

FEDERAL RULES OF APPELLATE  
PROCEDURE

---

Table of Contents.

---

	Page
TITLE I. APPLICABILITY OF RULES.....	1069
Rule 1. Scope of rules.....	1069
Rule 2. Suspension of rules.....	1069
TITLE II. APPEALS FROM JUDGMENTS AND OR- DERS OF DISTRICT COURTS.....	1069
Rule 3. Appeal as of right—How taken.....	1069
Rule 4. Appeal as of right—When taken.....	1071
Rule 5. Appeals by permission under 28 U. S. C. § 1292 (b).....	1072
Rule 6. Appeals by allowance in bankruptcy proceedings.	1074
Rule 7. Bond for costs on appeal in civil cases.....	1075
Rule 8. Stay or injunction pending appeal.....	1075
Rule 9. Release in criminal cases.....	1076
Rule 10. The record on appeal.....	1077
Rule 11. Transmission of the record.....	1079
Rule 12. Docketing the appeal; filing of the record.....	1082
TITLE III. REVIEW OF DECISIONS OF THE TAX COURT OF THE UNITED STATES.....	1083
Rule 13. Review of decisions of the Tax Court.....	1083
Rule 14. Applicability of other rules to review of de- cisions of the Tax Court.....	1085
TITLE IV. REVIEW AND ENFORCEMENT OF OR- DERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS.....	1085
Rule 15. Review or enforcement of agency orders—How obtained; intervention.....	1085
Rule 16. The record on review or enforcement.....	1087
Rule 17. Filing of the record.....	1087
Rule 18. Stay pending review.....	1088
Rule 19. Settlement of judgments enforcing orders.....	1089
Rule 20. Applicability of other rules to review or enforce- ment of agency orders.....	1089

	Page
TITLE V. EXTRAORDINARY WRITS.....	1089
Rule 21. Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs .....	1089
TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS.....	1091
Rule 22. Habeas corpus proceedings.....	1091
Rule 23. Custody of prisoners in habeas corpus pro- ceedings .....	1092
Rule 24. Proceedings in forma pauperis.....	1093
TITLE VII. GENERAL PROVISIONS.....	1094
Rule 25. Filing and service.....	1094
Rule 26. Computation and extension of time.....	1095
Rule 27. Motions .....	1096
Rule 28. Briefs .....	1097
Rule 29. Brief of an amicus curiae.....	1100
Rule 30. Appendix to the briefs.....	1100
Rule 31. Filing and service of briefs.....	1103
Rule 32. Form of briefs, the appendix and other papers.	1104
Rule 33. Prehearing conference.....	1105
Rule 34. Oral argument.....	1106
Rule 35. Determination of causes by the court in banc..	1107
Rule 36. Entry of judgment.....	1108
Rule 37. Interest on judgments.....	1108
Rule 38. Damages for delay.....	1109
Rule 39. Costs .....	1109
Rule 40. Petition for rehearing.....	1110
Rule 41. Issuance of mandate; stay of mandate.....	1111
Rule 42. Voluntary dismissal.....	1111
Rule 43. Substitution of parties.....	1112
Rule 44. Cases involving constitutional questions where United States is not a party.....	1113
Rule 45. Duties of clerks.....	1113
Rule 46. Attorneys .....	1115
Rule 47. Rules by courts of appeals.....	1116
Rule 48. Title .....	1117

### FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court.....	1117
Form 2. Notice of Appeal to a Court of Appeals From a Decision of the Tax Court.....	1118
Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer.....	1118
Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis.....	1119

# FEDERAL RULES OF APPELLATE PROCEDURE

## TITLE I. APPLICABILITY OF RULES

### *Rule 1. Scope of rules.*

(a) *Scope of rules.*—These rules govern procedure in appeals to United States courts of appeals from the United States district courts and the Tax Court of the United States; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give.

(b) *Rules not to affect jurisdiction.*—These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

### *Rule 2. Suspension of rules.*

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26 (b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

## TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

### *Rule 3. Appeal as of right—How taken.*

(a) *Filing the notice of appeal.*—An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Ap-

## 1070 RULES OF APPELLATE PROCEDURE.

peals by permission under 28 U. S. C. § 1292 (b) and appeals by allowance in bankruptcy shall be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

(b) *Joint or consolidated appeals.*—If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) *Content of the notice of appeal.*—The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) *Service of the notice of appeal.*—The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address; and in criminal cases, habeas corpus proceedings, or proceedings under 28 U. S. C. § 2255, the clerk shall mail a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him, either by personal service or by mail addressed to him. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

*Rule 4. Appeal as of right—When taken.*

(a) *Appeals in civil cases.*—In a civil case (including a civil action which involves an admiralty or maritime claim and a proceeding in bankruptcy or a controversy arising therein) in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Federal Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50 (b); (2) granting or denying a motion under Rule 52 (b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is entered in the civil docket.

Upon a showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the

## 1072 RULES OF APPELLATE PROCEDURE.

expiration of the time otherwise prescribed by this subdivision. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

(b) *Appeals in criminal cases.*—In a criminal case the notice of appeal by a defendant shall be filed in the district court within 10 days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the government is authorized by statute, the notice of appeal shall be filed in the district court within 30 days after the entry of the judgment or order appealed from. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. Upon a showing of excusable neglect the district court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

*Rule 5. Appeals by permission under 28 U. S. C. § 1292 (b).*

(a) *Petition for permission to appeal.*—An appeal from an interlocutory order containing the statement

prescribed by 28 U. S. C. § 1292 (b) may be sought by filing a petition for permission to appeal with the clerk of the court of appeals within 10 days after the entry of such order in the district court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) *Content of petition; answer.*—The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) *Form of papers; number of copies.*—All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) *Grant of permission; cost bond; filing of record.*—If permission to appeal is granted the appellant shall file a bond for costs as required by Rule 7, within 10 days after entry of the order granting permission to appeal, and the record shall be transmitted and filed and the appeal docketed in accordance with Rules 11 and 12. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of the entry of the order granting permission to appeal. A notice of appeal need not be filed.

## 1074 RULES OF APPELLATE PROCEDURE.

### *Rule 6. Appeals by allowance in bankruptcy proceedings.*

(a) *Petition for allowance.*—Allowance of an appeal under section 24 of the Bankruptcy Act (11 U. S. C. § 47) from orders, decrees, or judgments of a district court involving less than \$500, or from an order making or refusing to make allowances of compensation or reimbursement under sections 250 or 498 thereof (11 U. S. C. § 650, § 898) shall be sought by filing a petition for allowance with the clerk of the court of appeals within the time provided by Rule 4 (a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed.

(b) *Content of petition; answer.*—The petition shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those questions and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and a copy of the order, decree or judgment complained of and of any opinion or memorandum relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The petition and answer shall be submitted without oral argument unless otherwise ordered.

(c) *Form of papers; number of copies.*—All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) *Allowance of the appeal; cost bond; filing of record.*—If the appeal is allowed the appellant shall file a bond for costs as required by Rule 7, within 10 days of the entry of the order granting permission to appeal, and the record shall be transmitted and filed and the appeal docketed in accordance with Rules 11 and 12. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of the entry of the order allowing the appeal. A notice of appeal need not be filed.

*Rule 7. Bond for costs on appeal in civil cases.*

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant in the district court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of \$250 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the court of appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of \$250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the district court objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 8 (b) apply to a surety upon a bond given pursuant to this rule.

*Rule 8. Stay or injunction pending appeal.*

(a) *Stay must ordinarily be sought in the first instance in district court; motion for stay in court of appeals.*—Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action.

The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

(b) *Stay may be conditioned upon giving of bond; proceedings against sureties.*—Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the district court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the district court without the necessity of an independent action. The motion and such notice of the motion as the district court prescribes may be served on the clerk of the district court, who shall forthwith mail copies to the sureties if their addresses are known.

(c) *Stays in criminal cases.*—Stays in criminal cases shall be had in accordance with the provisions of Rule 38 (a) of the Federal Rules of Criminal Procedure.

*Rule 9. Release in criminal cases.*

(a) *Appeals from orders respecting release entered prior to a judgment of conviction.*—An appeal authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the

district court shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals or a judge thereof may order the release of the appellant pending the appeal.

(b) *Release pending appeal from a judgment of conviction.*—Application for release after a judgment of conviction shall be made in the first instance in the district court. If the district court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the court of appeals or to a judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The court of appeals or a judge thereof may order the release of the appellant pending disposition of the motion.

*Rule 10. The record on appeal.*

(a) *Composition of the record on appeal.*—The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) *The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.*—Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a tran-

## 1078 RULES OF APPELLATE PROCEDURE.

script of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within 10 days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. If the appellant shall refuse to order such parts, the appellee shall either order the parts or apply to the district court for an order requiring the appellant to do so. At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) *Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.*—If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal.

(d) *Agreed statement as the record on appeal.*—In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms

to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the court of appeals as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 11. Copies of the agreed statement may be filed as the appendix required by Rule 30.

(e) *Correction or modification of the record.*—If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

*Rule 11. Transmission of the record.*

(a) *Time for transmission; duty of appellant.*—The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the court of appeals within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (d) of this rule. After filing the notice of appeal the appellant shall comply with the provisions of Rule 10 (b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of Rule 10 (b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

## 1080 RULES OF APPELLATE PROCEDURE.

(b) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the clerk of the court of appeals. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the court of appeals.

(c) *Temporary retention of record in district court for use in preparing appellate papers.*—Notwithstanding the provisions of subdivisions (a) and (b) of this rule, the parties may stipulate, or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of Rule 12 (a) and by presenting to the clerk of the court of appeals a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if he is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the

appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

(d) *Extension of time for transmission of the record; reduction of time.*—The district court for cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the court of appeals may on motion for cause shown extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given. The district court or the court of appeals may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(e) *Retention of the record in the district court by order of court.*—The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as

the district court shall allow and copies of such parts as the parties may designate.

(f) *Stipulation of parties that parts of the record be retained in the district court.*—The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) *Record for preliminary hearing in the court of appeals.*—If prior to the time the record is transmitted a party desires to make in the court of appeals a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.

*Rule 12. Docketing the appeal; filing of the record.*

(a) *Docketing the appeal.*—Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the court of appeals the docket fee fixed by the Judicial Conference of the United States pursuant to 28 U. S. C. § 1913, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of a party or at the time of filing the record. The court of appeals may upon motion for cause shown enlarge the time for docketing the appeal or permit the appeal to be docketed out of time. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title.

## RULES OF APPELLATE PROCEDURE. 1083

(b) *Filing of the record.*—Upon receipt of the record or of papers authorized to be filed in lieu of the record under the provisions of Rule 11 (c) and (e) by the clerk of the court of appeals following timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) *Dismissal for failure of appellant to cause timely transmission or to docket appeal.*—If the appellant shall fail to cause timely transmission of the record or to pay the docket fee if a docket fee is required, any appellee may file a motion in the court of appeals to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order extending the time for transmitting the record, and by proof of service. The appellant may respond within 14 days of such service. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment of the docket fee, but the appellant shall not be permitted to respond without payment of the fee unless he is otherwise exempt therefrom.

### TITLE III. REVIEW OF DECISIONS OF THE TAX COURT OF THE UNITED STATES

#### *Rule 13. Review of decisions of the Tax Court.*

(a) *How obtained; time for filing notice of appeal.*—Review of a decision of the Tax Court of the United States shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

The running of the time for appeal is terminated as to all parties by a timely motion to vacate or revise a decision made pursuant to the Rules of Practice of the Tax Court. The full time for appeal commences to run and is to be computed from the entry of an order disposing of such motion, or from the entry of decision, whichever is later.

(b) *Notice of appeal—How filed.*—The notice of appeal may be filed by deposit in the office of the clerk of the Tax Court in the District of Columbia or by mail addressed to the clerk. If a notice is delivered to the clerk by mail and is received after expiration of the last day allowed for filing, the postmark date shall be deemed to be the date of delivery, subject to the provisions of § 7502 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto.

(c) *Content of the notice of appeal; service of the notice; effect of filing and service of the notice.*—The content of the notice of appeal, the manner of its service, and the effect of the filing of the notice and of its service shall be as prescribed by Rule 3. Form 2 in the Appendix of Forms is a suggested form of the notice of appeal.

(d) *The record on appeal; transmission of the record; filing of the record.*—The provisions of Rules 10, 11 and 12 respecting the record and the time and manner of its transmission and filing and the docketing of the appeal in the court of appeals in cases on appeal from the district courts shall govern in cases on appeal from the Tax Court. Each reference in those rules and in Rule 3 to the district court and to the clerk of the district court shall be read as a reference to the Tax Court and to the clerk of the Tax Court respectively. If appeals are taken from a decision of the Tax Court to more than one court of appeals, the original record shall be transmitted to the court of appeals named in the first notice of appeal filed. Provision for the record in any other appeal shall be made upon appropriate application by the appellant

to the court of appeals to which such other appeal is taken.

*Rule 14. Applicability of other rules to review of decisions of the Tax Court.*

All provisions of these rules are applicable to review of a decision of the Tax Court, except that Rules 4-9, Rules 15-20, and Rules 22 and 23 are not applicable.

TITLE IV. REVIEW AND ENFORCEMENT OF ORDERS OF  
ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS  
AND OFFICERS

*Rule 15. Review or enforcement of agency orders—How obtained; intervention.*

(a) *Petition for review of order; joint petition.*—Review of an order of an administrative agency, board, commission or officer (hereinafter, the term "agency" shall include agency, board, commission or officer) shall be obtained by filing with the clerk of a court of appeals which is authorized to review such order, within the time prescribed by law, a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute (hereinafter, the term "petition for review" shall include a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal). The petition shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. Form 3 in the Appendix of Forms is a suggested form of a petition for review. In each case the agency shall be named respondent. The United States shall also be deemed a respondent if so required by statute, even though not so designated in the petition. If two or more persons are entitled to petition the same court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) *Application for enforcement of order; answer; default; cross-application for enforcement.*—An application for enforcement of an order of an agency shall be filed with the clerk of a court of appeals which is authorized to enforce the order. The application shall contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief prayed. Within 20 days after the application is filed, the respondent shall serve on the petitioner and file with the clerk an answer to the application. If the respondent fails to file an answer within such time, judgment will be awarded for the relief prayed. If a petition is filed for review of an order which the court has jurisdiction to enforce, the respondent may file a cross-application for enforcement.

(c) *Service of petition or application.*—A copy of a petition for review or of an application or cross-application for enforcement of an order shall be served by the clerk of the court of appeals on each respondent in the manner prescribed by Rule 3 (d), unless a different manner of service is prescribed by an applicable statute. At the time of filing, the petitioner shall furnish the clerk with a copy of the petition or application for each respondent. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who shall have been admitted to participate in the proceedings before the agency other than respondents to be served by the clerk, and shall file with the clerk a list of those so served.

(d) *Intervention.*—Unless an applicable statute provides a different method of intervention, a person who desires to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and file with the clerk of the court of appeals a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A motion for leave to

intervene or other notice of intervention authorized by an applicable statute shall be filed within 30 days of the date on which the petition for review is filed.

*Rule 16. The record on review or enforcement.*

(a) *Composition of the record.*—The order sought to be reviewed or enforced, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency.

(b) *Omissions from or misstatements in the record.*—If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

*Rule 17. Filing of the record.*

(a) *Agency to file; time for filing; notice of filing.*—The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provided by the statute authorizing review. In enforcement proceedings the agency shall file the record within 40 days after filing an application for enforcement, but the record need not be filed unless the respondent has filed an answer contesting enforcement of the order, or unless the court otherwise orders. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.

(b) *Filing—What constitutes.*—The agency may file the entire record or such parts thereof as the parties may designate by stipulation filed with the agency. The original papers in the agency proceeding or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the agency may file a certi-

fied list of all documents, transcripts of testimony, exhibits and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the clerk of the court of appeals and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the agency shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the agency shall be a part of the record on review for all purposes.

*Rule 18. Stay pending review.*

Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant had requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief

under this rule upon the filing of a bond or other appropriate security. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

*Rule 19. Settlement of judgments enforcing orders.*

When an opinion of the court is filed directing the entry of a judgment enforcing in whole or in part the order of an agency, the agency shall within 14 days thereafter serve upon the respondent and file with the clerk a proposed judgment in conformity with the opinion. If the respondent objects to the proposed judgment as not in conformity with the opinion, he shall within 7 days thereafter serve upon the agency and file with the clerk a proposed judgment which he deems to be in conformity with the opinion. The court will thereupon settle the judgment and direct its entry without further hearing or argument.

*Rule 20. Applicability of other rules to review or enforcement of agency orders.*

All provisions of these rules are applicable to review or enforcement of orders of agencies, except that Rules 3-14 and Rules 22 and 23 are not applicable. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders.

TITLE V. EXTRAORDINARY WRITS

*Rule 21. Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs.*

(a) *Mandamus or prohibition to a judge or judges; petition for writ; service and filing.*—Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with

the clerk of the court of appeals with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) *Denial; order directing answer.*—If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) *Other extraordinary writs.*—Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the court of appeals with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

(d) *Form of papers; number of copies.*—All papers may be typewritten. Three copies shall be filed with the original, but the court may direct that additional copies be furnished.

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA  
PAUPERIS

*Rule 22. Habeas corpus proceedings.*

(a) *Application for the original writ.*—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

(b) *Necessity of certificate of probable cause for appeal.*—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of probable cause. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges

## 1092 RULES OF APPELLATE PROCEDURE.

of the court of appeals. If an appeal is taken by a state or its representative, a certificate of probable cause is not required.

### *Rule 23. Custody of prisoners in habeas corpus proceedings.*

(a) *Transfer of custody pending review.*—Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court, justice or judge rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) *Detention or release of prisoner pending review of decision failing to release.*—Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon his recognizance, with or without surety, as may appear fitting to the court or justice or judge rendering the decision, or to the court of appeals or to the Supreme Court, or to a judge or justice of either court.

(c) *Release of prisoner pending review of decision ordering release.*—Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court shall otherwise order.

(d) *Modification of initial order respecting custody.*—An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken,

shall govern review in the court of appeals and in the Supreme Court unless for special reasons shown to the court of appeals or to the Supreme Court, or to a judge or justice of either court, the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

*Rule 24. Proceedings in forma pauperis.*

(a) *Leave to proceed on appeal in forma pauperis from district court to court of appeals.*—A party to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed, together with an affidavit showing, in the detail prescribed by Form 4 of the Appendix of Forms, his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the district court, or if the district court shall certify that the appeal is not taken in good

faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

(b) *Leave to proceed on appeal or review in forma pauperis in administrative agency proceedings.*—A party to a proceeding before an administrative agency, board, commission or officer (including, for the purpose of this rule, the Tax Court of the United States) who desires to proceed on appeal or review in a court of appeals in forma pauperis, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of subdivision (a) of this rule.

(c) *Form of briefs, appendices and other papers.*—Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

## TITLE VII. GENERAL PROVISIONS

### *Rule 25. Filing and service.*

(a) *Filing.*—Papers required or permitted to be filed in a court of appeals shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of

mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(b) *Service of all papers required.*—Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of service.*—Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) *Proof of service.*—Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

*Rule 26. Computation and extension of time.*

(a) *Computation of time.*—In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded

in the computation. As used in this rule "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) *Enlargement of time.*—The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

(c) *Additional time after service by mail.*—Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

#### *Rule 27. Motions.*

(a) *Content of motions; response; reply.*—Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based,

## RULES OF APPELLATE PROCEDURE. 1097

and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)] within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) *Determination of motions for procedural orders.*—Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders, including any motion under Rule 26 (b) may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(c) *Power of a single judge to entertain motions.*—In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

(d) *Form of papers; number of copies.*—All papers relating to motions may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

### *Rule 28. Briefs.*

(a) *Brief of the appellant.*—The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and

other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) *Brief of the appellee.*—The brief of the appellee shall conform to the requirements of subdivision (a)(1)–(4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) *Reply brief.*—The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court.

(d) *References in briefs to parties.*—Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee.” It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” “the ship,” “the stevedore,” etc.

(e) *References in briefs to the record.*—References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule

30 (a)) shall be to the pages of the appendix at which those parts appear. If the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by Rule 30 (c). If the record is reproduced in accordance with the provisions of Rule 30 (f), or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; *e. g.*, Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) *Reproduction of statutes, rules, regulations, etc.*—If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) *Length of briefs.*—Except by permission of the court, principal briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. And except by permission of the court, reply briefs shall not exceed 25 pages of standard typographic printing or 35 pages of printing by any other process of duplicating or copying.

(h) *Briefs in cases involving cross appeals.*—If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

## 1100 RULES OF APPELLATE PROCEDURE.

(i) *Briefs in cases involving multiple appellants or appellees.*—In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

### *Rule 29. Brief of an amicus curiae.*

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

### *Rule 30. Appendix to the briefs.*

(a) *Duty of appellant to prepare and file; content of appendix; time for filing; number of copies.*—The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. The fact that parts of the record

are not included in the appendix shall not prevent the parties or the court from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant shall serve and file the appendix within 40 days of the date on which the record is filed. Ten copies of the appendix shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented, unless the court shall by rule or order direct the filing or service of a lesser number.

(b) *Determination of contents of appendix; cost of producing.*—The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than 10 days after the date on which the record is filed, serve on the appellee a designation of the parts of the record which he intends to include in the appendix and a statement of the issues which he intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, he shall, within 10 days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented he may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be included

in the appendix unnecessarily the court may impose the cost of producing such parts on the party.

(c) *Alternative method of designating contents of the appendix; how references to the record may be made in the briefs when alternative method is used.*—If the appellant shall so elect, or if the court shall so provide by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until after the briefs have been filed, and the appendix may be filed 21 days after service of the brief of the appellee. Notice of the election by the appellant to defer preparation of the appendix shall be filed and served by him within 10 days after the date on which the record is filed. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 30 shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.

If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in his brief directly to pages of the appendix, he may serve and file typewritten or page proof copies of his brief within the time required by Rule 31 (a), with appropriate references to the pages of the parts of the record involved. In that event, within 14 days after the appendix is filed he shall serve and file copies of the brief in the form prescribed by Rule 32 (a) containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.

(d) *Arrangement of the appendix.*—At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(e) *Reproduction of exhibits.*—Exhibits designated for inclusion in the appendix may be contained in a separate volume, or volumes, suitably indexed. Four copies thereof shall be filed with the appendix and one copy shall be served on counsel for each party separately represented. The transcript of a proceeding before an administrative agency, board, commission or officer used in an action in the district court shall be regarded as an exhibit for the purpose of this subdivision.

(f) *Hearing of appeals on the original record without the necessity of an appendix.*—A court of appeals may by rule applicable to all cases, or to classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

*Rule 31. Filing and service of briefs.*

(a) *Time for serving and filing briefs.*—The appellant shall serve and file his brief within 40 days after the date on which the record is filed. The appellee shall serve and file his brief within 30 days after service of the brief

of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

(b) *Number of copies to be filed and served.*—Twenty-five copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct a lesser number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented.

(c) *Consequence of failure to file briefs.*—If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the court.

*Rule 32. Form of briefs, the appendix and other papers.*

(a) *Form of briefs and the appendix.*—Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages  $6\frac{1}{8}$  by  $9\frac{1}{4}$  inches and type matter  $4\frac{1}{6}$  by  $7\frac{1}{6}$  inches. Those produced by any other process shall be bound in volumes having pages not exceeding  $8\frac{1}{2}$  by 11 inches and type matter not exceeding  $6\frac{1}{2}$  by  $9\frac{1}{2}$  inches, with double spacing between each line of text. In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent

documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12 (a)); (3) the nature of the proceeding in the court (*e. g.*, Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (*e. g.*, Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) *Form of other papers.*—Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8½ by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

*Rule 33. Prehearing conference.*

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposi-

tion of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

*Rule 34. Oral argument.*

(a) *Notice of argument; postponement.*—The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) *Time allowed for argument.*—Unless otherwise provided by rule for all cases or for classes of cases, each side will be allowed 30 minutes for argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary. Requests may be made by letter addressed to the clerk reasonably in advance of the date fixed for the argument and shall be liberally granted if cause therefor is shown. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) *Order and content of argument.*—The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) *Cross and separate appeals.*—A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court other-

wise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) *Non-appearance of parties.*—If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) *Submission on briefs.*—By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.*—If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

*Rule 35. Determination of causes by the court in banc.*

(a) *When hearing or rehearing in banc will be ordered.*—A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) *Suggestion of a party for hearing or rehearing in banc.*—A party may suggest the appropriateness of a hearing or rehearing in banc. The clerk shall transmit any such suggestion to the judges of the court who are

in regular active service but a vote will not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) *Time for suggestion of a party for rehearing in banc; suggestion does not stay mandate.*—If a party desires to suggest a rehearing in banc, the suggestion must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

*Rule 36. Entry of judgment.*

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

*Rule 37. Interest on judgments.*

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment

for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

*Rule 38. Damages for delay.*

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

*Rule 39. Costs.*

(a) *To whom allowed.*—Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) *Costs for and against the United States.*—In cases involving the United States or an agency or officer thereof, if an award of costs against the United States is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the United States.

(c) *Costs of briefs, appendices, and copies of records.*—The cost of printing or otherwise producing necessary copies of briefs, appendices, or copies of records authorized by Rule 30 (f) shall be taxable in the court of appeals at rates not higher than those generally charged for such work in the area where the clerk's office is located. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment.

(d) *Clerk to insert costs in mandate.*—The clerk shall prepare and certify an itemized statement of costs taxed

## 1110 RULES OF APPELLATE PROCEDURE.

in the court of appeals for insertion in the mandate. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, may be added to the mandate at any time upon request of the clerk of the court of appeals.

(e) *Costs on appeal taxable in the district courts.*—Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

### *Rule 40. Petition for rehearing.*

(a) *Time for filing; content; answer; action by court if granted.*—A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) *Form of petition; length.*—The petition shall be in a form prescribed by Rule 32 (a), and copies shall be served and filed as prescribed by Rule 31 (b) for the service and filing of briefs. Except by permission of the

court, a petition for rehearing shall not exceed 10 pages of standard typographic printing or 15 pages of printing by any other process of duplicating or copying.

*Rule 41. Issuance of mandate; stay of mandate.*

(a) *Date of issuance.*—The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) *Stay of mandate pending application for certiorari.*—A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

*Rule 42. Voluntary dismissal.*

(a) *Dismissal in the district court.*—If an appeal has not been docketed, the appeal may be dismissed by the district court upon the filing in that court of a stipulation

## 1112 RULES OF APPELLATE PROCEDURE.

for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) *Dismissal in the court of appeals.*—If the parties to an appeal or other proceeding shall sign and file with the clerk of the court of appeals an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

### *Rule 43. Substitution of parties.*

(a) *Death of a party.*—If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the court of appeals. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the court of appeals may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision.

(b) *Substitution for other causes.*—If substitution of a party in the court of appeals is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) *Public officers; death or separation from office.*

(1) When a public officer is a party to an appeal or other proceeding in the court of appeals in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the court may require his name to be added.

*Rule 44. Cases involving constitutional questions where United States is not a party.*

It shall be the duty of a party who draws in question the constitutionality of any Act of Congress in any proceeding in a court of appeals to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the court of appeals, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

*Rule 45. Duties of clerks.*

(a) *General provisions.*—The clerk of a court of appeals shall take the oath and give the bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or as counselor in any court while

he continues in office. The court of appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays, but a court may provide by local rule or order that the office of its clerk shall be open for specified hours on Saturdays or on particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day.

(b) *The docket; calendar; other records required.*—The clerk shall keep a book known as the docket, in such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders and judgments shall be entered chronologically in the docket on the folio assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, he shall give preference to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, or as may be required by the court.

(c) *Notice of orders or judgments.*—Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) *Custody of records and papers.*—The clerk shall have custody of the records and papers of the court. He shall not permit any original record or paper to be taken from his custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and appendices and other printed papers filed.

*Rule 46. Attorneys.*

(a) *Admission to the bar of a court of appeals; eligibility; procedure for admission.*—An attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or a United States district court (including the district courts for the Canal Zone, Guam and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing his personal statement showing his eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

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

## 1116 RULES OF APPELLATE PROCEDURE.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that he appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) *Suspension or disbarment.*—When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, he will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why he should not be suspended or disbarred. Upon his response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) *Disciplinary power of the court over attorneys.*—A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

### *Rule 47. Rules by courts of appeals.*

Each court of appeals by action of a majority of the circuit judges in regular active service may from time to time make and amend rules governing its practice not inconsistent with these rules. In all cases not provided for by rule, the courts of appeals may regulate their practice in any manner not inconsistent with these rules. Copies of all rules made by a court of appeals shall upon their promulgation be furnished to the Administrative Office of the United States Courts.

RULES OF APPELLATE PROCEDURE. 1117

Rule 48. Title.

These rules may be known and cited as the Federal Rules of Appellate Procedure.

APPENDIX OF FORMS

FORM 1. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the .....  
District of .....

File Number .....

A. B., Plaintiff }  
                  v.        } Notice of Appeal  
C. D., Defendant }

Notice is hereby given that C. D., defendant above named, hereby appeals to the United States Court of Appeals for the ..... Circuit (from the final judgment) (from the order (describing it)) entered in this action on the .... day of .....

....., 19...

(s) .....

.....

(Address)

Attorney for C. D.

1118 RULES OF APPELLATE PROCEDURE.

FORM 2. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A DECISION OF THE TAX COURT

TAX COURT OF THE UNITED STATES  
Washington, D. C.

A. B., Petitioner  
v.  
Commissioner of Internal Revenue,  
Respondent

} Docket No. ....

Notice of Appeal

Notice is hereby given that A. B. hereby appeals to the United States Court of Appeals for the ..... Circuit from [that part of] the decision of this court entered in the above captioned proceeding on the ..... day of ....., 19....  
[relating to .....].

(s) .....  
.....  
(Address)  
Counsel for A. B.

FORM 3. PETITION FOR REVIEW OF ORDER OF AN AGENCY, BOARD, COMMISSION OR OFFICER

United States Court of Appeals for the .....  
Circuit

A. B., Petitioner  
v.  
XYZ Commission,  
Respondent

} Petition for Review

A. B. hereby petitions the court for review of the Order of the XYZ Commission (describe the order) entered on ....., 19....

.....  
Attorney for Petitioner  
Address: .....

RULES OF APPELLATE PROCEDURE. 1119

FORM 4. AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL  
IN FORMA PAUPERIS

United States District Court for the .....  
District of .....

United States of America }  
                                  } *v.* No. ....  
                                  } A. B.

Affidavit in Support of Motion to Proceed on Appeal in Forma Pauperis.

I, ..... being first duly sworn, depose and say that I am the ....., in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

1120 RULES OF APPELLATE PROCEDURE.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

.....

SUBSCRIBED AND SWORN TO before me this .....  
day of ....., 19 .....

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

.....

*District Judge*