RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 27, 2003

EFFECTIVE MAY 1, 2003

The following are the Rules of the Supreme Court of the United States as revised on January 27, 2003. See *post*, p. 1248. The amended Rules became effective May 1, 2003, as provided in Rule 48, *post*, p. 1306.

For previous revisions of the Rules of the Supreme Court see 346 U. S. 949, 388 U. S. 931, 398 U. S. 1013, 445 U. S. 985, 493 U. S. 1099, 515 U. S. 1197, 519 U. S. 1161, and 525 U. S. 1191.

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ORDER ADOPTING REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

MONDAY, JANUARY 27, 2003

IT IS ORDERED that the revised Rules of this Court, today approved by the Court and lodged with the Clerk, shall be effective May 1, 2003, and be printed as an appendix to the United States Reports.

IT IS FURTHER ORDERED that the Rules promulgated January 11, 1999, see 525 U. S. 1193, shall be rescinded as of April 30, 2003, and that the revised Rules shall govern all proceedings in cases commenced after that date and, to the extent feasible and just, cases then pending.

RULES OF THE SUPREME COURT OF THE UNITED STATES

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RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 27, 2003—EFFECTIVE MAY 1, 2003

PART I. THE COURT

Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

Rule 2. Library

1. The Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and for federal departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the Court building, except by a Justice or a member of a Justice's staff.

Rule 3. Term

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U. S. C. § 2. At the end of each Term, all cases pending on the docket are continued to the next Term.

Rule 4. Sessions and Quorum

1. Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U. S. C. § 1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending—or if no Justice is present, the Clerk or a Deputy Clerk—may announce that the Court will not meet until there is a quorum.

3. When appropriate, the Court will direct the Clerk or the Marshal to announce recesses.

Part II. Attorneys and Counselors

Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a

completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall sign the following oath or affirmation: I, ..., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $100, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, and the fee for a certificate of good standing is $10, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but

otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice.*

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice.*

3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice.* It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed, and it shall be accompanied by proof of service as required by Rule 29.

Rule 7. Prohibition Against Practice

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any professional capacity in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate in any professional capacity in any case that was pending in this Court during the employee's tenure.

Rule 8. Disbarment and Disciplinary Action

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who

is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

Part III. Jurisdiction on Writ of Certiorari

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that

conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis.* A copy of the motion shall pre-

cede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (*i. e.*, a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-

petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within 20 days after the case is placed on the docket, and that time will not be extended. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated por-

tions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

Rule 13. Review on Certiorari: Time for Petitioning

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. § 2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely)

will not be granted unless another party's timely petition for a writ of certiorari is granted.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a corporate disclosure statement as required by Rule 29.6.

(c) If the petition exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

(i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);

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

(iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and

(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or sum-

mary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g)(i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished

that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent may file an original and 10 copies of a brief in opposition prepared as required by Rule 33.2. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply

brief to the Court for its consideration no less than 10 days after the brief in opposition is filed.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will

request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

Part IV. Other Jurisdiction

Rule 17. Procedure in an Original Action

1. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. § 1251 and U. S. Const., Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. In other respects, those Rules and the Federal Rules of Evidence may be taken as guides.

3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. Forty copies of each document shall be filed, with proof of service. Service shall be as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the Attorney General of that State.

4. The case will be placed on the docket when the motion for leave to file and the initial pleading are filed with the Clerk. The Rule 38(a) docket fee shall be paid at that time.

5. No more than 60 days after receiving the motion for leave to file and the initial pleading, an adverse party shall file 40 copies of any brief in opposition to the motion, with proof of service as required by Rule 29. The Clerk will dis-

tribute the filed documents to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the filed documents to the Court for its consideration no less than 10 days after the brief in opposition is filed. A reply brief may be filed, but consideration of the case will not be deferred pending its receipt. The Court thereafter may grant or deny the motion, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.

7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.

Rule 18. Appeal from a United States District Court

1. When a direct appeal from a decision of a United States district court is authorized by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court together with the notice of appeal.

2. All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court, but a party having no interest in the outcome of the appeal may so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly,

severally, or otherwise in the judgment may appeal separately, or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the judgments suffices. Parties who file no document will not qualify for any relief from this Court.

3. No more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement and shall pay the Rule 38 docket fee, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The case will then be placed on the docket. It is the appellant's duty to notify all appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date it was filed in the district court. For good cause, a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis for jurisdiction in this Court; identify the judgment sought to be reviewed; include a copy of the opinion, any order respecting rehearing, and the notice of appeal; and set out specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. No more than 30 days after a case has been placed on the docket, an appellee seeking to file a conditional cross-appeal (*i. e.*, a cross-appeal that otherwise would be untimely) shall file, with proof of service as required by Rule 29, a jurisdictional statement that complies in all respects (including number of copies filed) with paragraph 3 of this Rule, except that material already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal then will be placed on the docket. It is the cross-appellant's duty to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal will not be extended.

5. After a notice of appeal has been filed in the district court, but before the case is placed on this Court's docket, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the appellant's motion, with notice to all parties. If a notice of appeal has been filed, but the case has not been placed on this Court's docket within the time prescribed for docketing, the district court may dismiss the appeal on the appellee's motion, with notice to all parties, and may make any just order with respect to costs. If the district court has denied the appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of a motion presented in conformity with Rules 21 and 33.2. The motion shall be accompanied by proof of service as required by Rule 29, and by a certificate from the clerk of the district court, certifying that a notice of appeal was filed and that the appellee's mo-

tion to dismiss was denied. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is placed on this Court's docket, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention

to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is received no more than 60 days after the date of the Clerk's letter, its filing will be deemed timely.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises.

Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be

in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by let-

ter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

Part V. Motions and Applications

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any

asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. § 2101(f).

3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

Part VI. Briefs on the Merits and Oral Argument

Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review (unless the caption of the case in this Court contains the names of all parties). Any amended corporate disclosure statement as required by Rule 29.6 shall be placed here.

(c) If the brief exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, including the statutory provisions and time factors on which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text, if not already set out in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set out in an appendix to the brief.

(g) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e. g.*, App. 12, or to the record, *e. g.*, Record 12.

(h) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition

of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.

(j) A conclusion specifying with particularity the relief the party seeks.

2. A brief on the merits for a respondent or an appellee shall conform to the foregoing requirements, except that items required by subparagraphs 1(a), (b), (d), (e), (f), and (g) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the page limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e. g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the writ of certiorari, noting probable jurisdiction, or postponing

consideration of jurisdiction. Any respondent or appellee who supports the petitioner or appellant shall meet the petitioner's or appellant's time schedule for filing documents.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 35 days after the brief for the petitioner or appellant is filed.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 35 days after the brief for the respondent or appellee is filed, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

7. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file

40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be

made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e. g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

7. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause, the time limits specified in this Rule may be shortened or extended by the Court or a Justice, or by the Clerk under Rule 30.4.

Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 no more than 15 days after the petitioner's or appellant's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed no more than 15 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argument shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall

present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be granted only in the most extraordinary circumstances.

Part VII. Practice and Procedure

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the

document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

3. Any document required by these Rules to be served may be served personally, by mail, or by third-party commercial carrier for delivery within 3 calendar days on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail or third-party commercial carrier, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, or delivery to the carrier for delivery within 3 calendar days, addressed to counsel of record at the proper address. When a party is not represented by counsel, service shall be made on the party, personally, by mail, or by commercial carrier. Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court.

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office,

agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed.

Rule 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. § 6103, or day on which the Court building is closed by order of the

Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Rule 31. Translations

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so

that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.

Rule 32. Models, Diagrams, Exhibits, and Lodgings

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, exhibits, and other items placed in the custody of the Clerk shall be removed by the parties no more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

3. Any party or *amicus curiae* desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court. The material proposed for lodging may not be submitted until and unless requested by the Clerk.

Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:* (a) Except for a document expressly permitted by these Rules to be submitted on 8½- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 6⅛- by 9¼-inch booklet format using a standard typesetting process (*e. g.*, hot metal, photocomposition, or computer typesetting) to produce text printed in typographic (as opposed to typewritten) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in Roman 11-point or larger type with 2-point or more leading between lines. The

typeface should be similar to that used in current volumes of the United States Reports. Increasing the amount of text by using condensed or thinner typefaces, or by reducing the space between letters, is strictly prohibited. Type size and face shall be consistent throughout. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 9-point or larger with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4⅛ by 7⅛ inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every booklet-format document shall comply with the page limits shown on the chart in subparagraph 1(g) of this Rule. The page limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, or any appendix. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the page limits, but application for such leave is not favored. An application to exceed page limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a

separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed.

(g) Page limits and cover colors for booklet-format documents are as follows:

	Type of Document	Page Limits	Color of Cover
(i)	Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	30	white
(ii)	Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4)	30	orange
(iii)	Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	10	tan
(iv)	Supplemental Brief (Rules 15.8, 17, 18.10, and 25.5)	10	tan
(v)	Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	50	light blue
(vi)	Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	light red
(vii)	Reply Brief on the Merits (Rule 24.4)	20	yellow
(viii)	Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17)	50	orange

	Type of Document	Page Limits	Color of Cover
(ix)	Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	yellow
(x)	Brief for an *Amicus Curiae* at the Petition Stage (Rule 37.2)	20	cream
(xi)	Brief for an *Amicus Curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	light green
(xii)	Brief for an *Amicus Curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	dark green
(xiii)	Petition for Rehearing (Rule 44)	10	tan

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. §3006A(d)(6), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The page exclusions specified in subparagraph 1(d) of this Rule apply.

Rule 34. Document Preparation: General Requirements

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the caption of the case as appropriate in this Court;

(d) the nature of the proceeding and the name of the court from which the action is brought (*e. g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(e) the title of the document (*e. g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 33.2), and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document exceeding five pages (other than a joint appendix), whether prepared under Rule 33.1 or Rule 33.2, shall contain a table of contents and a table of cited authorities (*i. e.*, cases alphabetically arranged, constitutional provi-

sions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited.

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(g) of this Rule, as may be desired.

Rule 35. Death, Substitution, and Revivor; Public Officers

1. If a party dies after the filing of a petition for a writ of certiorari to this Court, or after the filing of a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its atten-

tion by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ, may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 2(b) of this Rule. The brief shall be submitted within the time allowed for filing a brief in opposition or for filing a motion to dismiss or affirm. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed five pages. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the *amicus curiae*, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200;

(c) for reproducing and certifying any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, $.50 per page;

(d) for a certificate bearing the seal of the Court, $10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the

original, alone, suffices. A copy of the motion, and affidavit or declaration if required, shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every document presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis.*

Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing to establish reemployment rights under any provision of law exempting veterans from the payment of fees or court costs, may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

Part VIII. Disposition of Cases

Rule 41. Opinions of the Court

Opinions of the Court will be released by the Clerk immediately upon their announcement from the bench, or as the Court otherwise directs. Thereafter, the Clerk will cause the opinions to be issued in slip form, and the Reporter of Decisions will prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Rule 43. Costs

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U. S. C. § 2412, costs under this Rule are allowed for or against the United States or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Rule 44. Rehearing

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening

circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

6. If the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with the Rule or Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing received no more than 15 days after the date of the Clerk's letter will be deemed timely.

Rule 45. Process; Mandates

1. All process of this Court issues in the name of the President of the United States.

2. In a case on review from a state court, the mandate issues 25 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. § 451, a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by this Court's Clerk, will provide for costs if any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

Rule 46. Dismissing Cases

1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable. No more than 15 days after service thereof, an adverse party may file an objection, limited to the amount of damages and costs in this Court alleged to be payable or to showing that the moving party does not represent all petitioners or appellants. The Clerk will not file any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter will be submitted to the Court for its determination.

(c) If no objection is filed—or if upon objection going only to the amount of damages and costs in this Court, the party moving for dismissal tenders the additional damages and costs in full within 10 days of the demand therefor—the Clerk, without further reference to the Court, will enter an order of dismissal. If, after objection as to the amount of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk will report the matter to the Court for its determination.

3. No mandate or other process will issue on a dismissal under this Rule without an order of the Court.

Part IX. Definitions and Effective Date

Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals and the Supreme Court of the Commonwealth of Puerto Rico. See 28 U. S. C. §§ 1257 and 1258. References in these Rules to the common law and statutes of a State include the common law and statutes of the District of Columbia and of the Commonwealth of Puerto Rico.

Rule 48. Effective Date of Rules

1. These Rules, adopted January 27, 2003, will be effective May 1, 2003.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies.

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