
AMENDMENTS TO FEDERAL RULES OF APPELLATE PROCEDURE

The following amendments to the Federal Rules of Appellate Procedure were prescribed by the Supreme Court of the United States on April 22, 1993, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1060. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Appellate Procedure and the amendments thereto, see 389 U. S. 1063, 398 U. S. 971, 401 U. S. 1029, 406 U. S. 1005, 441 U. S. 973, 475 U. S. 1153, 490 U. S. 1125, and 500 U. S. 1007.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 22, 1993

*To the Senate and House of Representatives of the United
States of America in Congress Assembled:*

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court pursuant to Section 2072 of Title 28, United States Code. While the Court is satisfied that the required procedures have been observed, this transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) WILLIAM H. REHNQUIST
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 22, 1993

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 3, 3.1, 4, 5.1, 6, 10, 12, 15, 25, 28, and 34, and to Forms 1, 2, and 3.

[See *infra*, pp. 1063–1074.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 1993, and shall govern all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings in appellate cases then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

Rule 3. Appeal as of right—how taken.

(c) *Content of the notice of appeal.*—A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X.” A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer’s spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal also must designate the judgment, order, or part thereof appealed from, and must name the court to which the appeal is taken. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice. Form 1 in the Appendix of Forms is a suggested form for a notice of appeal.

(d) *Serving 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 to each party’s counsel of record (apart from the appellant’s), or, if a party is not represented by counsel, to the party’s last known address. The clerk of the district court shall forthwith send a copy of the notice and of the docket entries to the clerk of the court of appeals named in

the notice. The clerk of the district court shall likewise send a copy of any later docket entry in the case to the clerk of the court of appeals. When a defendant appeals in a criminal case, the clerk of the district court shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date when the notice of appeal was filed and, if the notice of appeal was filed in the manner provided in Rule 4(c) by an inmate confined in an institution, the date when the clerk received the notice of appeal. The clerk's failure to serve notice does not affect the validity of the appeal. Service is sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

Rule 3.1. Appeal from a judgment entered by a magistrate judge in a civil case.

When the parties consent to a trial before a magistrate judge under 28 U. S. C. § 636(c)(1), any appeal from the judgment must be heard by the court of appeals in accordance with 28 U. S. C. § 636(c)(3), unless the parties consent to an appeal on the record to a district judge and thereafter, by petition only, to the court of appeals, in accordance with 28 U. S. C. § 636(c)(4). An appeal under 28 U. S. C. § 636(c)(3) must be taken in identical fashion as an appeal from any other judgment of the district court.

Rule 4. Appeal as of right—when taken.

(a) Appeal in a civil case.

(1) Except as provided in paragraph (a)(4) of this Rule, in a civil case 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 must be filed with the clerk of the district court within 30 days after the date of 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 after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date when the clerk received the notice and send it to the clerk of the district court and the notice will be treated as filed in the district court on the date so noted.

(2) A notice of appeal filed after the court announces a decision or order but before the entry of the judgment or order is treated as filed on the date of and after the entry.

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

- (A) for judgment under Rule 50(b);
- (B) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;
- (C) to alter or amend the judgment under Rule 59;
- (D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;
- (E) for a new trial under Rule 59; or
- (F) for relief under Rule 60 if the motion is served within 10 days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing

of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file an amended notice of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(b) *Appeal in a criminal case.*—In a criminal case, a defendant shall file the notice of appeal in the district court within 10 days after the entry either of the judgment or order appealed from, or of a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order—but before entry of the judgment or order—is treated as filed on the date of and after the entry. If a defendant makes a timely motion specified immediately below, in accordance with the Federal Rules of Criminal Procedure, an appeal from a judgment of conviction must be taken within 10 days after the entry of the order disposing of the last such motion outstanding, or within 10 days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:

- (1) for judgment of acquittal;
- (2) for arrest of judgment;
- (3) for a new trial on any ground other than newly discovered evidence; or
- (4) for a new trial based on the ground of newly discovered evidence if the motion is made before or within 10 days after entry of the judgment.

A notice of appeal filed after the court announces a decision, sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction,

whichever is later. Notwithstanding the provisions of Rule 3(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions. When an appeal by the government is authorized by statute, the notice of appeal must be filed in the district court within 30 days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by any defendant.

A judgment or order is entered within the meaning of this subdivision when it is entered on 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.

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Fed. R. Crim. P. 35(c), nor does the filing of a motion under Fed. R. Crim. P. 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(c) *Appeal by an inmate confined in an institution.*—If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or by a declaration (in compliance with 28 U. S. C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid. In a civil case in which the first notice of appeal is filed in the manner provided in this subdivision (c), the 14-day period provided in paragraph (a)(3) of this Rule 4 for another party to file a notice of appeal runs from the date when the district court receives the first notice of appeal. In a criminal case in which a defendant files a notice of appeal in the manner provided in this subdivision (c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from

or from the district court's receipt of the defendant's notice of appeal.

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

(a) *Petition for leave to appeal; answer or cross petition.*—An appeal from a district court judgment, entered after an appeal under 28 U. S. C. § 636(c)(4) to a district judge from a judgment entered upon direction of a magistrate judge in a civil case, may be sought by filing a petition for leave to appeal. An appeal on petition for leave to appeal is not a matter of right, but its allowance is a matter of sound judicial discretion. The petition shall be filed 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. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.

Rule 6. Appeal in a bankruptcy case from a final judgment, order, or decree of a district court or of a bankruptcy appellate panel.

(b) *Appeal from a judgment, order or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case.*

(2) *Additional rules.*—In addition to the rules made applicable by subsection (b)(1) of this rule, the following rules shall apply to an appeal to a court of appeals pursuant to 28 U. S. C. § 158(d) from a final judgment, order or decree of a district court or of a bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U. S. C. § 158(a) or (b):

(i) *Effect of a motion for rehearing on the time for appeal.*—If any party files a timely motion for

rehearing under Bankruptcy Rule 8015 in the district court or the bankruptcy appellate panel, the time for appeal to the court of appeals for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after announcement or entry of the district court's or bankruptcy appellate panel's judgment, order, or decree, but before disposition of the motion for rehearing, is ineffective until the date of the entry of the order disposing of the motion for rehearing. Appellate review of the order disposing of the motion requires the party, in compliance with Appellate Rules 3(c) and 6(b)(1)(ii), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal within the time prescribed by Rule 4, excluding 4(a)(4) and 4(b), measured from the entry of the order disposing of the motion. No additional fees will be required for filing the amended notice.

Rule 10. The record on appeal.

(b) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10-day time provided in paragraph (b)(1) of this Rule 10, file a statement of the issues the appellant intends to present on the appeal, and shall serve on the appellee a copy of the order or certificate and of the statement. An appellee who believes that a transcript of other parts of the proceedings is necessary shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of

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

Rule 12. Docketing the appeal; filing a representation statement; filing the record.

(b) *Filing a representation statement.*—Within 10 days after filing a notice of appeal, unless another time is designated by the court of appeals, the attorney who filed the notice of appeal shall file with the clerk of the court of appeals a statement naming each party represented on appeal by that attorney.

(c) *Filing the record, partial record, or certificate.*—Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

Rule 15. Review or enforcement of an agency order—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” will include agency, board, commission, or officer) must be obtained by filing with the clerk of a court of appeals that 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” will include a petition to enjoin, set aside, suspend, modify, or otherwise review, or a notice of appeal). The petition must name each party seeking review either in the caption or in the body of the petition. Use of such terms as “et al.,” or

“petitioners,” or “respondents” is not effective to name the parties. The petition also must 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 must be named respondent. The United States will also be a respondent if required by statute, even though not 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.

(e) *Payment of fees.*—When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the clerk of the court of appeals the fees established by statute, and also the docket fee prescribed by the Judicial Conference of the United States.

Rule 25. Filing and service.

(a) *Filing.*—Papers required or permitted to be filed in a court of appeals must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing, except that briefs and appendices are treated as filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is used. Papers filed by an inmate confined in an institution are timely filed if deposited in the institution’s internal mail system on or before the last day for filing. Timely filing of papers by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U. S. C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note thereon the date of filing and thereafter give it to the clerk. A court of appeals may, by local rule, permit

papers to be filed by facsimile or other electronic means, provided such means are authorized by and consistent with standards established by the Judicial Conference of the United States.

Rule 28. Briefs.

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

(5) *An argument.*—The argument may be preceded by a summary. The argument must contain the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The argument must also include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues.

(b) *Appellee's brief.*—The brief of the appellee must conform to the requirements of paragraphs (a)(1)–(5), except that none of the following need appear unless the appellee is dissatisfied with the statement of the appellant:

- (1) the jurisdictional statement;
- (2) the statement of the issues;
- (3) the statement of the case;
- (4) the statement of the standard of review.

Rule 34. Oral argument.

(c) *Order and content of argument.*—The appellant is entitled to open and conclude the argument. Counsel may not read at length from briefs, records, or authorities.

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	}	Notice of Appeal
v.		
C. D., Defendant		

Notice is hereby given that (here name all parties taking the appeal), (plaintiffs)
(defendants) in the above named case,* hereby appeal to the United States
Court of Appeals for the _____ Circuit (from the final judgment)
(from an order (describing it)) entered in this action on the _____ day
of _____, 19____.

(s) _____
Attorney for _____
Address: _____

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

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

UNITED STATES TAX COURT
Washington, D. C.

A. B., Petitioner	}	Docket No. _____
v.		
Commissioner of Internal Revenue, Respondent		

Notice of Appeal

Notice is hereby given that (here name all parties taking the appeal)* hereby
appeal to the United States Court of Appeals for the _____
Circuit from (that part of) the decision of this court entered in the above
captioned proceeding on the _____ day of _____, 19____ (relating
to _____).

(s) _____
Counsel for _____
Address: _____

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

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

United States Court of Appeals for the _____ Circuit

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

(here name all parties bringing the petition)* hereby petition the court for review
of the Order of the XYZ Commission (describe the order) entered on
_____, 19____.

(s) _____
Attorney for Petitioners
Address: _____

*See Rule 15.