorneys and Law Clerks.** *No one serving as a staff attorney to the court or as a law clerk to a member of this court or employed in any such capacity by this court shall engage in the practice of law while continuing in such position. Nor shall a staff attorney or law clerk after separating from that position practice as an attorney in connection with any case pending in this court during the term of service, or appear at the counsel table or on brief in connection with any case heard during a period of one year following separation from service with the court.*

**(f) Standing Rule Governing Appearance and Argument by Eligible Law Students**

**(1) Scope of Legal Assistance.**

- (A) An eligible law student with the written consent of an indigent and the indigent's attorney of record may appear in this court on behalf of that indigent in any case. The attorney of record, for purposes of this rule, must be a member of the bar of this court, the faculty member conducting the course in appellate advocacy described in paragraph (2)(c) of this section, and appointed as counsel on appeal for the indigent. The written consent must be filed with the clerk.*
- (B) An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be signed by the attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs. The law student may also participate in oral argument with leave of the court, but only in the presence of the attorney of record. The attorney of record must assume personal professional responsibility for the law student's work and for supervising the quality of the law student's work. The attorney of record should be familiar with the case and prepared to supplement or correct any written or oral statements made by the student.*

**(2) Student Eligibility Requirements.** *In order to appear, the student must:*

- (A) Be enrolled in a law school approved by the American Bar Association;*
- (B) Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;*
- (C) Be taking a course in appellate advocacy for academic credit;*
- (D) Be certified by the attorney of record as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;*

- (E) *Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services. This shall also prevent a law student from making charges for its services;*
- (F) *certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court.*

**(3) Standards of Supervision.** *The supervising attorney of record must:*

- (A) *File with this court the attorney's written consent to supervise the student;*
- (B) *Assume personal professional responsibility for the student's work;*
- (C) *Assist the student to the extent necessary;*
- (D) *Appear with the student in all proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.*

**(4) Forms Required by Rule.**

**(A) Form to be completed by the party for whom the law student is rendering services:**

*I authorize \_\_\_\_\_, a law student, to appear in court or at other proceedings on my behalf, and to prepare documents on my behalf.*

---

*(Date) \_\_\_\_\_*

*(Signature of Client)*

*(If more than one client is involved, approvals from each shall be attached.)*

**(B) Form to be completed by the law student's supervising attorney:**

*I certify that this student has completed at least 4 semesters of law school work, and is, to the best of my knowledge, of good character and competent legal ability. I will carefully supervise all of this student's work. I authorize this student to appear in court or at other proceedings, and to prepare documents. I will accompany the student at such appearances, sign all documents prepared by the student, assume personal responsibility for the student's work, and be prepared to supplement, if necessary, any statements made by the student to the court or to opposing counsel.*

(Name of Student)	(Signature of Supervising Attorney)
(Address & Phone of Above)	(Address & Phone of Above)
Name of Law School Attending	

**(C) Form to be completed by law student:**

*I certify that I have completed at least 4 semesters of law school; that I am familiar and will comply with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the Rules of this Court; and that I am receiving no compensation from the party on whose behalf I am rendering services.*

(Date)	(Signature of Student)
--------	------------------------

**Local Rule 46.5. Appointment of Counsel in Criminal Cases**

*The United States Court of Appeals for the First Circuit adopts the following Plan to implement the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, P.L. 88-455, as amended October 12, 1984, P.L. 98-473, and November 14, 1986, P.L. 99-651 to which references must be made. The purpose of this Plan is to provide adequate representation and defense of all persons to the extent provided therein including cases where a person faces loss of liberty or is in custody as a material witness. The court notes at the outset that the Act does not diminish the traditional responsibility of members of the Bar to accept appointments. It recognizes that compensation will, in most instances, be something less than full, and appreciates that service by counsel will represent a substantial measure of public dedication.*

**(a) Request for Counsel.** *Every person or eligible witness desiring counsel and that the government pay for the expense of appeal, whether or not the person had court-appointed counsel in the district court, shall address to this court a request in writing and a statement of the person’s inability to pay. The court may make such further inquiry of the person’s need as it may see fit. This inquiry may also be addressed to previously retained counsel, with the objective of ascertaining that present inability to pay is not a result of past excessive compensation. Such inquiry is not aimed at depriving an indigent of counsel but at the relatively few counsel who might reasonably be considered to have used up all of the available funds for doing only part of the work.*

**(b) Appointment of Counsel.** *The court may appoint counsel who represented the person in the district court, or counsel from a panel maintained by the court, or otherwise. The addition or deletion of names from the panel and the selection of counsel shall be the sole and exclusive responsibility of the court but the actual administration thereof may be conducted by the clerk of this court. The person may ask for appointment of counsel who represented the defendant in the district court or for the non-appointment of such counsel, but shall not otherwise request any specific individual. The court shall give consideration to such request, but shall not be bound by it. A request for relief by trial counsel, upon a showing of cause, shall be given due consideration. It is recognized that counsel on appeal may require different qualifications than for trial. The substitution of counsel on appeal shall not in any way reflect upon the ability or upon the conduct of prior counsel. The Administration Office shall be notified promptly of each appointment, and of each order releasing counsel.*

**(c) Duration and Substitution of Counsel.** *The court notes, and incorporates herein, the provisions of section (c) of the Act, except the references therein to magistrates. Except when relieved by the court, counsel's appointment shall not terminate until, if the person loses the appeal, counsel informs the person of that fact and of the person's right to petition for certiorari and the time period, and has prepared and filed the petition if the person requests it and there are reasonable grounds for counsel properly to do so (see Rule 10 of the Rules of the Supreme Court of the United States). If counsel determines that there are no reasonable grounds and declines to file a petition for certiorari requested by the person, counsel shall so inform the Court and request leave to withdraw from the representation by written motion stating that counsel has reviewed the matter and determined that the petition would be frivolous, accompanied by counsel's certification of the date when a copy of the motion was furnished to the person. If the person does not wish to apply for certiorari or does not respond to the notification, counsel shall so inform the court by letter, which action shall terminate the representation. The clerk will inform the person in writing of the fact and effective date of the termination of counsel's appointment.*

**(d) Payment for Representation and Services other than Counsel.** *The court notes sections (d) and (e) of the Act and incorporates the pertinent portions herein. Expenses described in the Act do not include overhead and such matters as secretarial expenses not ordinarily billed to clients, but a reasonable charge for copying briefs may be allowed. For additional guidance, see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, Guide to Judiciary Policies and Procedures.*

*All claims, whether for compensation, or for expenditures, shall be submitted promptly after the completion of all duties, at the risk of disallowance. If counsel files a petition for a writ of certiorari, counsel's time and expenses involved in the preparation of the petition should be included on the voucher for services performed in this court. After court approval all orders for payment shall be processed through the Administrative Office.*

**(e) Receipt of Other Payments.** *The provisions of section (f) of the Act are incorporated herein. Appointed counsel shall be under a continuing duty to report to the court any circumstances indicating financial ability on behalf of the person to pay part or all of the person's counsel fees or expenses.*

*The court shall in no instance permit counsel who receives payments under the Act to frustrate the intent of the limitations contained in sections (d) and (e) by the receipt of other payment, either during, before, or after such representation.*

- (f) Forms.** *For the appointment of counsel, the making of claims, and all other matters for which forms shall have been approved by the Administrative Office, such forms shall be used as a matter of course.*
- (g) Effective Date and Amendments.** *This amended Plan shall take effect on November 14, 1986. It may be amended at any time with the approval of the Judicial Council. [The present plan incorporates an amendment made on December 16, 2002.]*

### **Local Rule 46.6. Procedure for Withdrawal in Criminal Cases**

- (a) Trial counsel's duty to continue to represent defendant on appeal until relieved by the court of appeals.**

*An attorney who has represented a defendant in a criminal case in the district court will be responsible for representing the defendant on appeal, whether or not the attorney has entered an appearance in the court of appeals, until the attorney is relieved of such duty by the court of appeals. See Local Rule 12(b).*

- (b) Withdrawal by counsel appointed in the district court.**

*When a defendant has been represented in the district court by counsel appointed under the Criminal Justice Act, the clerk will usually send a "Form for Selection of Counsel on Appeal" to defendant, which asks defendant to select among the following:*

- (1) representing him or herself on appeal and proceeding pro se;*
- (2) requesting trial counsel to be appointed on appeal to represent defendant on appeal;*
- (3) requesting the appointment of new counsel on appeal; and*
- (4) retaining private counsel for appeal.*

*If the defendant returns the form and elects to proceed with new counsel to be appointed on appeal, then the court will ordinarily appoint new counsel and allow trial counsel to withdraw.*

*If counsel wishes to withdraw and either the defendant fails to complete the form or counsel wishes to terminate representation even though the defendant has selected (2) above, counsel may file an affidavit explaining the difficulty and move to withdraw.*



*An unsworn declaration under the penalty of perjury in the format set forth in 28 U.S.C. § 1746 will suffice in place of an affidavit.*

**(c) Procedure for withdrawal in situations not governed by Local Rule 46.6(b).**

*Motions to withdraw as counsel on appeal in criminal cases must be accompanied by a notice of appearance of replacement counsel or, in the absence of replacement counsel, such motions must state the reasons for withdrawal and must be accompanied by one of the following:*

- (1) The defendant's completed application for appointment of replacement counsel under the Criminal Justice Act or a showing that such application has already been filed with the court and, if defendant has not already been determined to be financially eligible, certification of compliance with Fed. R. App. P. 24; or*
- (2) An affidavit from the defendant showing that the defendant has been advised that the defendant may retain replacement counsel or apply for appointment of replacement counsel and expressly stating that the defendant does not wish to be represented by counsel but elects to appear pro se; or*
- (3) An affidavit from the defendant showing that the defendant has been advised of the defendant's rights with regard to the appeal and expressly stating that the defendant elects to withdraw the appeal; or*
- (4) If the reason for the motion is the frivolousness of the appeal, a brief following the procedure described in Anders v. California, 386 U.S. 738 (1967), must be filed with the court. [Counsel's attention is also directed to McCoy v. Court of Appeals, 486 U.S. 429 (1988); Penson v. Ohio, 488 U.S. 75 (1988)]. Any such brief shall be filed only after counsel has ordered and read all relevant transcripts, including trial, change of plea, and sentencing transcripts, as well as the presentence investigation report. Counsel shall serve a copy of the brief and motion on the defendant and advise the defendant that the defendant has thirty (30) days from the date of service in which to file a brief in support of reversal or modification of the judgment. The motion must be accompanied by proof of service on the defendant and certification that counsel has advised the defendant of the defendant's right to file a separate brief.*

*If counsel is unable to comply with (1), (2), or (3) and does not think it appropriate to proceed in accordance with (4), counsel may file an affidavit explaining the difficulty and move to withdraw.*

*An unsworn declaration under the penalty of perjury in the format set forth in 28 U.S.C. § 1746 will suffice in place of an affidavit.*

**(d) Service.**

*All motions must be accompanied by proof of service on the defendant and the Government and will be determined, without oral argument, by one or more judges.*

## **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.

### ***Local Rule 47. Local Rules of the First Circuit***

**(a) Advisory Committee**

- (1) **Membership.** *In accordance with 28 U.S.C. § 2077(b) an advisory committee on the rules of practice and internal operating procedures is hereby created for the court. This committee shall consist of members of the Bar of the court as follows: Three members from the District of Massachusetts, two members from the District of Puerto Rico and one each from the Districts of Maine, New Hampshire and Rhode Island.*
- (2) **Duties.** *The advisory committee shall have an advisory role concerning the rules of practice and internal operating procedures of the court. The advisory committee shall, among other things,*

- (A) *provide a forum for continuous study of the rules of practice and internal operating procedures of the court;*
- (B) *serve as a conduit between the bar and the public and the court regarding procedural matters and suggestions for changes;*
- (C) *consider and recommend rules and amendments for adoption; and*
- (D) *render reports from time to time, on its own initiative and on request, to the court.*

(3) **Terms of Members.** *The members of the advisory committee shall serve three-year terms, which will be staggered commencing on October 1, 1986, so that three new members will be appointed every year in such order as the court decides. The court shall appoint one of the members of the committee to serve as chairman.*

(b) **Comments from Members of the Bar.** *Prior to the adoption of a proposed amendment to these Rules, if time permits, the court will seek the comments and recommendations of interested members of the bar through the office of the clerk and with the aid of the advisory committee created pursuant to 28 U.S.C. § 2077.*

### **Local Rule 47.1. Judicial Conference of the First Circuit**

- (a) *A Judicial Conference of the First Circuit will be held periodically in accordance with 28 U.S.C. § 333. The chief judge shall preside at the Conference.*
- (b) *The chief judge of the circuit shall appoint a Planning Committee consisting of a circuit judge and/or district judge and such members of the Bar as they may designate to plan and conduct the Conference.*
- (c) *Members of the Conference shall include the following:*
  - (1) *Presidents of the state bar associations of states and commonwealths within the circuit;*
  - (2) *The dean or member of the faculty designated by the dean of each accredited law school within the circuit;*
  - (3) *All United States Attorneys of the circuit;*
  - (4) *Lawyers to be appointed from each state in numbers to be determined by the Planning Committee, such appointment to be made by the district committee of each district; if such a committee does not exist, such appointments to be made by the district judges as determined by each district court. Such additional members of the Bar may also be invited as the chief circuit judge, in consultation with the other circuit judges, and the Planning Committee shall decide; and*

(5) *All federal defenders designated by the chief judge of the circuit.*

(d) *The Circuit Executive of this court shall be the Secretary of the Conference.*

## **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.

## ***Local Rule 48. Capital Cases***

(a) ***Applicability of Rule.*** *This rule shall govern all matters in which this Court is requested to rule in any case where the death penalty has been imposed, including, but not limited to, the following:*

- (1) *direct criminal appeals;*
- (2) *appeals from District Court rulings, such as on motions to vacate a sentence, petitions for a writ of habeas corpus, and requests for a stay or other injunction;*
- (3) *original petitions for a writ of habeas corpus;*
- (4) *motions for second or successive habeas corpus applications;*
- (5) *any related civil proceedings challenging the conviction or sentence of death, or the time, place or manner of execution, as being in violation of federal law, whether filed by the prisoner or by someone else on his or her behalf.*

*Such cases shall be referred to herein as "capital cases" and shall be governed by this rule, except where otherwise specified in a written order by the Court. To the extent that any local rule of this Court is inconsistent with this rule, this rule shall govern. All local rules of this Court, including interim local rules, are otherwise as applicable to capital cases as they would have been absent this rule.*

**(b) Certificate of Death Penalty Case.** *A special docket shall be maintained by the Clerk of this Court for all cases filed pursuant to this rule.*

*(1) Filing. Upon the filing of any proceeding in any District Court in this Circuit challenging a sentence of death imposed pursuant to a federal or a state court judgment, each party to such proceeding shall file a Certificate of Death Penalty Case with the Clerk of this Court. The U.S. Attorney shall file a Certificate of Death Penalty Case with the Clerk of this Court immediately upon notifying the District Court of intent to seek the death penalty in a federal criminal case. The U.S. Attorney shall also update the Certificate immediately upon return of a verdict imposing a sentence of death.*

*(2) Content of the Certificate. The Certificate shall set forth the names, telephone numbers and addresses of the parties and counsel, the proposed date and place of implementation of the sentence of death, if set, and the emergency nature of the proceedings, if appropriate. It shall be the responsibility of counsel for all parties to apprise the Clerk of this Court of any changes in the information provided on the Certificate as expeditiously as possible.*

**c) Certificates of Appealability and Stays.**

*(1) Certificates of Appealability and Motions for Stays. Certificates of appealability for all habeas matters are addressed in Fed. R. App. P. 22. If no express request for a certificate of appealability has been filed in the district or appellate court, a motion for stay of execution or a notice of appeal shall be deemed to constitute such a request.*

*(2) Stays of Execution.*

*(A) Except where otherwise prohibited by 28 U.S.C. § 2262, a sentence of death shall automatically be stayed upon the filing of a notice of appeal. In cases where the petitioner is seeking leave to file a second or successive application under 28 U.S.C. § 2254 or § 2255, a stay of execution shall automatically be issued upon approval by the Court of Appeals of the filing of a second or successive application under 28 U.S.C. § 2244(b). The Clerk shall immediately notify all parties and the state or federal authorities responsible for implementing the defendant's sentence of death of the stay of execution. If notification is oral, it shall be followed as expeditiously as possible by written notice.*

*(B) Except where otherwise required by law or specified in a written order by the Court, an automatic stay of execution shall remain in effect until the Court issues its mandate, at which time the automatic stay shall expire. In the event that a motion requesting a stay of*

*mandate is filed, the motion should also be accompanied by a motion requesting a case-specific stay of execution.*

- (C) The assigned panel may grant or modify or vacate any stay of execution at any time and will consider upon request motions for a case-specific stay of execution. All motions for a case specific stay of execution must be accompanied by a memorandum of law, which must include at a minimum the prevailing standards of review and any relevant facts to advise the Court's decision.*
- (D) Upon making the necessary findings, the Court may enter a case-specific stay of execution which shall clearly specify the duration of the stay.*
- (E) The Clerk shall send notice to all the parties and state or federal authorities responsible for implementing the defendant's sentence of death when a stay imposed by this provision, be it automatic or case-specific, is no longer in effect.*

# 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 First 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 appeals to the United States Court of Appeals for the First 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 4.**  
**Affidavit to Accompany Motion for**  
**Leave to Appeal in Forma Pauperis**

United States District Court for the District of \_\_\_\_\_

A.B., Plaintiff

v.

Case No. \_\_\_\_\_

C.D., Defendant

<b>Affidavit in Support of Motion</b>	<b>Instructions</b>
<p>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.)</p> <p>Signed: _____</p>	<p>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.</p> <p>Date: _____</p>

**My issues on appeal are:**

*1. For both you and you 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	\$ _____	\$ _____	\$ _____	\$ _____
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): _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Total Monthly income:</b>	\$ _____	\$ _____	\$ _____	\$ _____

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

<b>Employer</b>	<b>Address</b>	<b>Dates of Employment</b>	<b>Gross monthly pay</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouses's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

<b>Employer</b>	<b>Address</b>	<b>Dates of Employment</b>	<b>Gross monthly pay</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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, 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 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.

	<b>You</b>	<b>Spouse</b>
Rent or home mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____
Are any real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
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 operations of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
<b>Total monthly expenses:</b>	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses 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:

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*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.*

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Your daytime phone number: (\_\_\_\_) \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

**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 the United States Court of Appeals for the First Circuit

\_\_\_\_\_, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the First Circuit from the final judgment [or order or decree] of the district court for the district of \_\_\_\_\_ [or bankruptcy appellate panel of the first 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: \_\_\_\_\_  
 \_\_\_\_\_



**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:

- 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*
- 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:

- 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*
- 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: \_\_\_\_\_