REVISED RULES
OF THE
SUPREME COURT OF THE UNITED STATES

ADOPTED APRIL 12, 1954. EFFECTIVE JULY 1, 1954.

PART I. THE COURT.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice as attorney or counsellor in any court, while he continues in office.

2. The clerk shall not permit any original record or paper to be taken from the office, except temporarily for purposes of printing, and except, on proper application from counsel or from the clerk or the presiding judge of a court below whose judgment is sought to be reviewed, for return to such court, after the conclusion of the proceedings in this court. Original or file copies of pleadings, papers, or briefs may not be withdrawn by litigants.

3. The clerk's office will be open from 9:00 A. M. to 5:00 P. M. Mondays through Fridays, and from 9:00 A. M. to noon on Saturdays, legal holidays excepted.

2.

LIBRARY.

1. The library for the bar shall be open to members of the bar of this court, to members of Congress, and to law officers of the executive or other departments of the Government.

2. The library shall be open during such times as the reasonable needs of the bar require and shall be governed by the regulations made by the librarian with the approval of the chief justice.

3. Books may not be removed from the building.

3.

TERM.

1. The court will hold an annual term commencing on the first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

2. The court will at every term announce the date after which no case will be called for argument, or be submitted for decision at that term, unless otherwise ordered for special cause shown.

3. At the end of each term, all cases on the docket shall be continued to the next term.

4.

SESSIONS, QUORUM, AND ADJOURNMENTS.

1. Open sessions of the court will be held at noon on the first Monday in October of each year, and thereafter as announced by the court. When the court is in session to hear arguments, it sits from noon until two; recesses until half-past two; and adjourns for the day at half-past four.

2. The court will not hear arguments or hold open sessions on Saturday.

3. In the absence of a quorum, on any day appointed for holding a session of the court, the justices attending (or, if no justice is present, the clerk or a deputy clerk) may adjourn the court until there is a quorum.

4. The court may, in appropriate instances, direct the clerk or the marshal to announce recesses and adjournments.

PART II. ATTORNEYS AND COUNSELLORS.

5.

ADMISSION TO THE BAR.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, Commonwealth, or Possession, and that their private and professional characters shall appear to be good.

2. In advance of appearing for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court evidencing his admission to practice there and that he is presently in good standing, and (2) his personal statement, on the form approved by the court and furnished by the clerk, which shall be indorsed by two members of the bar of this court who are not related to the applicant.

3. Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he is satisfied that the applicant possesses the necessary qualifications.

4. Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, viz:

I, ———————— ————————, do solemnly swear (or affirm) that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

See Rule 52 (f) for fee required.

6.

ADMISSION OF FOREIGN COUNSEL.

An attorney, barrister, or advocate who is qualified to practice in the courts of any foreign state may be specially admitted to the bar of this court for purposes limited

to a particular case. He shall not, however, be authorized to act as attorney of record. In the case of such applicants, the oath shall not be required and there shall be no fee. Such admissions shall be only on motion of a member of the bar of this court, notice of which signed by such member and reciting all relevant facts shall be filed with the clerk at least three days prior to the motion.

7.

CLERKS TO JUSTICES NOT TO PRACTICE.

No one serving as a law clerk or secretary to a justice of this court shall practice as an attorney or counsellor in any court or before any agency of government while continuing in that position; nor shall he after separating from that position practice as an attorney or counsellor in this court until two years have elapsed after such separation; nor shall he ever participate, by way of any form of professional consultation and assistance, in any case that was pending in this court during the period that he held such position.

8.

DISBARMENT.

Where it is shown to the court that any member of its bar has been disbarred from practice in any State, Territory, District, Commonwealth, or Possession, or has been guilty of conduct unbecoming a member of the bar of this court, he will be forthwith suspended from practice before this court. He will thereupon be afforded the opportunity to show good cause, within forty days, why he should not be disbarred. Upon his response to the rule to show cause, or upon the expiration of the forty days if no response is made, the court will enter an appropriate order; but no order of disbarment will be entered except with the concurrence of a majority of the justices participating.

PART III. ORIGINAL JURISDICTION.

9.

PROCEDURE IN ORIGINAL ACTIONS.

1. This rule applies only to actions within the original jurisdiction of the court under the Constitution. Original applications for writs in aid of the court's appellate jurisdiction are governed by Part VII of these rules.

2. The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court.

3. The initial pleading in any original action shall be prefaced by a motion for leave to file such pleading, and both shall be printed in conformity with Rule 39. A brief in support of the motion for leave to file, which shall comply with Rule 39, may be filed with the motion and pleading. Sixty copies of each document, with proof of service as prescribed by Rule 33, are required, except that, where the adverse party is a State, service shall be made on the governor and attorney general of such State.

4. The case will be placed upon the original docket when the motion for leave to file is filed with the clerk. The docket fee must be paid at that time, and the appearance of counsel for the plaintiff entered.

5. The adverse party or parties may, within sixty days after receipt of the motion for leave to file and allied documents, file sixty printed copies of a brief or briefs in opposition to such motion, which shall conform to Rule 39. When such brief or briefs in opposition have been filed, or the time within which they may be filed has expired, the motion, pleading and briefs shall be distributed to the court by the clerk. The court may

thereafter grant or deny the motion or set it down for argument.

6. Additional pleadings may be filed, and subsequent proceedings had, as the court shall direct.

7. Any process against a State issued from the court in an original action shall be served on the governor and attorney general of such State.

8. A summons issuing out of this court in any original action shall be served on the defendant sixty days before the return day set out therein; and if the defendant, on such service of the summons, shall not respond by the return day, the plaintiff shall be at liberty to proceed *ex parte*.

PART IV. JURISDICTION ON APPEAL.

10.

APPEAL—HOW TAKEN.

1. An appeal permitted by law to this court shall be taken by filing a notice of appeal, in the form and at the place prescribed by this rule.

2. The notice of appeal shall be in three parts: (a) It shall specify the party or parties taking the appeal; shall designate the judgment or part thereof appealed from, giving its date and the time of its entry; shall specify the statute under which the appeal to this court is taken; and, if in a criminal case, shall include a general statement of the offense, the sentence imposed, and the place of confinement if the defendant below is in custody. (b) It shall include a designation of the portions of the record to be certified by the clerk of the lower court to this court. (c) It shall set forth the questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise, should not be repetitious,

and should not resemble in form or particularity the former assignments of error which are abolished by paragraph 4 of this rule. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the court. The notice of appeal shall include proof of service on all adverse parties as prescribed by Rule 33. A failure to comply with these requirements will be a sufficient reason for dismissing the appeal. For forms of notices of appeal, see the Appendix to these rules.

3. If the appeal is taken from a federal court, the notice of appeal shall be filed with the clerk of such court. If the appeal is taken from a state court, the notice of appeal shall be filed with the clerk of the court possessed of the record.

4. The petition for allowance of appeal, the order allowing appeal, the assignment of errors, the citation, and the bond for costs on appeal in cases governed by these rules are abolished.

11.

APPEAL—TIME FOR TAKING.

1. An appeal to review the judgment of a state court of last resort in a criminal case shall be deemed in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the court possessed of the record within ninety days after the entry of such judgment.

2. An appeal permitted by law from a district court to this court in a criminal case shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the district court within thirty days after entry of the judgment or order appealed from.

3. An appeal in all other cases shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the appropriate court within the time allowed by law for taking such appeal.

12.

CROSS-DESIGNATION AND CERTIFICATION OF RECORD.

1. Within twenty days from receipt of the notice of appeal, any other party to the appeal may file and serve a designation of additional portions of the record desired to be included. Such filing and service shall be made in the same manner as provided in Rule 10 for the filing and service of the notice of appeal. A judge of the court wherein the notice of appeal is filed (or a justice of this court, if application has first been made below) may, for good cause shown, enlarge the time for the filing of such cross-designation.

2. The clerk of the lower court shall prepare for transmission to this court as the transcript of the record only the portions of the record covered by the designation in the notice of appeal, and by the cross-designation, if any. He shall, however, include, whether designated or not, the opinion and judgment sought to be reviewed, and the notice of appeal. The papers comprising the transcript shall be fastened together in one or more volumes of convenient size, paged consecutively.

3. The parties or their counsel may by written stipulation filed with the clerk of the lower court within the time permitted for the filing of a cross-designation indicate the portions of the record to be included in the transcript, and the clerk shall then prepare for transmission only the parts designated in such stipulation, together with the opinion and judgment sought to be reviewed, and the notice of appeal, whether designated or not. If the designation in such stipulation shall differ from the designation in the notice of appeal, the designation in the stipulation shall prevail.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge of the court from which the appeal is taken, that original papers of any kind should be inspected in this court in lieu of copies, such

presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper.

5. When more than one appeal is taken to this court from the same judgment, it shall be sufficient to prepare a single record containing all the matter designated or agreed upon by the parties, without duplication.

13.

DOCKETING CASES.

1. It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court not more than sixty days after the filing of the notice of appeal. But, for good cause shown, any judge of the court whose decision is being appealed or in which the notice of appeal is filed (or a justice of this court if application has first been made below), may enlarge the time for docketing the case. Where application under this rule is made to a justice of this court, Rule 34 (2) governs timeliness. All other applications hereunder must be presented to the judge in question before the expiration of the original sixty-day period.

2. Upon the filing in this court of the record brought up by appeal, counsel for the appellant shall enter his appearance, pay the docket fee, and file, with proof of service as prescribed by Rule 33, forty copies of a printed statement as to jurisdiction, which shall comply in all respects with Rule 15. The case will then be placed on the appellate docket.

14.

DISMISSING APPEALS FOR NON-PROSECUTION.

1. After a notice of appeal has been filed, but before the case has been docketed in this court, the parties may at any time dismiss the appeal by stipulation filed in the court possessed of the record, or that court may dismiss

the appeal upon motion and notice by the appellant. For dismissal after the case has been docketed, see Rule 60.

2. If an appeal which has been noted is not docketed in this court within the time for docketing, plus any enlargement thereof duly granted, the court possessed of the record may dismiss the appeal upon motion of the appellee and notice to the appellant, and may make such orders thereon with respect to costs as may be just.

3. If an appeal which has been noted is not docketed in this court within the time for docketing, plus any enlargement thereof duly granted, and the court possessed of the record has for any reason denied an appellee's motion, made as provided in the foregoing paragraph, to dismiss the appeal, the appellee may have the cause docketed and the appeal dismissed in this court, by producing a certificate, whether in term or vacation, from the clerk of the court possessed of the record, establishing the foregoing facts, and by filing a motion to dismiss, which shall conform to Rule 35 and be accompanied by proof of service as prescribed by Rule 33. The clerk's certificate shall be attached to the motion, but it shall not be necessary for the appellee to file the record. In the event that the appeal is thereafter dismissed, the court will give judgment against the appellant and in favor of appellee for costs. In no case shall the appellant be entitled to docket the cause and file the record after the appeal shall have been dismissed under this paragraph, unless by special leave of court.

15.

JURISDICTIONAL STATEMENT.

1. The jurisdictional statement required by paragraph 2 of Rule 13 shall contain in the order here indicated—

(a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and

if reported. Any such opinions shall be appended as provided in subparagraph (h) hereof.

(b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing:

(i) The nature of the proceeding and the statute pursuant to which it is brought;

(ii) The date of the judgment or decree sought to be reviewed and the time of its entry, the date of any order respecting a rehearing, the date the notice of appeal was filed, and the court in which it was filed;

(iii) The statutory provision believed to confer on this court jurisdiction of the appeal;

(iv) Cases believed to sustain the jurisdiction.

(v) If the validity of the statute of a state, or statute or treaty of the United States is involved, its text shall be set out verbatim, citing the volume and page where it may be found in the official edition. If the statutory or treaty provisions that are involved are lengthy, the citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(c) (1) The questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise, should not be repetitious, and should not resemble in form or particularity the former assignments of error which are abolished by paragraph 4 of Rule 10. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the jurisdictional statement or fairly comprised therein will be considered by the court.

(2) The phrasing of the questions presented need not be identical with that set forth in the notice of appeal (see paragraph 2 of Rule 10), but the jurisdictional statement may not raise additional questions or change the substance of the questions already presented.

(d) A concise statement of the case containing the facts material to the consideration of the questions presented. If the appeal is from a state court, the statement of the case shall also specify the stage in the proceedings in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court.

(e) If the appeal is from a state court, there shall be included a presentation of the grounds upon which it is contended that the federal questions are substantial (*Zucht* v. *King*, 260 U. S. 174, 176, 177), which shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and the cases cited to sustain the jurisdiction (subparagraph (b)(iv) hereof), and shall include the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

(f) If the appeal is from a federal court, there shall similarly be included a statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

(g) If the appeal is from a decree of a district court granting or denying an interlocutory injunction, the statement must also include a showing of the matters

in which it is contended that the court has abused its discretion by such action. See *United States* v. *Corrick*, 298 U. S. 435; *Maya* v. *Lakeland Highlands Canning Co.*, 309 U. S. 310.

(h) There shall be appended to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including, if not reported, earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree; and, if the appeal is from a federal court, there shall similarly be appended the court's findings of fact and conclusions of law, if any were separately made.

(i) If the appeal is from a state court, there shall also be appended to the statement a copy of the order, judgment, or decree appealed from; and if from a federal court, there shall similarly be appended a copy of such order, judgment, or decree, which may however be limited to the portions thereof appealed from.

2. The jurisdictional statement shall be printed in conformity with Rule 39.

3. Where several cases are appealed from the same court that involve identical or closely related questions, it shall suffice to file a single jurisdictional statement covering all the cases.

16.

MOTION TO DISMISS OR AFFIRM.

1. Within thirty days after receipt of the jurisdictional statement, the appellee may file a printed motion to dismiss, or motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss.

(a) The court will receive a motion to dismiss any appeal on the ground that the appeal is not within the jurisdiction of this court, because not taken in conformity to statute or to these rules.

(b) The court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised, or expressly passed on; or that the judgment rests on an adequate non-federal basis.

(c) The court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

2. The motion to dismiss or affirm shall be printed in conformity with Rules 35 and 39, and forty copies, with proof of service as prescribed by Rule 33, shall be filed with the clerk.

3. The appellant shall have twenty days from the date of receipt of the motion to dismiss or affirm within which to file a brief opposing the motion. Such brief shall be printed in conformity with Rule 39 and with the requirements of Rule 40 governing a respondent's brief, and forty copies, with proof of service as prescribed by Rule 33, shall be filed with the clerk. Upon the filing of such opposing brief, or the expiration of the time allowed therefor, or express waiver of the right to file, the jurisdictional statement, motion, and briefs thereon shall be distributed by the clerk to the court for its consideration. If no motion to dismiss or affirm has been filed, such distribution will similarly be made upon the expiration of the time to file such motion, or an express waiver of the right to do so.

4. After consideration of the papers distributed pursuant to the foregoing paragraph, the court will enter an appropriate order. If such order notes probable jurisdiction, or postpones consideration of the question of jurisdiction to the hearing of the case on the merits, the case shall stand for argument. If consideration of the

question of jurisdiction is postponed, counsel should address themselves, at the outset of their briefs and oral argument, to the question of jurisdiction.

17.

DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED.

1. Within twenty days after the court has entered an order noting probable jurisdiction or postponing consideration of the question of jurisdiction to the hearing on the merits, the appellant shall file with the clerk a designation of the parts of the record the printing of which he thinks necessary for a consideration of the questions presented as set forth in his notice of appeal and his jurisdictional statement, or a designation of those parts the printing of which is considered unnecessary, whichever is more convenient, with proof of service on the appellee as prescribed by Rule 33.

2. Any appellee, within ten days after receipt of the designation as to printing required to be filed by appellant, may file with the clerk a cross-designation of additional parts of the record the printing of which he deems material; and, if he shall not do so, he shall be held to have consented to a hearing on a printed record consisting of the parts designated by the appellant. Such cross-designation shall be served as required by Rule 33. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The designations of the parts of the record to be printed will not be printed as a part of the record.

3. Within the time allowed for filing a cross-designation, the parties may stipulate the parts of the record to be printed, whereupon only the parts so stipulated shall be printed by the clerk. If the designation in such stipulation shall differ from the designation already filed by the appellant pursuant to paragraph 1 of this rule, then

the designation in the stipulation shall prevail. The stipulation will not be printed as a part of the record.

4. Rule 36 governs the printing and distribution of records.

18.

SUPERSEDEAS ON APPEAL.

1. Whenever an appellant entitled thereto desires a stay on appeal, he may present for approval to a judge of the court whose decision is sought to be reviewed, or to such court when action by that court is required by law, or, subject to paragraph 2 hereof, to a justice of this court, a motion to stay the enforcement of the judgment appealed from, with which, if the stay is to act as a supersedeas, shall be tendered a supersedeas bond which shall have such surety or sureties as said judge, court, or justice may require. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as this court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the judge, court, or justice after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of any court wherein were had the proceedings appealed from, the amount of the supersedeas bond shall be fixed at such

sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

2. Application hereunder to a justice of this court will normally not be entertained unless application therefor has first been made to a judge of the court rendering the decision appealed from, or to such court, or unless the security offered below has been disapproved by such judge or court. All such applications are governed by Rules 50 and 51.

PART V. JURISDICTION ON WRIT OF CERTIORARI.

19.

CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI.

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a depar-

ture by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

20.

CERTIORARI TO A COURT OF APPEALS BEFORE JUDGMENT.

A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court. See *United States* v. *Bankers Trust Co.*, 294 U. S. 240; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330; *Rickert Rice Mills* v. *Fontenot*, 297 U. S. 110; *Carter* v. *Carter Coal Co.*, 298 U. S. 238; *Ex parte Quirin*, 317 U. S. 1; *United States* v. *United Mine Workers*, 330 U. S. 258; *Youngstown Co.* v. *Sawyer*, 343 U. S. 579.

21.

REVIEW ON CERTIORARI—HOW SOUGHT.

1. Review on writ of certiorari shall be sought by filing with the clerk, with proof of service as required by Rule 33, forty printed copies of a petition, which shall conform in all respects to Rule 23, and a transcript of the record in the case, including the proceedings in the court whose judgment or decree is sought to be reviewed, which shall be certified by the clerk of the appropriate court or courts below. The provisions of Rule 12 (4) with respect to original papers shall apply to all cases sought to be reviewed on writ of certiorari. Service of a copy of the transcript of the record is not required.

2. Upon the filing of the petition and the certified transcript of record required by the preceding paragraph, counsel for the petitioner shall enter his appearance and pay the docket fee. The case will then be placed on the appellate docket. It shall be the duty of counsel for the petitioner to notify all respondents, on a form supplied by the clerk, of the date of filing and of the docket number of the case, and to indicate thereon the contents of the record filed under this rule, either itemized in detail as in a designation of record, or else appropriately summarized (e. g., "Joint Appendix as printed for the use of the court below"). Such notification shall be served as required by Rule 33.

3. The requirement of paragraph 1 with respect to the filing of a transcript of the record shall be deemed satisfied if the petitioner seeking review of the judgment or decree of a court of appeals whose rules permit the use of an appendix record on appeal, under the authority conferred by Rule 75 (l) of the Federal Rules of Civil Procedure (or of the judgment or decree of a state court which follows a similar practice), files a copy of the appendices filed by all parties below, or of the joint appendix if there be one, together with all the proceedings in the court below, the whole to be duly certified. In such cases, the petitioner may, at the time of filing his petition (or, if the petition for writ of certiorari is granted, then or before the time that his designation of portions of the record to be printed is due under paragraph 1 of Rule 26), file the entire record in addition to the appendix or appendices.

4. If the record in the case has been printed for the use of the court below, then the petitioner may at his option file, in addition to the certified record required by paragraph 1 of this rule, nine additional copies of the record so printed for consideration by the court. Similarly, if the record in the case has been printed for the

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use of the court below, and the petitioner does not so elect, any respondent may, if he desires, file nine copies of the record so printed at or before the time that his opposing brief is due under Rule 24. The provisions of paragraph 3 of this rule are applicable to the extra copies of the record furnished under this paragraph.

5. A party seeking a cross-writ of certiorari to review in this court the same judgment need not file any record additional to that filed by the petitioner.

6. Any respondent, including a cross-petitioner, may, within the time allowed for filing his brief in opposition or his cross-petition, file duly certified portions of the record additional to those filed by the petitioner.

7. The court may, on its own motion or that of a party, require the printing of the entire record, or of designated portions thereof, prior to ruling on the petition for writ of certiorari. If the petition is thereafter denied, the cost of such printing shall be taxed against the petitioner, unless otherwise ordered by the court; if the petition is thereafter granted, the cost of such printing shall abide the outcome of the case.

22.

REVIEW ON CERTIORARI—TIME FOR PETITIONING.

1. A petition for writ of certiorari to review the judgment of a state court of last resort in a criminal case shall be deemed in time when it and the certified record required by Rule 21 are filed with the clerk within ninety days after the entry of such judgment. A justice of this court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding sixty days.

2. A petition for writ of certiorari to review the judgment of a court of appeals in a criminal case shall be deemed in time when it and the certified record required by Rule 21 are filed with the clerk within thirty days after the entry of such judgment. A justice of this court, for

good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding thirty days. If the original judgment in such a case was entered in a district court in Alaska, Guam, Hawaii, Puerto Rico, the Virgin Islands, or the Canal Zone, the petition and certified record shall be deemed filed in time if mailed by air-mail under a postmark dated within the thirty-day period or due extension thereof.

3. A petition for writ of certiorari in all other cases shall be deemed in time when it and the certified record required by Rule 21 are filed with the clerk within the time prescribed by law.

4. An application for extension of time within which to file a petition for writ of certiorari must set out, as in a petition for certiorari (see Rule 23 (1), subparagraphs (b) and (f)), the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons why the granting of an extension of time is deemed justified. For the time and manner of presenting an application for extension of time within which to file a petition for writ of certiorari, see Rules 34, 35 (2), and 50. Such applications are not favored.

23.

THE PETITION FOR CERTIORARI.

1. The petition for writ of certiorari shall contain in the order here indicated—

(a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in subparagraph (i) hereof.

(b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(ii) The date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to petition for certiorari; and

(iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari.

(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves, setting them out verbatim, and citing the volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(e) A concise statement of the case containing the facts material to the consideration of the questions presented.

(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to

give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, and the petitioner has not filed with his petition nine copies of the record as printed for the use of the court below, under the provisions of paragraph 4 of Rule 21, then those portions of the record shall be included in an appendix to the petition, which may, if more convenient, be separately presented.

(g) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19.

(i) There shall be appended to the petition a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including all opinions of courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, opinions in companion cases.

Where the petitioner has filed with his petition nine copies of the record as printed for the use of the court below, under the provisions of paragraph 4 of Rule 21, then only the pertinent opinions not contained therein need be appended to the petition. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(j) If review of the judgment or decree of a state court is sought, there shall also be appended to the petition a copy of the judgment or decree in question; and, if review of the judgment or decree of a federal court is sought, there shall similarly be appended a copy of such judgment or decree, which may however be limited to the portions thereof sought to be reviewed.

2. The petition for writ of certiorari shall be printed in conformity with Rule 39.

3. All contentions in support of a petition for writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (h) of paragraph 1 of this rule. No separate brief in support of a petition for writ of certiorari will be received, and the clerk will refuse to file any petition for writ of certiorari to which is annexed or appended any supporting brief.

4. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

5. Where several cases are sought to be reviewed on certiorari to the same court that involve identical or closely related questions, it shall suffice to file a single petition for writ of certiorari covering all the cases.

24.

BRIEF IN OPPOSITION—REPLY.

1. Counsel for the respondent shall have thirty days (unless enlarged by the court or a justice thereof, or by the clerk under the provisions of paragraph 5 of Rule 34), after receipt of a petition, within which to file forty printed copies of an opposing brief disclosing any matter or ground why the cause should not be reviewed by this court. See Rule 19. Such brief in opposition shall comply with Rule 39 and with the requirements of Rule 40 governing a respondent's brief, and shall be served as prescribed by Rule 33.

2. No motion by a respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

3. Upon the expiration of the period for filing the respondent's brief, or upon an express waiver of the right

to file or the actual filing of such brief in a shorter time, the petition, and the record and brief, if any, shall be distributed by the clerk to the court for its consideration.

4. Timely reply or supplemental briefs will be considered, but distribution under paragraph 3 hereof will not be delayed pending the filing of such briefs.

25.

ORDER GRANTING OR DENYING CERTIORARI.

1. Whenever a petition for writ of certiorari to review a decision of any court is granted, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record of the granting of the petition. The order shall direct that the certified transcript of record on file here be treated as though sent up in response to a formal writ. A formal writ shall not issue unless specially directed.

2. No mandate issues upon the denial of a petition for writ of certiorari. Whenever application for a writ of certiorari to review a decision of any court is denied, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record. Such notification will not be withheld pending disposition of a petition for rehearing except by order of the court or of a justice thereof.

26.

DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED.

1. Within twenty days after the court has entered an order granting a writ of certiorari, the petitioner shall file with the clerk a designation of the parts of the record the printing of which he thinks necessary for a consideration of the questions presented as set forth in his petition for writ of certiorari, or a designation of those parts the printing of which is considered unnecessary, which-

ever is more convenient, with proof of service on the respondent as prescribed by Rule 33. Insofar as any portion of the record has already been printed for the use of the court below, the designation shall so state, and shall indicate the number of printed copies of such portions that have been or can be furnished.

2. Any respondent, within ten days after receipt of the designation filed by the petitioner, may file with the clerk a cross-designation of additional parts of the record the printing of which he deems material; and, if he shall not do so, he shall be held to have consented to a hearing on a printed record consisting of the parts designated by the petitioner. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The designations of the parts of the record to be printed will not be printed by the clerk with the record.

3. Within the time allowed for filing a cross-designation, the parties may stipulate the parts of the record to be printed, whereupon only the parts so stipulated shall be printed by the clerk. If the designation in such stipulation shall differ from the designation already filed by the petitioner pursuant to paragraph 1 of this rule, then the designation in the stipulation shall prevail. The parties may also stipulate the inclusion in the printed record in this court of additional certified portions of the record below. The stipulations will not be printed as a part of the record.

4. Rule 36 governs the printing and distribution of records.

5. A motion to require the certification of additional parts of the record must be filed and served together with, and within the time allowed for filing, the cross-designation provided for in paragraph 2 of this rule. The clerk will not proceed under Rule 36 until the court has disposed of the motion.

27.

STAY PENDING REVIEW ON CERTIORARI.

Applications pursuant to 28 U. S. C. § 2101 (f) to a justice of this court will normally not be entertained unless application for a stay has first been made to a judge of the court rendering the decision sought to be reviewed, or to such court, or unless the security offered below has been disapproved by such judge or court. All such applications are governed by Rules 50 and 51.

PART VI. JURISDICTION OF CERTIFIED QUESTIONS.

28.

QUESTIONS CERTIFIED BY A COURT OF APPEALS OR BY THE COURT OF CLAIMS.

1. Where a court of appeals or the Court of Claims shall certify to this court a question or proposition of law, concerning which it desires instruction for the proper decision of a cause, the certificate shall contain a statement of the nature of the cause and of the facts on which such question or proposition of law arises. Questions of fact cannot be certified. Only questions or propositions of law may be certified, and they must be distinct and definite.

2. If in a cause certified by a court of appeals it appears that there is special reason therefor, this court may on application, or on its own motion, require that the entire record be sent up, so that it may consider and decide the entire matter in controversy.

3. Where application is made under the preceding paragraph for direction that the entire record be sent up, the application must be accompanied by a certified copy thereof.

29.

PROCEDURE IN CERTIFIED CASES.

1. When a case is certified, the certificate itself constitutes the record. The clerk will upon receipt thereof from the court below notify the appellant in the court of appeals, or the plaintiff in the Court of Claims, who shall thereupon pay the docket fee, after which the case will be placed on the appellate docket. If the appellant or plaintiff fails to pay the fee, the appellee or defendant may do so. The appearance of counsel for the party paying the fee shall be entered at the time of payment.

2. After docketing, the certificate shall be submitted to the court for a preliminary examination to determine whether the case shall be set for argument or whether the certificate will be dismissed.

3. If the case is ordered set down for argument, the clerk will notify the appellant or plaintiff to deposit the estimated cost of printing the certificate.

4. When the entire record is ordered to be sent up pursuant to Rule 28 (2), it will be printed under the supervision of the clerk as provided in Rule 36. If forty copies of the entire record as printed for the use of the court of appeals can be supplied by the appellant, the clerk will print only the certificate, otherwise the appellant will be required to deposit the estimated cost of printing as provided by paragraph 1 of Rule 36. The parties may, within fifteen days after the case is ordered set for argument, stipulate that portions of the certified record need not be printed.

5. Briefs on the merits in cases on certificates shall comply with Rules 39, 40, and 41, except that the brief of the party who was appellant or plaintiff below shall be filed within thirty days after receipt of the printed certificate or of the whole record if there be one, or within forty-five days of the order setting the case down for argument, whichever is later. Where, however, a case

is placed on the calendar too late in the term to be reached for argument before the commencement of the next term, the clerk will so notify the parties. In that event, counsel for the appellant or plaintiff below need not file the required number of copies of his brief prior to August 25.

PART VII. JURISDICTION TO ISSUE EXTRAORDINARY WRITS.

30.

CONSIDERATIONS GOVERNING ISSUANCE OF EXTRAORDINARY WRITS.

The issuance by the court of any writ authorized by 28 U. S. C. § 1651 (a) is not a matter of right but of sound discretion sparingly exercised. See the following cases, which are cited by way of illustration only: *Ex parte Bollman and Swartwout*, 4 Cranch 15; *Ex parte Peru*, 318 U. S. 578; *Ex parte Abernathy*, 320 U. S. 219; *Ex parte Hawk*, 321 U. S. 114; *House* v. *Mayo*, 324 U. S. 42; *U. S. Alkali Export Assn.* v. *United States*, 325 U. S. 196; *DeBeers Consol. Mines* v. *United States*, 325 U. S. 212; *Ex parte Betz*, 329 U. S. 672; *Ex parte Fahey*, 332 U. S. 258.

31.

PROCEDURE ON APPLICATIONS FOR EXTRAORDINARY WRITS.

1. The petition in any proceeding seeking the issuance of a writ by this court authorized by 28 U. S. C. § 1651 (a) or 28 U. S. C. § 2241 shall be prefaced by a motion for leave to file such petition, and both shall be printed. All contentions in support of the petition shall be included in the petition. The case will be placed upon the miscellaneous docket when forty copies of the printed papers, with proof of service as prescribed by Rule 33 (subject to paragraph 5 of this rule), are filed with the clerk and

the docket fee is paid. The appearance of counsel for the petitioner must be entered at this time.

2. If the petition seeks issuance of a common law writ of certiorari under 28 U. S. C. § 1651 (a), there must also be filed, at the time of docketing, a certified copy of the record, including all proceedings in the court to which the writ is sought to be directed. The petition shall, except for the addition of the motion for leave to file, follow as far as may be the form for a petition for certiorari prescribed by Rule 23, and shall set forth with particularity why the relief sought is not available in any other court, or cannot be had through other appellate processes. The respondent may, within thirty days after receipt of the motion and petition, file forty printed copies of a brief in opposition, as provided in Rule 24.

3. If the petition seeks issuance of a writ of prohibition, a writ of mandamus, or both in the alternative, it shall set forth with particularity why the relief sought is not available in any other court, and there shall be appended to such petition a copy of the judgment or order in respect of which the writ is sought, including a copy of any opinion rendered in that connection, and such other papers as may be essential to an understanding of the petition. The petition shall follow, insofar as applicable, the form for the petition for writ of certiorari prescribed by Rule 23. The motion and petition shall be served on the judge or judges to whom the writ is sought to be directed, and shall also be served on every other party to the proceeding in respect of which relief is desired. The judge or judges, and the other parties, may, within thirty days after receipt of the motion and petition, file forty printed copies of a brief or briefs in opposition thereto, with proof of service. If the judge or judges concerned do not desire to contest the motion and petition, they may so advise the clerk and all parties by letter. All parties, other than the judge or judges, who are served pursuant to

this paragraph, shall also be deemed to be respondents for all purposes in the proceeding in this court.

4. When briefs in opposition under paragraphs 2 and 3 of this rule have been filed, or when the time within which they may be filed has expired, or upon an express waiver of the right to file, the motion, petition, and briefs shall be distributed to the court by the clerk.

5. If the petition seeks issuance of an original writ of habeas corpus, it shall comply with the requirements of 28 U. S. C. § 2242, and in particular with the last paragraph thereof; and, if the relief sought is from the judgment of a state court, shall specifically set forth how and wherein the petitioner has exhausted his remedies in the state courts. See *Ex parte Abernathy*, 320 U. S. 219; *Ex parte Hawk*, 321 U. S. 114. Proceedings under this paragraph will be *ex parte*, unless the court requires the respondent to show cause why leave to file the petition for a writ of habeas corpus should not be granted. Neither refusal of leave to file, without more, nor an order of transfer under authority of 28 U. S. C. § 2241 (b), is an adjudication on the merits, and the former action is to be taken as without prejudice to a further application to any other court for the relief sought.

6. If the court orders the cause set down for argument, the clerk will notify the parties whether additional briefs are required, when they must be filed, how much time has been allotted for oral argument, and, if the case involves a petition for common law certiorari, that the parties shall proceed to designate the record pursuant to Rule 26.

32.

CERTIORARI TO CORRECT DIMINUTION OF RECORD ABOLISHED.

The writ of certiorari to correct diminution of the record is abolished. Relief formerly obtained by grant of that writ shall be sought by a motion to require certification of additional portions of the record. See Rules 26 (5) and 36 (6).

PART VIII. PRACTICE.

33.

SERVICE.

1. Whenever any pleading, motion, notice, brief or other document is required by these rules to be served, such service may be made personally or by mail on each adverse party. If personal, it shall consist of delivery, at the office of counsel of record, to counsel or a clerk therein. If by mail, it shall consist of depositing the same in a United States post office or mail box, with first class postage prepaid, addressed to counsel of record at his post office address. Where the person on whom service is to be made resides 500 miles or more from the person effecting service, such mailing must be made with air mail postage prepaid.

2. If the United States or an officer or agency thereof is a party, service of all briefs, pleadings, notices and papers shall, notwithstanding the foregoing paragraph, be made upon the Solicitor General, Department of Justice, Washington 25, D. C. Copies of the following documents shall also be served on an attorney of record who represented the United States or its officer or agency in the court whose judgment or decree is sought to be reviewed: Notice of appeal (Rule 10), cross-designation of record on appeal (Rule 12), petition for certiorari (Rule 21), motion for leave to file petition for common law certiorari (Rule 31 (2)). Where an agency of the United States authorized by law to appear in its own behalf is a party in addition to the United States, such agency shall also be served, in addition to the Solicitor General, in every case.

3. Whenever proof of service is required by these rules, it may be shown, either by indorsement on the document served or by separate instrument, by any one of the methods set forth below; and it is not necessary that

service on each party required to be served be effected in the same manner or evidenced by the same proof:

(a) By an acknowledgement of service of the document in question, signed by counsel of record for the party served.

(b) By a certificate of service of the document in question, reciting the fact and circumstances of service in compliance with the appropriate paragraph of this rule, such certificate to be signed by a member of the bar of this court representing the party in behalf of whom such service has been effected. If counsel certifying to such service has not up to that time entered his appearance in this court in respect of the cause in which such service is made, his appearance shall accompany the certificate of service if the same is to be filed in this court.

(c) By an affidavit of service of the document in question, reciting the fact and circumstances of service in compliance with the appropriate paragraph of this rule, whenever such service is effected by any person not a member of the bar of this court.

4. Whenever proof of service is required by these rules, it must accompany or be indorsed upon the document in question at the time such document is presented to the clerk for filing. Any document filed with the clerk by or on behalf of counsel of record whose appearance has not previously been entered must be accompanied by an entry of appearance.

34.

COMPUTATION AND ENLARGEMENT OF TIME.

1. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the

end of the next day which is neither a Sunday nor a holiday. A half holiday shall be considered as other days and not as a holiday.

2. Whenever any justice of this court is empowered by law or under any provision of these rules to extend the time within which a party may petition for a writ of certiorari or file in this court his record on appeal or any brief or paper, an application seeking such extension shall be timely if it is presented to the clerk within the period sought to be extended. The clerk will refuse to receive any application for extension sought to be presented after expiration of such period.

3. All applications seeking an extension of time within which a party may petition for a writ of certiorari or file in this court his record on appeal or any brief or paper must be presented as provided in Rule 50, but such applications for extension of time, if once denied, may not be renewed before another justice after expiration of the period sought to be extended.

4. Whenever a justice has granted an extension of time within which a party may petition for a writ of certiorari or file in this court his record on appeal or any brief or paper it shall be the duty of the party to whom such extension is granted to give all other parties to the proceeding prompt notice thereof.

5. Whenever any party seeks an extension of time for filing briefs, and the granting of such extension is agreed to by all adverse parties and, in the opinion of the clerk, would not prejudicially delay the disposition of causes not set for argument or impede the progress of the argument calendar, the clerk may without further reference to the court enter an order granting the whole or any appropriate part of such extension of time. He shall notify all parties of the extension granted. All other requests for extension of time for filing briefs shall be referred to the court or a justice thereof.

35.

MOTIONS.

1. Every motion to the court shall state clearly its object and the facts on which it is based. A brief in support of the motion (other than motions under Rule 31) may be filed therewith.

2. Motions and applications addressed to a single justice need not be printed, and only a typewritten original need be filed. Motions in actions within the court's original jurisdiction shall be printed, and sixty copies shall be filed. Motions to dismiss or affirm made under Rule 16, motions to bring up the entire record under Rule 28 (2), motions for permission to file a brief *amicus curiae*, any motions the granting of which would be dispositive of the entire case or would affect the final judgment to be entered (other than a motion to docket or dismiss under Rule 14, or a motion for voluntary dismissal under Rule 60), and any motions to the court accompanied by a supporting brief, shall likewise be printed, and forty copies of the motion and of the brief, if any, shall be filed. All other motions to the court need not be printed, and it shall be sufficient to file a typewritten original and nine legible typewritten copies; but the court may by subsequent order require any such motion to be printed by the moving party.

3. Motions to the court shall be filed with the clerk, with proof of service unless *ex parte* in nature. For applications and motions addressed to a single justice, see Rule 50. No motion shall be presented in open court, other than a motion for admission to the bar, except when the proceeding to which it refers is being argued. Oral argument will not be heard on any motion unless the court specially assigns it therefor.

4. Unless a different time for the filing of a brief in opposition is specifically authorized elsewhere in these rules, motions submitted in printed form will normally

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be held by the clerk for twenty days to permit the filing of forty printed copies of a brief in opposition, after which the motion and brief will be distributed to the court. Motions to the court submitted in typewritten form may be opposed in like fashion, but distribution of the motion will be made at the earliest opportunity without regard to time of service. Where such motions are thereafter ordered to be printed, the parties will be notified of such order, and will be given a reasonable time within which to file forty printed copies of the motion and of the brief in opposition, if any.

5. Printed motions must comply with Rule 39 with respect to format, signatures, and index. Typewritten motions must similarly comply with Rule 47.

36.

PRINTING OF RECORDS.

1. Immediately after the designation and cross-designation, or the stipulation, of the parts of the record to be printed have been filed, or after the expiration of the time allowed for filing a cross-designation (see Rules 17 (2) and 26 (2)), the clerk shall make an estimate of the cost of printing the record and of his fee for preparing it for the printer and supervising the printing, and shall furnish the same to the appellant or petitioner. If such estimated sum be not paid on or before a date designated by the clerk in each case, it shall be the duty of the clerk to report that fact to the court, whereupon the cause will be dismissed, unless good cause to the contrary is shown.

2. If the actual cost of printing the record, together with the fees of the clerk, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the appellant or petitioner. If the actual cost and clerk's fees shall exceed the estimate, the excess shall be paid to the clerk within forty days after notice thereof, and if it be not paid the matter shall be dealt with as if it were a default under paragraph 1 of this rule.

as well as by rendering a judgment against the defaulting party for such excess.

3. Upon payment of the amount estimated by the clerk, forty copies of the record shall be printed for the use of the court and of counsel. But where the record has been printed for the use of the court below, and forty copies as so printed are furnished and comply with the rules of this court, it shall not be necessary to reprint the record for this court, but only to print such additions as may be necessary to show the proceedings in the court below and the opinions there.

4. When printed copies of the record used in the court below have been furnished as permitted by Rule 21 (4), the requisite additional copies must be supplied after the portions of the record to be printed have been designated, and if not available the entire record as designated must be reprinted under the supervision of the clerk.

5. In preparing the record for the printer, the clerk shall omit all duplication, all repetition of titles and all other obviously unimportant matter, and make proper note thereof. He shall supervise the printing and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter of decisions, from time to time, as required, and five copies to each side. He shall also make such further distribution of printed records, briefs, and motions, as the court may from time to time direct.

6. If anything material to either party is omitted from the printed record by error or accident or is misstated therein, the parties by stipulation, or by motion to require the certification of additional parts of the record to be printed, may correct the omission or misstatement, provided that such stipulation or motion be filed within a reasonable time after the record is distributed to counsel pursuant to the preceding paragraph.

7. If either party shall have caused unnecessary parts of the record to be printed, or if it is shown that unnec-

essary parts of the record have been printed although a reasonable effort was made by one of the parties to secure the printing of a proper record, such order as to costs may be made as the court shall deem proper.

8. The fees of the clerk under Rule 52 shall be computed on the folios in the record as printed, and shall be in full for the performance of his duties in that regard.

9. The cost of printing the record and the clerk's fees in connection therewith shall be charged to the party against whom costs are taxed (see Rule 57).

37.

TRANSLATIONS.

Whenever any record transmitted to this court shall contain any document, paper, testimony, or other proceedings in a foreign language, without a translation of such document, paper, testimony, or other proceedings, made under the authority of the lower court, or admitted to be correct, the case shall be reported by the clerk, to the end that this court may order that a translation be supplied and printed with the record.

38.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case, and brought up to this court for its inspection, shall be placed in the custody of the marshal at least one week before the case is heard or submitted.

2. All such models, diagrams, and exhibits of material, placed in the custody of the marshal must be taken away by the parties within forty days after the case is decided. When this is not done, it shall be the duty of the marshal to notify counsel to remove the articles forthwith; and if they are not removed within a reasonable

time after such notice, the marshal shall destroy them, or make such other disposition of them as to him may seem best.

39.

FORM OF PRINTED RECORDS, PETITIONS, BRIEFS, ETC.

1. All records, petitions, motions and briefs, printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches, except that records in patent cases may be printed in such size as is necessary to utilize copies of patent documents. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than 11-point type) adequately leaded; and the paper must be opaque and unglazed. If footnotes are included, they may not be printed in type smaller than 9-point.

2. All printed documents presented to the court, other than records, must bear on the cover the name and post office address of the member of the bar of this court who is counsel of record for the party concerned, and upon whom service is to be made. The individual names of other counsel and, if desired, their post office addresses, may be added. The body of the document shall at its close bear the printed names of counsel of record and of such other individual counsel as may be desired. One copy of every printed motion filed with the clerk (other than a motion to dismiss or affirm under Rule 16) must in addition bear, at the appropriate place in the body thereof, the manuscript signature of counsel of record.

3. All printed documents presented to the court other than records, which in this respect are governed by Rule 36 (5), shall, unless they are less than ten pages in length, be preceded by a subject index of the matter contained

therein, with page references, and a table of the cases (alphabetically arranged), text books and statutes cited, with references to the pages where they are cited.

4. The clerk shall refuse to receive any printed document which has been printed otherwise than in substantial conformity to this rule.

40.

BRIEFS—IN GENERAL.

1. Briefs of an appellant or petitioner on the merits shall be printed as prescribed in Rule 39, and shall contain in the order here indicated—

(a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if there were such and they have been reported.

(b) A concise statement of the grounds on which the jurisdiction of this court is invoked, with citation to the statutory provision and to the time factors upon which such jurisdiction rests.

(c) The constitutional provisions, treaties, statutes, ordinances and regulations which the case involves, setting them out verbatim, and citing the volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(d)(1) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein.

(2) The phrasing of the questions presented need not be identical with that set forth in the jurisdictional statement or the petition for certiorari, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. Ques-

tions not presented according to this paragraph will be disregarded, save as the court, at its option, may notice a plain error not presented.

(e) A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate references to the printed record, e. g., (R. 12).

(f) In briefs on the merits, or in any briefs wherein the argument portion extends beyond twenty printed pages, a summary of argument, suitably paragraphed, which should be a succinct, but accurate and clear, condensation of the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged.

(g) The argument, exhibiting clearly the points of fact and of law being presented, citing the authorities and statutes relied upon.

(h) A conclusion, specifying with particularity the relief to which the party believes itself entitled.

2. Whenever, in the brief of any party, a reference is made to the record, it must be accompanied by the record page number. When the reference is to a part of the evidence, the page citation must be specific. If the reference is to an exhibit, both the page number at which the exhibit appears and at which it was offered in evidence must be indicated, e. g., (Pl. Ex. 14; R. 199, 2134).

3. The brief filed by an appellee or respondent shall conform to the foregoing requirements, except that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side, and except that items (a), (b), (c) and (d) need not be included unless the appellee or respondent is dissatisfied with their presentation by the other side.

4. Reply briefs shall conform to such portions of this rule as are applicable to the briefs of an appellee or respondent, but need not contain a summary of argument,

regardless of their length, if appropriately divided by topical headings.

5. Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the court.

41.

BRIEFS ON THE MERITS—TIME FOR FILING.

1. Counsel for the appellant or petitioner shall file with the clerk forty copies of his printed brief on the merits, within thirty days after receipt by him of the printed record transmitted by the clerk pursuant to Rule 36 (5), or within forty-five days of the order noting or postponing probable jurisdiction or of the order granting the writ of certiorari, whichever is later. Where, however, a case is placed on the calendar too late in the term to be reached for argument before the commencement of the next term, the clerk will so notify the parties. In that event, counsel for the appellant or petitioner need not file the required number of copies of his brief prior to August 25, if that date would be later than thirty days after receipt of the printed record.

2. Forty printed copies of the brief of the appellee or respondent shall be filed with the clerk within thirty days after the receipt by him of the brief filed by the appellant or petitioner.

3. Reply briefs will be received up to the time the case is called for hearing; but, since later filing may delay consideration of the case, only by leave of court thereafter.

4. The periods of time stated in paragraphs 1 and 2 of this rule may be enlarged, as provided in Rule 34, upon motion duly made; or, if a case is advanced for hearing, the time for filing briefs may be abridged as circumstances shall require, pursuant to order of the court on its own or a party's motion.

5. Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in his brief in chief, he may file forty printed copies of a supplemental brief, restricted to such new matter and otherwise in conformity with these rules, up to the time the case is called for hearing, or, by leave of court, thereafter.

6. No brief will be received through the clerk or otherwise after a case has been argued or submitted, except upon special leave.

7. No brief will be received by the clerk unless the same shall be accompanied by proof of service as required by Rule 33.

42.

BRIEFS OF AN AMICUS CURIAE.

1. A brief of an *amicus curiae* prior to consideration of the jurisdictional statement or of the petition for writ of certiorari, filed with the consent of the parties, or a motion for leave to file when consent is refused, may be filed only if submitted a reasonable time prior to the consideration of the jurisdictional statement or of the petition for writ of certiorari. Such motions are not favored. Distribution to the court under the applicable rules of the jurisdictional statement or of the petition for writ of certiorari, and its consideration thereof, will not be delayed pending the receipt of such brief or the filing of such motion.

2. A brief of an *amicus curiae* in cases before the court on the merits may be filed only after order of the court or when accompanied by written consent of all parties to the case and presented within the time allowed for the filing of the brief of the party supported.

3. When consent to the filing of a brief of an *amicus curiae* is refused by a party to the case, a motion for leave to file may timely be presented to the court. It shall

concisely state the nature of the applicant's interest, set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case; and it shall in no event exceed five printed pages in length. A party served with such motion may seasonably file an objection concisely stating the reasons for withholding consent.

4. Consent to the filing of a brief of an *amicus curiae* need not be had when the brief is presented for the United States sponsored by the Solicitor General; for any agency of the United States authorized by law to appear in its own behalf, sponsored by its appropriate legal representative; for a State, Territory, or Commonwealth sponsored by its attorney general; or for a political subdivision of a State, Territory or Commonwealth sponsored by the authorized law officer thereof.

5. All briefs, motions, and responses filed under this rule shall be printed; shall comply with the applicable provisions of Rules 35, 39, and 40 (except that it shall be sufficient to set forth the interest of the *amicus curiae*, the argument, the summary of argument if required by Rule 40 (1)(f), and the conclusion); and shall be accompanied by proof of service as required by Rule 33.

43.

CALL AND ORDER OF THE CALENDAR.

1. The clerk shall, at the commencement of each term, prepare a calendar, consisting of the cases that have become or will be available for argument, which shall be arranged in the first instance in the order in which they are ordered set down for argument, and which shall indicate which of them have been ordered heard as summary calendar cases under Rule 44 (3). No separate summary calendar will be maintained. The arrangement of cases on the calendar shall be subject to modification in the

light of availability of printed records, extensions of time to file briefs, and of orders granting motions to advance or postpone or specially setting particular cases for argument. Cases will be calendared so that they will not normally be called for argument less than two weeks after the brief of the appellee or respondent has been filed. The clerk shall keep the calendar current throughout the term, adding cases as they are set down for argument, and making rearrangements as required. He shall periodically publish hearing lists in advance of each argument session, for the convenience of counsel and the information of the public.

2. Unless otherwise ordered, the court, on the second Monday of each term, will commence calling cases for argument in the order in which they stand on the calendar, and proceed from day to day during the term in the same order, except as hereinafter provided.

3. Cases will not be called until they are actually reached for argument. The clerk will seasonably advise counsel when they are required to be present in court.

4. Cases may be advanced or postponed by order of the court, upon motion duly made showing good cause therefor.

5. Two or more cases, involving the same question, may, on the court's own motion or by special permission on the motion or stipulation of the parties, be argued together as one case, or on such terms as may be prescribed.

44.

ORAL ARGUMENT.

1. Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs theretofore filed. The court looks with disfavor on any oral argument that is read from a prepared text.

2. The appellant or petitioner shall be entitled to open and conclude the argument. But when there are cross-

appeals or cross-writs of certiorari they shall be argued together as one case and in the time of one case, and the court will, by order seasonably made, advise the parties which one is to open and close.

3. In cases on the summary calendar, half an hour, and no more, will be allowed for the argument, and only one counsel will be heard on the same side, except by special permission, which will be granted only upon a showing that parties with differing interests are on the same side. A case will be placed on the summary calendar whenever the court concludes that it is of such a character as not to justify extended argument.

4. In all other cases, one hour on each side, and no more, will be allowed for the argument, unless more time be granted before the argument begins. Any request for additional time shall be presented by letter addressed to the clerk (copy to be sent opposing counsel), and shall set forth with specificity and conciseness why the case cannot be presented within the one hour limitation. Two counsel, and no more, will be heard for each side, except by special permission when there are several parties on the same side. Divided arguments are not favored by the court. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

5. In any case, and regardless of the number of counsel participating, a fair opening of the case shall be made by the party having the opening and closing.

6. Oral argument will not be heard on behalf of any party for whom no brief has been filed.

7. Counsel for an *amicus curiae* whose brief has been duly filed pursuant to Rule 42 may, with the consent of a party, argue orally on the side of such party, provided that neither the time nor the number of counsel permitted for oral argument on behalf of that party under the preceding paragraphs of this rule will thereby be exceeded. In the absence of such consent, argument by

counsel for an *amicus curiae* may be made only by special leave of court, on motion particularly setting forth why such argument is thought to provide assistance to the court not otherwise available. Such motions, unless made on behalf of the United States or of a State, Territory, Commonwealth, or Possession, are not favored.

45.

SUBMISSION ON BRIEFS BY ONE OR BOTH PARTIES WITHOUT ORAL ARGUMENT.

1. The court looks with disfavor on the submission of cases on briefs, without oral argument, and therefore may, notwithstanding such submission, require oral argument by the parties.

2. When a case is called and no counsel appear to present argument, but briefs have been filed, the case will be treated as having been submitted.

3. When a case is called, if a brief has been filed for only one of the parties and no counsel appears to present oral argument for either party, the case will be regarded as submitted on that brief.

46.

JOINT OR SEVERAL APPEALS OR PETITIONS FOR WRITS OF CERTIORARI; SUMMONS AND SEVERANCE ABOLISHED.

Parties interested jointly, severally, or otherwise in a judgment may join in an appeal or a petition for writ of certiorari therefrom; or, without summons and severance, any one or more of them may appeal or petition separately or any two or more of them may join in an appeal or petition.

47.

FORM OF TYPEWRITTEN PAPERS.

1. All papers specifically permitted by these rules to be presented to the court without being printed shall, subject to Rule 53 (1), be typewritten or otherwise dupli-

cated upon opaque, unglazed paper, 8½ by 13 inches in size (legal cap), and shall be stapled or bound at the upper left-hand corner. The typed matter, except quotations, must be double-spaced. When more than one original is required by any rule, the copies must be legible.

2. The original copy of all typewritten motions and applications must be signed in manuscript by the party or by counsel, but, in a cause not yet docketed, such counsel need not be a member of the bar of this court.

48.

DEATH, SUBSTITUTION, AND REVIVOR.

1. Whenever either party shall die after filing notice of appeal to this court or filing of petition for writ of certiorari in this court, the proper representative of the deceased may appear and, upon motion, be substituted as a party to the proceeding. If such representative shall not voluntarily become a party, the other party may suggest the death on the record, and on motion obtain an order that, unless such representative shall become a party within a designated time, the party moving for such an order, if appellee or respondent, shall be entitled to have the appeal or petition for or writ of certiorari dismissed or the judgment vacated for mootness, as may be appropriate; and, if the party so moving be appellant or petitioner, shall be entitled to proceed as in other cases of non-appearance by appellee or respondent. Such substitution, or, in default thereof, such suggestion, must be made within six months after the death of the party, else the case shall abate.

2. Whenever, in the case of a suggestion made as provided in paragraph 1 of this rule, the case cannot be revived in the court whose judgment is sought to be reviewed because the deceased party has no proper representative within the jurisdiction of that court, but does have a proper representative elsewhere, proceedings shall then be had as this court may direct.

3. When an officer of the United States, or of the District of Columbia, a Territory, Commonwealth, Possession, State, county, city or other governmental agency, is a party to a proceeding here, and it is shown that he has died, resigned, or otherwise ceased to hold office, the action may be continued and maintained by or against his successor, if within six months after the successor takes office it is satisfactorily shown to the court, on motion, that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this paragraph may be made when it is shown in the motion that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Service of and response to a motion to substitute under this paragraph shall be made as provided by Rules 33 and 35, respectively. Unless otherwise provided by law, no notice of appeal and no petition for writ of certiorari may be filed on behalf of an officer who has ceased to hold office.

49.

CUSTODY OF PRISONERS.

1. Pending review of a decision refusing a writ of habeas corpus, or refusing a rule to show cause why the writ should not be granted, the custody of the prisoner shall not be disturbed, except by order of the court wherein the case is then pending, or of a judge or justice thereof, upon a showing that custodial considerations require his removal. In such cases, the order of the court or judge or justice will make appropriate provision for substitution so that the case will not become moot.

2. Pending review of a decision discharging a writ of habeas corpus after it has been issued, or discharging a rule to show cause why such a writ should not be granted, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate

custody, or enlarged upon recognizance with surety, as to the court in which the case is pending, or to a judge or justice thereof, may appear fitting in the circumstances of the particular case.

3. Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court in which the case is pending, or of a judge or justice thereof, surety ought not to be required the personal recognizance of the prisoner shall suffice.

4. Except as elsewhere provided in this rule, the initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the court of appeals but also the further possible review in this court; and only where special reasons therefor are shown to the court of appeals or to this court or to a judge or justice of either court will that order be disturbed, or any independent order made in that regard.

5. This rule applies only to cases arising or pending in courts of the United States. For the purpose of this rule, a case is pending in the court possessed of the record until a notice of appeal or a petition for writ of certiorari has been filed, or until the time for such filing has expired, whichever is earlier; and is pending on review in the appellate court after the notice of appeal or the petition for writ of certiorari has been filed.

50.

APPLICATIONS TO INDIVIDUAL JUSTICES; PRACTICE IN CHAMBERS.

1. All motions and applications addressed to individual justices shall normally be submitted to the clerk, who will promptly transmit them to the justice concerned. If oral argument on the application is desired, request therefor shall accompany the application.

2. Except for applications for extensions of time, which are *ex parte* subject to the provisions of Rule 34 (4), all motions and applications addressed to individual justices and all requests for oral argument thereon, shall be accompanied by proof of service on all adverse parties. In urgent cases, proof of telegraphic dispatch to such parties of notice that the motion, application, or request is being made will suffice.

3. The clerk will in due course advise all counsel concerned, by means as speedy as may be appropriate, of the time and place of the hearing, if any, or, if no hearing is requested or granted, of the disposition made of the motion or application.

4. During the term, applications will be addressed to the justice duly allotted to the circuit within which the case arises. The court or the chief justice will seasonably instruct the clerk as to the distribution of applications during vacation, and whenever a circuit justice is temporarily absent or disabled.

5. A justice denying an application made to him will note his denial thereon. Thereafter, unless action on such application is by law restricted to the circuit justice, or is out of time under Rule 34 (3), the party making the application may renew the same to any other justice, subject to the provisions of this rule. Except where the denial has been without prejudice, such renewed applications are not favored.

6. Any justice to whom an application for a stay or for bail is submitted may refer the same to the court for determination.

51.

STAYS.

1. Stays may be granted by a justice of this court as permitted by law; and writs of injunction may be granted by any justice in cases where they might be granted by

the court. For supersedeas on appeal, see Rule 18; for stay pending review on certiorari, see Rule 27.

2. All applications for stays or injunctions made pursuant to this or any other rule must show whether application for the relief sought has first been made to the appropriate court or courts below, or to a judge or judges thereof, and shall be submitted as provided in Rule 50. See Rules 18 (2) and 27.

3. If an application for a stay addressed to the court is received in vacation, the clerk will refer it pursuant to Rule 50 (4).

52.

FEES.

In pursuance of 28 U. S. C. § 1911, the fees to be charged by the clerk of this court are fixed as follows:

(a) For docketing a case on appeal (except a motion to docket and dismiss under Rule 14 (3), wherein the fee is $25.00) or on petition for writ of certiorari or docketing any other proceeding, $100.00, to be increased to $150.00 in a case on appeal or writ of certiorari when oral argument is permitted.

(b) For preparing the record for the printer, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter of decisions, the library, and the parties or their counsel, 20 cents per folio of each 100 words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision, plus a handling charge of $25.00 in cases in which oral argument is permitted.

(c) For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions at the request of counsel, when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, 20

cents per folio of each 100 words. Neither the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case. See Rule 57 (3).

(d) For making a copy (except a photographic reproduction) of any record or paper, and comparison thereof, 40 cents per page of 250 words or fraction thereof; for comparing for certification a copy (except a photographic reproduction) of any record or paper when such copy is furnished by the person requesting its certification, 10 cents for each page of 250 words or fraction thereof.

For comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, 5 cents for each page.

(e) For a certificate and seal, $3.00.

(f) For an admission to the Bar and certificate under seal, $25.00.

(g) For a duplicate certificate of an admission to the Bar under seal, $10.00.

PART IX. SPECIAL PROCEEDINGS.

53.

PROCEEDINGS IN FORMA PAUPERIS.

1. A party desiring to proceed in this court *in forma pauperis* shall file a motion for leave so to proceed, together with his affidavit setting forth facts showing that he comes within the statutory requirements. See 28 U. S. C. § 1915; *Adkins* v. *DuPont Co.*, 335 U. S. 331. One copy of each will suffice. Papers in cases presented under this rule should, whenever possible, comply with Rule 47.

2. With the motion and affidavit there shall be filed the appropriate substantive document—statement as to jurisdiction, petition for writ of certiorari, or motion for leave to file, as the case may be—which shall comply in

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all respects with the rules governing the same, except that it shall be sufficient to file a single copy thereof. Notwithstanding any other provision of these rules, a party moving for leave to proceed *in forma pauperis* who shows that he was unable to obtain a certified copy of the record in the court below without payment of fees and costs need not file such a record with his jurisdictional statement, petition for writ of certiorari, or motion for leave to file.

3. When the papers required by paragraphs 1 and 2 of this rule are presented to the clerk, accompanied by proof of service as prescribed by Rule 33, he will, without payment of any docket or other fees, file them, and place the case on the miscellaneous docket.

4. The appellee or respondent in a case *in forma pauperis* may respond in the same manner and within the same time as in any other case of the same nature, except that the filing of a single response, typewritten or otherwise duplicated, with proof of service as required by Rule 33, will suffice whenever petitioner or appellant has filed unprinted papers.

5. While making due allowance for cases presented under this rule by persons appearing *pro se*, the clerk will refuse to receive any motion for leave to proceed *in forma pauperis* when it and the papers submitted therewith do not comply with the substance of this court's rules, or when it appears that the accompanying papers are obviously out of time.

6. If, in a case presented under this rule, the court enters an order noting or postponing probable jurisdiction, or granting a writ of certiorari, and the case is set down for argument, it will be transferred to the appellate docket, and the court will make such order respecting the furnishing and printing of the record as may be appropriate. The court may, in any case presented under this rule, require the furnishing and printing of the record prior to its consideration of the motion papers.

7. Whenever the court appoints a member of the bar to serve as counsel for an indigent party, the briefs prepared by such counsel will, unless he requests otherwise, be printed under the supervision of the clerk; and the clerk will in any event reimburse such counsel to the extent of first-class transportation from his home to Washington and return in connection with the argument of the cause.

54.

VETERANS' AND SEAMEN'S CASES.

1. A veteran suing to establish reemployment rights under the provisions of Section 9 (d) of the Universal Military Training and Service Act, as amended (50 U. S. C. App. § 459 (d)), or under similar provisions of law exempting veterans from the payment of fees or court costs, may proceed upon typewritten papers as under Rule 53, except that the motion shall ask leave to proceed as a veteran, the affidavit shall set forth the moving party's status as a veteran, and the case will be placed on the docket that would have been appropriate for its disposition had it been presented on printed papers.

2. A seaman suing pursuant to 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor, but he is not relieved of printing costs nor entitled to proceed on typewritten papers except by separate motion, or unless, by motion and affidavit, he brings himself within Rule 53.

PART X. DISPOSITION OF CAUSES.

55.

OPINIONS OF THE COURT.

1. All opinions of the court shall be handed to the clerk immediately upon the delivery thereof. He shall cause the same to be printed and shall deliver a copy to the reporter of decisions.

2. The original opinions shall be filed by the clerk for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term he shall cause them to be bound in a substantial manner, and when so bound they shall be deemed to have been recorded.

56.

INTEREST AND DAMAGES.

1. Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated from the date of the entry of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, may be awarded upon the amount of the judgment.

3. In cases in admiralty, damages and interest may be allowed only if specially directed by the court.

4. Where a petition for writ of certiorari has been filed, and there appears to be no ground for granting such a writ, the court may, in appropriate cases, adjudge to the respondent reasonable damages for his delay.

57.

COSTS.

1. In all cases of affirmance of any judgment or decree by this court, costs shall be paid by appellant or petitioner unless otherwise ordered by the court.

2. In cases of reversal or vacating of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of record from the court below

shall be a part of such costs, and be taxable in that court as costs in the case.

3. The cost of printing the record in this court is a taxable item. The cost of printing briefs, motions, petitions, and jurisdictional statements is not a taxable item.

4. In cases where questions have been certified, including such cases where the certificate is dismissed, costs shall be equally divided unless otherwise ordered by the court; but where the entire record has been sent up (Rule 28, par. 2), and a decision is rendered on the whole matter in controversy, costs shall be allowed as provided in paragraphs 1 and 2 of this rule.

5. No costs shall be allowed in this court either for or against the United States or an officer or agency thereof, except where specially authorized by statute and directed by the court.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail. The prevailing side in such a case is not to submit to the clerk any bill of costs.

7. In appropriate instances, the court may adjudge double costs.

58.

REHEARINGS.

1. A petition for rehearing of judgments or decisions other than those denying or granting certiorari, may be filed with the clerk in term time or in vacation, within twenty-five days after judgment or decision, unless the time is shortened or enlarged by the court or a justice thereof. Such petition must briefly and distinctly state its grounds; it must be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay; it must be printed in conformity with Rule 39; and forty copies, one of which shall bear the manuscript signature of counsel to the certificate, must

be filed, accompanied by proof of service as prescribed by Rule 33. A petition for rehearing is not subject to oral argument, and will not be granted, except at the instance of a justice who concurred in the judgment or decision and with the concurrence of a majority of the court.

2. A petition for rehearing of orders on petitions for writs of certiorari may be filed with the clerk in term time or vacation, subject to the requirements respecting time, printing, number of copies furnished, manuscript signature to certificate, and service, as provided in paragraph 1 of this rule. Any petition filed under this paragraph must briefly and distinctly state grounds which are confined to intervening circumstances of substantial or controlling effect (e. g., *Sanitary Refrigerator Co.* v. *Winters*, 280 U. S. 30, 34, footnote 1; *Massey* v. *United States*, 291 U. S. 608), or to other substantial grounds available to petitioner although not previously presented (e. g., *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47, 50). Such petition is not subject to oral argument. A petition for rehearing filed under this paragraph must be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay, and counsel must also certify that the petition is restricted to the grounds above specified.

3. No reply to a petition for rehearing will be received unless requested by the court. No petition for rehearing will be granted in the absence of such a request and an opportunity to submit a reply in response thereto.

4. Consecutive petitions for rehearings, and petitions for rehearing that are out of time under this rule, will not be received.

59.

PROCESS; MANDATES.

1. All process of this court shall be in the name of the President of the United States, and shall contain the given names, as well as the surnames, of the parties.

2. Subject to paragraph 3 of this rule, mandates shall issue as of course after the expiration of twenty-five days from the day the judgment is entered, unless the time is shortened or enlarged by an order of the court or of a justice thereof, or unless the parties stipulate that it be issued sooner. Except in cases where the twenty-five day period expires in vacation, the filing of a petition for rehearing will, unless otherwise ordered, stay the mandate until disposition of such petition, and if the petition is then denied, the mandate shall issue forthwith.

3. In cases coming from federal courts, a formal mandate shall not issue unless specially directed. In the absence of such direction, it shall suffice for the clerk to send to the proper court, within the time and under the conditions set out in paragraph 2 of this rule, a copy of the opinion or order of this court, and a certified copy of the judgment of this court, which in cases under this paragraph shall include provisions for the recovery of costs if any are awarded.

60.

DISMISSING CAUSES.

1. Whenever the parties thereto shall, by their attorneys of record, file with the clerk an agreement in writing that an appeal, petition for or writ of certiorari, or motion for leave to file or petition for or extraordinary writ be dismissed, specifying the terms as respects costs, and shall pay to the clerk any fees that may be due him, the clerk shall, without further reference to the court, enter an order of dismissal.

2. Whenever an appellant or petitioner in this court shall, by his attorney of record, file with the clerk a motion to dismiss a proceeding to which he is a party, with proof of service as prescribed by Rule 33, and shall tender to the clerk any fees and costs that may be due, the adverse party may within fifteen days after service thereof file an objection, limited to the quantum of damages and

costs in this court alleged to be payable, or, in a proper case, to a showing that the moving party does not represent all appellants or petitioners if there are more than one. The clerk will refuse to receive any objection not so limited.

3. Where the objection goes to the standing of the moving party to represent the entire side, the party moving for dismissal may within ten days thereafter file a reply, after which time the matter shall be laid before the court for its determination.

4. If no objection is filed, or if upon objection going only to the quantum of damages and costs in this court, the party moving for dismissal shall within ten days thereafter tender the whole of such additional damages and costs demanded, the clerk shall, without further reference to the court, enter an order of dismissal. If, after objection as to quantum of damages and costs in this court, the moving party does not respond with such a tender, then the clerk shall report the matter to the court for its determination.

5. No mandate or other process shall issue on a dismissal under this rule without an order of the court.

PART XI. ABROGATION OF PRIOR RULES.

61.

EFFECTIVE DATE.

These rules shall become effective July 1, 1954, and shall be printed as an appendix to the United States Reports. The rules promulgated February 13, 1939, appearing in 306 U. S., Appendix, and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.