FEDERAL RULES OF APPELLATE PROCEDURE

CIRCUIT RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPERATING PROCEDURES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH FEDERAL CIRCUIT TO SUPPLEMENT THE PLANS OF THE SEVERAL UNITED STATES DISTRICT COURTS WITHIN THE SEVENTH CIRCUIT

STANDARDS FOR PROFESSIONAL CONDUCT WITHIN THE SEVENTH JUDICIAL CIRCUIT

These rules and procedures are current
as of December 1, 2002.

FEDERAL RULES OF APPELLATE PROCEDURE
AND
CIRCUIT RULES OF THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

TABLE OF CONTENTS

TITLE I. APPLICABILITY OF RULES

F.R.A.P. 1. Scope of Rules; Title 1

CIR. R. 1. Scope of Rules 1

F.R.A.P. 2. Suspension of Rules 1

CIR. R. 2. Suspension of Circuit Rules 1

TITLE II. APPEALS FROM JUDGEMENTS AND ORDERS OF DISTRICT COURTS

F.R.A.P. 3. Appeal as of Right—How Taken 2

CIR. R. 3. Notice of Appeal, Docketing Fee, Docketing Statement, and Designation of Counsel of Record 3

F.R.A.P. 4. Appeal as of Right—When Taken 5

F.R.A.P. 5. Appeal by Permission 9

F.R.A.P. 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or a Bankruptcy Appellate Panel 10

F.R.A.P. 7. Bond for Costs on Appeal in a Civil Case 12

F.R.A.P. 8. Stay or Injunction Pending Appeal 12

CIR. R. 8. Motions for Stays and Injunctions Pending Appeal 14

F.R.A.P. 9. Release in a Criminal Case 14

CIR. R. 9. Motions Concerning Custody Pending Trial or Appeal 15

F.R.A.P. 10. The Record on Appeal 15
CIR. R. 10. Preparation of Record in District Court Appeals 17

F.R.A.P. 11. Forwarding the Record 20

CIR. R. 11. Record on Appeal 22

F.R.A.P. 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record 23

CIR. R. 12. Docketing the Appeal 23

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

F.R.A.P. 13. Review of a Decision of the Tax Court 24

F.R.A.P. 14. Applicability of Other Rules to the Review of a Tax Court Decision 25

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

F.R.A.P. 15. Review or Enforcement of an Agency Order—How Obtained; Intervention 25

F.R.A.P. 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding 26

F.R.A.P. 16. The Record on Review or Enforcement 27

F.R.A.P. 17. Filing the Record 27

F.R.A.P. 18. Stay Pending Review 28

F.R.A.P. 19. Settlement of a Judgment Enforcing an Agency Order in Part 28

F.R.A.P. 20. Applicability of Rules to the Review or Enforcement of an Agency Order 29

TITLE V. EXTRAORDINARY WRITS

F.R.A.P. 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs 29

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

F.R.A.P. 22. Habeas Corpus and Section 2255 Proceedings 30
CIR. R. 22. Death Penalty Cases 31

CIR. R. 22.2. Successive Petitions for Collateral Review 35

F.R.A.P. 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding . 36

F.R.A.P. 24. Proceeding In Forma Pauperis 37

TITLE VII. GENERAL PROVISIONS

F.R.A.P. 25. Filing and Service 38

F.R.A.P. 26. Computing and Extending Time 40

CIR. R. 26. Extensions of Time to File Briefs 41

F.R.A.P. 26.1 Corporate Disclosure Statement 42

CIR. R. 26.1. Disclosure Statement 42

F.R.A.P. 27. Motions 43

F.R.A.P. 28. Briefs 45

CIR. R. 28. Briefs 48

F.R.A.P. 29. Brief of an Amicus Curiae 50

F.R.A.P. 30. Appendix to the Briefs 52

CIR. R. 30. Appendices 54

F.R.A.P. 31. Serving and Filing Briefs 55

CIR. R. 31. Filing of Briefs and Failure to Timely File Briefs 56

F.R.A.P. 32. Form of Briefs, Appendices, and Other Papers 57

CIR. R. 32. Form of a Brief 60

F.R.A.P. 33. Appeal Conferences 60

CIR. R. 33. Prehearing Conference 60

F.R.A.P. 34. Oral Argument 61
CIR. R. 34. Oral Argument 62

F.R.A.P. 35. En Banc Determination 64

CIR. R. 35. Petitions for Rehearing En Banc 65

F.R.A.P. 36. Entry of Judgment; Notice 65

CIR. R. 36. Reassignment of Remanded Cases 66

F.R.A.P. 37. Interest on Judgments 66

F.R.A.P. 38. Frivolous Appeals—Damages and Costs 66

F.R.A.P. 39. Costs 66

CIR. R. 39. Costs of Printing Briefs and Appendices 67

F.R.A.P. 40. Petition for Panel Rehearing 68

CIR. R. 40. Petitions for Rehearing 68

F.R.A.P. 41. Mandate; Contents; Issuance and Effective Date; Stay 69

CIR. R. 41. Immediate Issuance of Mandate After Certain Dispositions 70

F.R.A.P. 42. Voluntary Dismissal 70

F.R.A.P. 43. Substitution of Parties 71

CIR. R. 43. Change in Public Offices 72

F.R.A.P. 44. Case Involving a Constitutional Question Where United States is Not a Party 72

F.R.A.P. 45. Clerk's Duties 72

CIR. R. 45. Fees 73

F.R.A.P. 46. Attorneys 74

CIR. R. 46. Attorneys 75

F.R.A.P. 47. Local Rules by Courts of Appeals 76

CIR. R. 47. Advisory Committee 77

F.R.A.P. 48. Masters 78

CIR. R. 50. Judges to Give Reasons when Dismissing a Claim, Granting Summary Judgment, or Entering an Appealable Order 78

CIR. R. 51. Summary Disposition of Certain Appeals by Convicted Persons; Waiver of Appeal 78

CIR. R. 52. Certification of Questions of State Law 80

CIR. R. 53. Plan for Publication of Opinions of the Seventh Circuit Promulgated Pursuant to Resolution of the Judicial Conference of the United States . 80

CIR. R. 54. Remands from Supreme Court 82

CIR. R. 55. Prohibition of Photographs and Broadcasts 83

CIR. R. 56. Opportunity to Object and Make Proposals on the Record 83

CIR. R. 57. Remands for Revision of Judgment 83

CIR. R. 60. Seventh Circuit Judicial Conference 83

APPENDICES

APPENDIX OF FORMS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

FORM 1
Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court 85

FORM 2
Notice of Appeal to a Court of Appeals from a Decision of the United States Tax Court 85

FORM 3
Petition For Review of Order of an Agency, Board, Commission or Officer 86

FORM 4
Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis 87

FORM 5
Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel 92

FORM 6
Certificate of Compliance With Rule 32(a) 92

APPENDIX OF FORMS TO THE CIRCUIT RULES

APPENDIX I
Notice Re: Defendant Counsel's Motion For Leave to Withdraw Under Circuit Rule 51(b) 93

APPENDIX II
Form of Notice for Motion for Dismissal Under Circuit Rule 51(d) 94

APPENDIX III
Form of Acknowledgment of Attorney's Motion for Dismissal and Consent to the Dismissal of the Appeal 96

Seventh Circuit Operating Procedures 97

Seventh Circuit Criminal Justice Act Plan 107

Standards for Professional conduct Within the Seventh Federal Judicial Circuit 114

FEDERAL RULES OF APPELLATE PROCEDURE
AND
SEVENTH CIRCUIT RULES

FEDERAL RULE OF APPELLATE PROCEDURE 1:

RULE 1. Scope of Rules; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) [Abrogated]

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

CIRCUIT RULE 1. Scope of Rules

These rules govern procedure in the United States Court of Appeals for the Seventh Circuit. They are to be known as the Circuit Rules of the United States Court of Appeals for the Seventh Circuit.

FEDERAL RULE OF APPELLATE PROCEDURE 2:

RULE 2. Suspension of Rules

On its own or a party's motion, a court of appeals may-to expedite its decision or for other good cause-suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

CIRCUIT RULE 2. Suspension of Circuit Rules

In the interest of expediting decision or for other good cause, the court may suspend the requirements of these Circuit Rules.

FEDERAL RULE OF APPELLATE PROCEDURE 3:

RULE 3. Appeal as of Right—How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record-excluding the appellant's or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries-and any later docket entries-to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

CIRCUIT RULE 3. Notice of Appeal, Docketing Fee, Docketing Statement, and Designation of Counsel of Record

(a) *Forwarding Copy of Notice of Appeal*. When the clerk of the district court sends to the clerk of this court a copy of the notice of appeal, the district court clerk shall include any docketing statement. In civil cases the clerk of the district court shall include the judgments or orders under review, any transcribed oral statement of reasons, opinion, memorandum of decision, findings of fact, and conclusions of law. The clerk of the district court shall also complete and include the Seventh Circuit Appeal Information Sheet in the form prescribed by this court.

(b) *Dismissal of Appeal for Failure to Pay Docketing Fee*. If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(c)(1) *Docketing Statement*. The appellant must serve on all parties a docketing statement and file it with the clerk of the district court at the time of the filing of the notice of appeal or with the clerk of this court within seven days of filing the notice of appeal. The docketing statement must comply with the requirements of Circuit Rule 28(a). If there have been prior or related appellate proceedings in the case, or if the party believes that the earlier appellate proceedings are sufficiently related to the new appeal, the statement must identify these proceedings by caption and number. The statement also must describe any prior litigation in the district court that, although not appealed, (a) arises out of the same criminal conviction, or (b) has been designated by the district court as satisfying the criteria of 28 U.S.C. §1915(g). If any of the parties to the litigation appears in an official capacity, the statement must identify the current occupant of the office. The docketing statement in a collateral attack on a criminal conviction must identify the prisoner's current place of confinement and its current warden; if the prisoner has been released, the statement must describe the nature of any ongoing custody (such as supervised release) and identify the custodian. If the docketing statement is not complete and correct, the appellee must provide a complete one to the court of appeals clerk within 14 days after the date of the filing of the appellant's docketing statement.

(2) Failure to file the docketing statement within 14 days of the filing of the notice of appeal will lead to the imposition of a $100 fine on counsel. Failure to file the statement within 28 days of the filing of the notice of appeal will be treated as abandonment of the appeal, and the appeal will be dismissed. When the appeal is docketed, the court will remind the litigants of these provisions.

(d) *Counsel of Record*. The attorney whose name appears on the docketing statement or other document first filed by that party in this court will be deemed counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown, the attorney who is counsel of record must be clearly identified. (There can be only one counsel of record.) If no attorney is so identified, the court will treat the first listed as counsel of record. The court will send documents only to the counsel of record for each party, who is responsible for transmitting them to other lawyers for the same party. The docketing statement or other document must provide the post office address and telephone number of counsel of record. The names of other members of the Bar of this Court and, if desired, their post office addresses, may be added but counsel of record must be clearly identified. 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. Counsel of record may not withdraw, without consent of the court, unless another counsel of record is simultaneously substituted.

FEDERAL RULE OF APPELLATE PROCEDURE 4:

RULE 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal*.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

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

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

whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal*.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);
(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
(iv) to alter or amend the judgment under Rule 59;
(v) for a new trial under Rule 59; or
(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment-but before it disposes of any motion listed in Rule 4(a)(4)(A)-the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal-in compliance with Rule 3(c)-within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time*.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or

(3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal*. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.**

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgement or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgement or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgement or order is set forth on a separate document, or
- 150 days have run from entry of the judgement or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgement or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgement or order.

(b) Appeal in a Criminal Case.

(1) *Time for Filing a Notice of Appeal*.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or
(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or
(ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment*. A notice of appeal filed after the court announces a decision, sentence, or order-but before the entry of the judgment or order-is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal*.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;
(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or
(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order-but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)-becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or
(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective-without amendment-to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time*. Upon a finding of excusable neglect or good cause, the district court may-before or after the time has expired, with or without motion and notice-extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction*. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(6) *Entry Defined*. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

FEDERAL RULE OF APPELLATE PROCEDURE 5:

RULE 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;
(B) the question itself;
(C) the relief sought;
(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and
(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and
(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(a)(1). Except by the court's permission, a paper must not exceed 20 pages,

exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and
(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

FEDERAL RULE OF APPELLATE PROCEDURE 6:

RULE 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or a Bankruptcy Appellate Panel.

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) *Applicability of Other Rules*. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in any applicable rule, means "appellate panel."

(2) *Additional Rules*. In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) *Motion for Rehearing*.

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree-but before disposition of the motion for rehearing-becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4-excluding Rules 4(a)(4) and 4(b)-measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) *The Record on Appeal*.

(i) Within 10 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006-and serve on the appellee-a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 10 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) *Forwarding the Record*.

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) *Filing the Record*. Upon receiving the record-or a certified copy of the docket entries sent in place of the redesignated record-the circuit clerk must file it and immediately notify all parties of the filing date.

FEDERAL RULE OF APPELLATE PROCEDURES 7:

RULE 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

FEDERAL RULE OF APPELLATE PROCEDURE 8:

RULE 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) *Initial Motion in the District Court*. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;
(B) approval of a supersedeas bond; or
(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the Court of Appeals*; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or
(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;
(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action.

The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

CIRCUIT RULE 8. Motions for Stays and Injunctions Pending Appeal

Counsel's obligation under Fed. R. App. P. 8(a) to provide this court with the reasons the district judge gave for denying relief includes an obligation to supply any statement of reasons by a magistrate judge or bankruptcy judge. Filing with the motion a copy of the order or memorandum of decision in which the reasons were stated, or if they were stated orally in open court, a copy of the transcript of proceedings is preferred; but, in an emergency, if such a copy is not available, counsel's statement of the reasons given by the district or bankruptcy court will suffice.

FEDERAL RULE OF APPELLATE PROCEDURE 9:

Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction

by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

CIRCUIT RULE 9. Motions Concerning Custody Pending Trial or Appeal

(a) All requests for release from custody pending trial shall be by motion. The defendant shall file a notice of appeal followed by a motion.

(b) All requests to reverse orders granting bail or enlargement pending trial or appeal shall be by motion. The government shall file a notice of appeal followed by a motion.

(c) All requests for release from custody after sentencing and pending the disposition of the appeal shall be by motion in the main case. There is no need for a separate notice of appeal.

(d) Any motion filed under this rule shall be accompanied by a memorandum of law.

FEDERAL RULE OF APPELLATE PROCEDURE 10:

RULE 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) *Appellant's Duty to Order*. Within 10 days after filing the notice of appeal or

entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;
(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and
(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) *Unsupported Finding or Conclusion*. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) *Partial Transcript*. Unless the entire transcript is ordered:

(A) the appellant must-within the 10 days provided in Rule 10(b)(1)-file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) *Payment*. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or

When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it-together with any additions that the district court may consider necessary to a full presentation of the issues on appeal-must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;
(B) by the district court before or after the record has been forwarded; or
(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

CIRCUIT RULE 10. Preparation of Record in District Court Appeals

(a) *Record Preparation Duties*. The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (with the exceptions listed below). The transcript of a deposition is "filed" within the meaning of this rule, and an exhibit is "received or offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat deposition transcripts or exhibits as part of the record. These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure that exhibits and transcripts to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within ten days after the filing of the notice of appeal. The following items will not be included in a record unless specifically requested by a party by item and date of filing within ten days after the notice of appeal is filed or unless specifically ordered by this court:

briefs and memoranda,
notices of filings,
subpoenas,
summonses,
motions to extend time,
affidavits and admissions of service and mailing,
notices of settings,
depositions and notices, and
jury lists.

(b) *Correction or Modification of Record*. A motion to correct or modify the record pursuant to Rule 10(e), Fed. R. App. P., or a motion to strike matter from the record on the ground that it is not properly a part thereof shall be presented first to the district court. That court's order ruling on the motion will be transmitted to this court as part of the record.

(c) *Order or Certification with Regard to Transcript*. Counsel and court reporters are to utilize the form prescribed by this court when ordering transcripts or certifying that none will be ordered. For specific requirements, see Rules 10(b) and 11(b), Fed. R. App. P.

(d) *Ordering Transcripts in Criminal Cases*.

(1) *Transcripts in Criminal Justice Act Cases*. At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed

under the Criminal Justice Act (C.J.A.), counsel for the defendant shall request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is probable, the judge shall order transcribed so much of the proceedings as the judge believes necessary for an appeal. The transcript shall be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, the judge shall retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a free transcript.

(2) *Transcripts in Other Criminal Cases*. Within 10 days after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel shall deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

(e) *Indexing of Transcript*. The transcript of proceedings to be transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) shall be bound by the reporter in a volume or volumes, with the pages consecutively numbered throughout all volumes. The transcript of proceedings, or the first volume thereof, shall contain a suitable index, which shall refer to the number of the volume as well as the page, shall be cumulative for all volumes, and shall include the following information:

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule may be applied separately to each transcript of one trial or other distinct proceeding.

(f) *Presentence Reports*. The presentence report is part of the record on appeal in every criminal case. The district court should transmit this report under seal, unless it has already been placed in the public record in the district court. If the report is transmitted under seal, the report may not be included in the appendix to the brief or the separate appendix under Fed. R. App. P. 30 and Circuit Rule 30. Counsel of record may review the presentence report at the clerk's office but may not review the probation officer's written comments and any other portion submitted in camera to the trial judge.

(g) *Effect of Omissions from the Record on Appeal*. When a party's argument is countered by a contention of waiver for failure to raise the point in the trial court or before an agency, the party opposing the waiver contention must give the record cite where the point was asserted and also ensure that the record before the court of appeals contains the relevant document or transcript.

FEDERAL RULE OF APPELLATE PROCEDURE 11:

RULE 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) *Reporter's Duty to Prepare and File a Transcript*. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) *District Clerk's Duty to Forward*. When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties. The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record for a Preliminary Motion in the Court of Appeals. If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a supersedeas bond; or
- for any other intermediate order,

the district clerk must send the court of appeals any parts of the record designated by any party.

CIRCUIT RULE 11. Record on Appeal

(a) *Record Transmission*. Appellate records from the Eastern Division of the Northern District of Illinois are to be transmitted to the court of appeals when prepared. Prepared appellate records from all other courts in the circuit are to be temporarily retained by the district court clerk's office pursuant to Rule 11(c), Fed. R. App. P. Rule 11(c) certification is not required. After the appeal is ready for scheduling for oral argument or submission, the clerk of the court of appeals will notify the district court clerk to transmit the record to the court of appeals. The parties may agree or the court of appeals may order that the record be sent to the clerk of the court of appeals at an earlier time. But in no event shall the clerk of the district court transmit bulky items, currency, securities, liquids, drugs, weapons, or similar items without a specific order of this court.

(b) *Transcript and Other Supplemental Transmissions*. When trial or hearing transcripts, or other parts of the record, are filed with the clerk of the district court (or exhibits that have been retained in the district court for use in

preparation of the transcript are returned to the clerk) after initial transmission of the record, they shall be immediately transmitted to this court and filed as a supplemental record without the requirement of this court's order. This immediate transmission meets the requirements of Rule 11(b), Fed. R. App. P., that the court reporter notify the clerk of the court of appeals that the transcript has been filed with the clerk of the district court.

(c) *Extension of Time*.

(1) *Requests for Extension to be Addressed to Court of Appeals*. All requests for extension of time for filing the record or parts thereof shall be addressed to the court of appeals.

(2) *Extension of Time for Preparation of Transcript*. Any request by a court reporter for an extension of time longer than 30 days from the date the transcript was first ordered must be filed with the clerk of this court on a form prescribed by the court. The request must include the date the transcript was ordered, the reasons for both that request, and any previous requests for extensions of time, and a certificate that all parties or their counsel have been sent a copy of the request. If the request is for an extension of time longer than 60 days from the date the transcript was first ordered, it must include a statement from the district judge who tried the case or the chief judge of the district court that the request has been brought to that judge's attention and that steps are being taken to insure that all ordered transcripts will be promptly prepared.

(d) *Withdrawal of Record*. During the time allowed for the preparation and filing of a brief, an attorney for a party or a party acting *pro se* may withdraw the record upon giving a receipt to the clerk who has physical custody of the record. Once a panel of judges is assigned, a record may not be withdrawn without an order of the court. Original exhibits may not be withdrawn but may be examined only in the clerk's office. The party who has withdrawn the record may not file a brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn. Except as provided above, the record shall not be taken from a clerk's office without leave of this court on written motion. Failure of a party to return the record to the clerk may be treated as contempt of this court. When the party withdrawing the record is incarcerated, the clerk who has physical custody of the record, on order of this court, will send the record to the warden of the institution with the request that the record be made available to the party under supervised conditions and be returned to the respective clerk before a specified date.

FEDERAL RULE OF APPELLATE PROCEDURE 12:

RULE 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

CIRCUIT RULE 12. Docketing the Appeal

(a) *Docketing*. The clerk will notify counsel and parties acting *pro se* of the date the appeal is docketed.

(b) *Caption*. The parties on appeal shall be designated in the title of the cause in court as they appeared in the district court, with the addition of identification of appellant and appellee, for example, John Smith, Plaintiff-Appellee v. William Jones, Defendant-Appellant. Actions seeking habeas corpus shall be designated "Petitioner v. Custodian" and not "United States ex rel. Petitioner v. Custodian" .

FEDERAL RULE OF APPELLATE PROCEDURE 13:

RULE 13. Review of a Decision of the Tax Court

(a) How Obtained; Time for Filing Notice of Appeal.

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal

within 120 days after the Tax Court's decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) Notice of Appeal; How Filed. The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) Contents of the Notice of Appeal; Service; Effect of Filing and Service. Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) The Record on Appeal; Forwarding; Filing.

(1) An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

FEDERAL RULE OF APPELLATE PROCEDURE 14:

RULE 14. Applicability of Other Rules to the Review of a Tax Court Decision

All provisions of these rules, except Rules 4-9, 15-20, and 22-23, apply to the review of a Tax Court decision.

FEDERAL RULE OF APPELLATE PROCEDURE 15:

RULE 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition-using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 20 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention. Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion-or other notice of intervention authorized by statute-must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) Payment of Fees. When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

FEDERAL RULE OF APPELLATE PROCEDURE 15.1:

RULE 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

FEDERAL RULE OF APPELLATE PROCEDURE 16:

RULE 16. The Record on Review or Enforcement

(a) Composition of the Record. The record on review or enforcement of an agency order consists of:

(1) the order involved;
(2) any findings or report on which it is based; and
(3) the pleadings, evidence, and other parts of the proceedings before the

agency.

(b) Omissions From or Misstatements in the Record. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

FEDERAL RULE OF APPELLATE PROCEDURE 17:

RULE 17. Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing. The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) Filing-What Constitutes.

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

FEDERAL RULE OF APPELLATE PROCEDURE 18:

RULE 18. Stay Pending Review

(a) Motion for a Stay.

(1) *Initial Motion Before the Agency*. A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) *Motion in the Court of Appeals*. A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or
(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;
(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) Bond. The court may condition relief on the filing of a bond or other appropriate security.

FEDERAL RULE OF APPELLATE PROCEDURE 19:

RULE 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 7 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

FEDERAL RULE OF APPELLATE PROCEDURE 20:

RULE 20. Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

FEDERAL RULE OF APPELLATE PROCEDURE 21:

RULE 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;
(ii) the issues presented;
(iii) the facts necessary to understand the issue presented by the petition; and
(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

FEDERAL RULE OF APPELLATE PROCEDURE 22:

RULE 22. Habeas Corpus and Section 2255 Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

CIRCUIT RULE 22. Death Penalty Cases.

(a) *Operation and Scope*.

(1) These rule applies to all cases involving persons under sentence of capital punishment.

(2) Cases within the scope of this rule will be assigned to a panel as soon as the appeal is docketed. The panel to which a case is assigned will handle all substantial matters pertaining to the case, including certificates of appealability, stays of execution, consideration of the merits, second or successive petitions, remands from the Supreme Court of the United States, and associated procedural matters. If a judge on the panel is unavailable to participate, another judge may be substituted.

(3) Pursuant to 18 U.S.C. §3006A, and 21 U.S.C. §848(q), 28 U.S.C. §2254(h), and 28 U.S.C. §2255 ¶5, appellate counsel shall be appointed for any person under a sentence of death who is financially unable to obtain representation, requests that counsel be appointed, and does not already have counsel appointed by a state under 28 U.S.C. §2261.

(4) The panel to which a case is assigned may make changes in procedure and scheduling in any case when justice so requires.

(b) *Notice of Appeal and Required Documents.*

(1) The district court clerk must notify the clerk of this court by telephone immediately upon the filing of a notice of appeal of a case within the scope of this rule. In all cases within the scope of this rule, the district court clerk must immediately transmit the record to the court of appeals. A supplemental record may be sent later if items are not currently available.

(2) Upon receipt of the record from the district court clerk, or any petition, application or motion invoking the jurisdiction of this court, the clerk of this court shall docket the appeal. The panel will be immediately notified.

(3) Upon filing a notice of appeal, the appellant shall immediately transmit to the court four copies of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue to be presented on appeal to this court. If a document or transcript is needed and is not immediately available, appellant shall submit an affidavit as to the decision and reasons given by the court. Appellant shall file the document or transcript as soon as it is available.

(c) *Briefs.*

(1) Unless the court sets another schedule, the following time limitations apply.

(A) On direct appeal in a federal criminal prosecution, the appellant shall serve and file a brief within 63 days after the date on which the appeal is docketed. The appellee shall serve and file a brief within 49 days after service of the brief by the appellant. The appellant may serve and file a reply brief within 21 days after service of the brief by the appellee.

(B) In all other cases within the scope of this rule the appellant will have 28 days from the date on which the notice of appeal is filed to file and serve a brief. The appellee then will have 21 days from the service of the brief to file and serve a brief. Within seven days after service of the appellee's brief, appellant may file and serve a reply brief.

(2) If an issue is raised that was not presented at a prior stage of the litigation (for example, in the district court, the appropriate state court, or this court on a prior appeal), the party raising the issue must state why the issue was not raised and why relief should nonetheless be granted.

(d) *Submission and Oral Argument.*

(1) The court will hear oral argument in every direct appeal in a federal criminal prosecution and in every appeal from the decision concerning an initial petition under 28 U.S.C. §2254 in a state case. In any other case, a request for oral argument will be evaluated under the standards of Fed. R. App. P. 34(a).

(2) Oral argument will be held expeditiously after the filing of the reply brief.

(3) The merits of an appeal may be decided summarily if the panel decides that an appeal is frivolous. In such a case, the panel may issue a single opinion deciding both the merits of the appeal and the motion for a stay of execution.

(e) *Opinion or Order*.

(1) The panel's decision shall be made without undue delay. In cases to which 28 U.S.C. §2266 applies, the panel's decision will be issued no later than 120 days after the date the reply brief was filed.

(2) In cases in which an execution date has been set and not stayed, the panel will release the decision with dispatch to allow the losing party time to ask for rehearing or consideration by the Supreme Court.

(f) *Panel or En Banc Rehearing*.

(1) Any active judge of the court may, within 14 days after filing of the opinion, notify the panel and the clerk to hold issuance of the mandate and poll the court for en banc consideration. If the mandate has already issued, it may be recalled by the panel or by the en banc court. All judges are to vote within 10 days after the request for the vote on en banc consideration. A judge unable by reason of illness or absence to act within the time allowed by this rule may extend the time to act for a reasonable period upon written notice to the other judges. Unless within 30 days after the petition for rehearing, or the answer to the petition (if one has been requested), is filed, a majority of the panel, or of the judges in active service, has voted to grant rehearing or rehearing en banc, the court will enter an order denying the petition.

(2) If the court decides to rehear an appeal en banc, the appeal will be scheduled for oral argument expeditiously and decided within the time allowed by 28 U.S.C. §2266(c).

(g) *Second or Successive Petitions or Appeals*. A second or successive petition or appeal will be assigned to the panel that handled the first appeal, motion for stay of execution, application for certificate of appealability or other prayer for

relief. A motion for leave to commence a second or successive case is governed by Circuit Rule 22.2 and likewise will be assigned to the original panel.

(h) *Stay of Execution*.

(1) A stay of execution is granted automatically (A) on direct appeal in a federal criminal prosecution by Fed. R. Crim. P. 38(a), and (B) in some state cases by 28 U.S.C. §2262(a). A stay of execution is forbidden in some state cases by 28 U.S.C. §2262(b) and (c). All requests with respect to stays of execution over which the court possesses discretion, or in which any party contends that §2262 or Rule 38(a) has not been followed, must be made by motion under this rule.

(2) An appellant may not file a motion to stay execution or to vacate a stay of execution unless there is an appeal accompanied by a certificate of appealability or four copies of a request that this court issue a certificate of appealability together with a copy of the district judge's statement as to why the certificate should not issue. The request for a certificate of appealability and the motion to stay execution shall be decided together.

(3) The movant shall file four copies of the motion and shall immediately notify opposing counsel by telephone. If the following documents have not yet been filed with this court as part of the record, a copy of each shall be filed with each copy of the motion:

(i) certificate of appealability;
(ii) the complaint, petition or motion seeking relief in the district court and the response thereto;
(iii) the district court decision on the merits;
(iv) the motion in the district court to stay execution or vacate stay of execution and the response thereto; and
(v) the district court decision on the motion to stay execution or vacate stay of execution.

If any required document cannot be filed, the movant shall state the reason for the omission.

(4) If an issue is raised that was not presented at a prior stage of the litigation (for example, in the district court, the appropriate state court, or this court on a prior appeal), the party raising the issue must state why the issue was not raised and why relief should nonetheless be granted.

(5) If the attorney for the government has no objection to the motion for stay,

the court shall enter an order staying the execution.

(6) Parties shall endeavor to file motions with the clerk during normal business hours. Parties having emergency motions during nonbusiness hours shall call the clerk's telephone number for recorded instructions. The clerk shall promptly notify, by telephone, the designated representatives of the appropriate governmental body or counsel for petitioner of any such motions or other communications received by the clerk during nonbusiness hours. Each side must keep the clerk informed of the home and office telephone number of one attorney who will serve as emergency representative.

(7) An order of the panel granting or denying a motion to issue or vacate a stay of execution shall set forth the reasons for its decision.

(i) *Clerk's List of Cases*. The clerk shall maintain a list by jurisdiction of cases within the scope of this rule.

(j) *Notification of State Supreme Court Clerk*. The clerk shall send to the state supreme court a copy of the final decision in any habeas corpus case within the scope of this rule.

CIRCUIT RULE 22.2. Successive Petitions for Collateral Review

(a) A request under 28 U.S.C. §2244(b) or the final paragraph of 28 U.S.C. §2255 for leave to file a second or successive petition must include the following information and attachments, in this order:

(1) A disclosure statement, if required by Circuit Rule 26.1.

(2) A short narrative statement of all claims the person wishes to present for decision. This statement must disclose whether any of these claims has been presented previously to any state or federal court and, if it was, how each court to which it was presented resolved it. If the claim has not previously been presented to a federal court, the applicant must state either:

(A) That the claim depends on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court; or

(B) That the factual predicate for the claim could not have been discovered previously through the exercise of due diligence and that the facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have

found the applicant guilty of the crime, had there been no constitutional error.

(3) A short narrative statement explaining how the person proposes to establish the requirements mentioned above. An applicant who relies on a new rule of constitutional law must identify the new rule, the case that establishes that rule, and the decision of the Supreme Court that holds this new rule applicable to cases on collateral review.

(4) Copies of all opinions rendered by any state or federal court previously rendered in the criminal prosecution, any appeal, and any collateral attack.

(5) Copies of all prior petitions or motions for collateral review.

(b) A copy of the application, together with all attachments, must be served on the attorney for the appropriate government agency at the same time as the application is filed with the court. The application must include a certificate stating who was served, by what means, and when. If the application is made by a prisoner who is not represented by counsel, filing and service may be made under the terms of Fed. R. App. P. 4(c).

(c) Except in capital cases in which execution is imminent, the attorney for the custodian (in state cases) or the United States Attorney (in federal cases) may file a response within 14 days. When an execution is imminent, the court will not wait for a response. A response must include copies of any petitions or opinions that the applicant omitted from the papers.

(d) The applicant may file a reply memorandum within 10 days of the response, after which the request will be submitted to a panel of the court for decision.

(e) An applicant's failure to supply the information and documents required by this rule will lead the court to dismiss the application, but without prejudice to its renewal in proper form.

(As amended Dec. 1, 2001.)

FEDERAL RULE OF APPELLATE PROCEDURE 23:

RULE 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review. Pending review of a decision in a

habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;
(2) detained in other appropriate custody; or
(3) released on personal recognizance, with or without surety.

(c) Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must-unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise-be released on personal recognizance, with or without surety.

(d) Modification of the Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

FEDERAL RULE OF APPELLATE PROCEDURE 24:

RULE 24. Proceeding In Forma Pauperis

(a) Leave to Proceed In Forma Pauperis.

(1) *Motion in the District Court*. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the Motion*. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior Approval*. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding; or
(B) a statute provides otherwise.

(4) *Notice of District Court's Denial*. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;
(B) certifies that the appeal is not taken in good faith; or
(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the Court of Appeals*. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed In Forma Pauperis on Appeal or Review of an Administrative-Agency Proceeding. When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(c) Leave to Use Original Record. A party allowed to proceed on appeal in

forma pauperis may request that the appeal be heard on the original record without reproducing any part.

FEDERAL RULES OF APPELLATE PROCEDURE 25:

RULE 25. Filing and Service

(a) Filing.

(1) *Filing with the Clerk*. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: Method and Timeliness*.

(A) *In General*. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A Brief or Appendix*. A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or
(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.

(C) *Inmate Filing*. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) *Electronic Filing*. A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a Motion with a Judge*. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) *Clerk's Refusal of Documents*. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service may be by any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail:

(C) by third-party commercial carrier for delivery within 3 calendar days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the releaf sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission , unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;
(ii) the names of the persons served; and
(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

FEDERAL RULES OF APPELLATE PROCEDURE 26:

RULE 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or-if the act to be done is filing a paper in court-a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for

permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of the Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

CIRCUIT RULE 26. Extensions of Time to File Briefs

Extensions of time to file briefs are not favored. A request for an extension of time shall be in the form of a motion supported by affidavit. The date the brief is due shall be stated in the motion. The affidavit must disclose facts which establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.

In addition, if the time for filing the brief has been previously extended, the affidavit shall set forth the filing date of any prior motions and the court's ruling thereon. All factual statements required by this rule shall be set forth with specificity. Generalities, such as that the purpose of the motion is not for delay, or that counsel is too busy will not be sufficient.

Grounds that may merit consideration are:

(1) Engagement in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth (a) a description of action taken on a request for continuance or deferment of other litigation; (b) an explanation of the reasons why other litigation should receive priority over the case in which the petition is filed; and (c) other relevant circumstances including why other associated counsel cannot either prepare the brief for filing or, in the alternative, relieve the movant's counsel of the other litigation claimed as a ground for extension.

(2) The matter under appeal is so complex that an adequate brief cannot reasonably be prepared by the date the brief is due, provided that the complexity is factually demonstrated in the affidavit.

(3) Extreme hardship to counsel will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

The motion shall be filed at least five days before the brief is due, unless it is made to appear in the motion that the facts which are the basis of the motion did not exist earlier or were not, or with due diligence could not have been, known earlier to the movant's counsel. Notice of the fact that an extension will be sought must be given to the opposing counsel together with a copy of the motion prior to the filing thereof.

In criminal cases, or in other cases in which a party may be in custody (including military service), a statement must be set forth in the affidavit as to the custodial status of the party, including the conditions of the party's bail, if any.

FEDERAL RULE OF APPELLATE PROCEDURE 26.1:

RULE 26.1 Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) Number of Copies. If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

CIRCUIT RULE 26.1. Disclosure Statement

(a) *Who Must File*. Every attorney for a non-governmental party or amicus curiae, and every private attorney representing a governmental party, must file a statement under this rule. A party or amicus required to file a corporate disclosure statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the statement required by the

national rule.

(b) *Contents of Statement*. The statement must disclose the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court. If any litigant is using a pseudonym, the statement must disclose the litigant's true name. A disclosure required by the preceding sentence will be kept under seal.

(c) *Time for Filing*. The statement under this rule and Fed. R. App. P. 26.1 must be filed no later than 21 days after docketing the appeal, with a party's first motion or response to an adversary's motion, or when directed by the court, whichever time is earliest. A disclosure statement also must accompany any petition for permission to appeal under Fed. R. App. P. 5 and must be included with each party's brief. See Fed. R. App. P. 28(a)(1), (b).

(d) *Duty to Update.* Counsel must file updated disclosure statements under this rule and Fed. R. App. P. 26.1 within 14 days of any change in the information required to be disclosed.

(As amended Dec. 1, 2001.)

FEDERAL RULE OF APPELLATE PROCEDURE 27:

RULE 27. Motions

(a) In General.

(1) *Application for Relief*. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) *Contents of a Motion*.

(A) *Grounds and Relief Sought*. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) *Accompanying Documents*.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.
(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) *Documents Barred or not Required*.

(i) A separate brief supporting or responding to a motion must not be filed.
(ii) A notice of motion is not required.
(iii) A proposed order is not required.

(3) *Response*.

(A) *Time to File*. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 8 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 8-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) *Request for Affirmative Relief*. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) *Reply to Response*. Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order-including a motion under Rule 26(b)--at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Page Limits; and Number of Copies.

(1) *Format*.

(A) *Reproduction*. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) *Cover*. A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed.

(C) *Binding*. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) *Paper Size, Line Spacing, and Margins*. The document must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(2) *Page Limits*. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) *Number of Copies*. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

FEDERAL RULE OF APPELLATE PROCEDURE 28:

RULE 28. Briefs

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

(1) a corporate disclosure statement if required by Rule 26.1;
(2) a table of contents, with page references;

(3) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;
(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;
(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));
(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(10) a short conclusion stating the precise relief sought; and
(11) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

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

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. An appellee who has cross-appealed may file a brief in reply to the appellant's response to the issues presented by the cross-appeal. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities-cases (alphabetically arranged), statutes, and other authorities with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) Briefs in a Case Involving a Cross-Appeal. If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30, 31, and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order. With respect to appellee's cross-appeal and response to appellant's brief, appellee's brief must conform to the requirements of Rule 28(a)(1)-(11). But an appellee who is satisfied with appellant's statement need not include a statement of the case or of the facts.

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed- or after oral argument but before decision-a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

CIRCUIT RULE 28. Briefs

Briefs must conform to Fed. R. App. P. 28 and the additional provisions in Circuit Rules 12(b), 30 and 52. The following requirements supplement those in the corresponding provisions of Fed. R. App. P. 28:

(a) *Appellant's Jurisdictional Statement*. The jurisdictional statement in appellant's brief, see Fed. R. App. P. 28(a)(4), must contain the following details:

(1) The statement concerning the district court's jurisdiction shall identify the provision of the constitution or federal statute involved if jurisdiction is based on the existence of a federal question. If jurisdiction depends on diversity of citizenship, the statement shall identify the jurisdictional amount and the citizenship of each party to the litigation. If any party is a corporation, the statement shall identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association or partnership the statement shall identify the citizenship of all members. The statement shall supply similar details concerning

the invocation of supplemental jurisdiction or other sources of jurisdiction.

(2) The statement concerning appellate jurisdiction shall identify the statutory provision believed to confer jurisdiction on this court and the following particulars:

(i) The date of entry of the judgment or decree sought to be reviewed.
(ii) The filing date of any motion for a new trial or alteration of the judgment or any other motion claimed to toll the time within which to appeal.
(iii) The disposition of such a motion and the date of its entry.
(iv) The filing date of the notice of appeal (together with information about an extension of time if one was granted).
(v) If the case is a direct appeal from the decision of a magistrate judge, the dates on which each party consented in writing to the entry of final judgment by the magistrate judge.

(3) If the appeal is from an order other than a final judgment which adjudicates all of the claims with respect to all parties, counsel shall provide the information necessary to enable the court to determine whether the order is immediately appealable. Elaboration will be necessary in the following cases although the list is illustrative rather than exhaustive:

(i) If any claims or parties remain for disposition in the district court, identify the nature of these claims and the ground on which an appeal may be taken in advance of the final judgment. If there has been a certificate under Fed. R. Civ. P. 54(b) or if this is an appeal by permission under 28 U.S.C. § 1292(b), give the particulars and describe the relation between the claims or parties subject to the appeal and the claims or parties remaining in the district court.

(ii) If the ground of jurisdiction is the "collateral order doctrine," describe how the order meets each of the criteria of that doctrine: finality, separability from the merits of the underlying action, and practical unreviewability on appeal from a final judgment. Cite pertinent cases establishing the appealability of orders of the character involved.

(iii) If the order sought to be reviewed remands a case to a bankruptcy judge or administrative agency, explain what needs to be done on remand and why the order is nonetheless "final."

(iv) Whenever some issues or parties remain before the district court, give enough information to enable the court to determine whether the order is appealable. Appeals from orders granting or staying arbitration or abstaining

from decision as well as appeals from the grant or denial of injunctions require careful exposition of jurisdictional factors.

(b) *Appellee's Jurisdictional Statement*. The appellee's brief shall state explicitly whether or not the jurisdictional summary in the appellant's brief is complete and correct. If it is not, the appellee shall provide a complete jurisdictional summary.

(c) *Statement of the Facts*. The statement of the facts required by Fed. R. App. P. 28(a)(7) shall be a fair summary without argument or comment. No fact shall be stated in this part of the brief unless it is supported by a reference to the page or pages of the record or the appendix where that fact appears.

(d) *Brief in Multiple Appeals*.

(1) *Order and Number of Briefs*.

(a) If a cross-appeal is filed, the clerk will designate which party will file the opening brief, and will set a briefing schedule. The adverse party may file a combined responsive brief and opening brief in its own appeal. This brief may not exceed the page limitation for principal briefs. The party that filed the opening brief may file a combined responsive brief to the cross-appeal and reply brief in its own appeal. This brief may not exceed the page limitation for reply briefs.

(b) The court will entertain motions for realignment of the briefing schedule and enlargement of the number of pages when the norm established by this rule proves inappropriate. Because it is improper to take a cross-appeal in order to advance additional arguments in support of a judgment, the court will not grant motions under this subsection by cross-appellants that do not seek to enlarge their rights under the judgment.

(2) *Captions of Briefs in Multiple Appeals*. When two or more parties file cross-appeals or other separate but related appeals, the briefs shall bear the appellate case numbers and captions of all related appeals.

(e) *Citation of Supplemental Authority*. Counsel shall file the original letter and ten copies of supplemental authorities drawn to the court's attention under Fed. R. App. P. 28(j).

(f) *Citation to the United States Reports*. Citation to the opinions of the Supreme Court of the United States must include the Volume and page of the

United States Reports, once the citation is available.

FEDERAL RULE OF APPELLATE PROCEDURE 29:

RULE 29. Brief of an Amicus Curiae

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

(1) a table of contents, with page references;

(2) a table of authorities-cases (alphabetically arranged), statutes and other authorities-with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(5) a certificate of compliance, if required by Rule 32(a)(7).

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that

extension does not affect the length of an amicus brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

FEDERAL RULE OF APPELLATE PROCEDURE 30:

RULE 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) *Contents of the Appendix*. The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) *Excluded Material*. Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) *Time to File; Number of Copies*. Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The

court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) *Determining the Contents of the Appendix*. The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) *Costs of Appendix*. Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) Deferred Appendix.

(1) *Deferral Until After Briefs Are Filed*. The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) *References to the Record*.

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in

brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) Appeal on the Original Record Without an Appendix. The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

CIRCUIT RULE 30. Appendices

(a) *Contents*. The appellant shall submit, bound with the main brief, an appendix containing the judgment or order under review and any opinion, memorandum of decision, findings of fact and conclusions of law, or oral statement of reasons delivered by the trial court or administrative agency upon the rendering of that judgment, decree, or order.

(b) *Additional Contents*. The appellant shall also include in an appendix:

(1) Copies of any other opinions, orders, or oral rulings in the case that address the issues sought to be raised. If the appellant's brief challenges any oral ruling, the portion of the transcript containing the judge's rationale for that ruling must be included in the appendix.

(2) Copies of any opinions or orders in the case rendered by magistrate judges or bankruptcy judges that address the issues sought to be raised.

(3) Copies of all opinions, orders, findings of fact and conclusions of law rendered in the case by administrative agencies (including their administrative law judges and adjudicative officers such as administrative appeals judges, immigration judges, members of boards and commissions, and others who serve functionally similar roles). This requirement applies whether the original review of the administrative decision is in this court or was conducted by the district court.

(4) If this is a collateral attack on a criminal conviction, then the appendix also must include copies of all opinions by any federal court or state appellate court previously rendered in the criminal prosecution, any appeal, and any earlier collateral attack.

(5) An order concerning a motion for new trial, alteration or amendment of the judgment, rehearing, and other relief sought under Rules 52(a) or 59, Fed. R. Civ. P.

(6) Any other short excerpts from the record, such as essential portions of the pleading or charge, disputed provisions of a contract, pertinent pictures, or brief portions of the transcript, that are important to a consideration of the issues raised on appeal.

(7) The documents in (b) may also be placed in the appendix bound with the brief if these documents when added to the required appendix in (a) do not exceed fifty pages.

(c) *Appendix to the brief of a Cross-Appellant*. The brief of a cross-appellant must comply with this rule, but it need not include materials contained in the appendix of the appellant.

(d) *Statement that All Required Materials are in Appendix*. The appendix to each appellant's brief shall contain a statement that all of the materials required by parts (a) and (b) of this rule are included. If there are no materials within the scope of parts (a) and (b) of this rule, counsel shall so certify.

(e) *Stipulated Joint Appendix and Supplemental Appendices*. The parties may file a stipulated joint appendix. A supplemental appendix, containing material not included in an appendix previously filed, may be filed with the appellee's brief. An appendix should not be lengthy, and costs for a lengthy appendix will not be awarded.

(f) *Indexing of Appendix*. If a party elects to file an appendix containing portions of the transcript of proceedings, it shall contain an index of the portions of the transcript contained therein in the form and detail described in Circuit Rule 10(e) as well as a complete table of contents.

FEDERAL RULE OF APPELLATE PROCEDURE 31:

RULE 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

CIRCUIT RULE 31. Filing of Briefs and Failure to Timely File Briefs

(a) *Time for Filing Briefs*. Except in agency cases, the time for filing briefs shall

run from the date the appeal is docketed, regardless of the completeness of the record at the time of docketing, unless the court orders otherwise.

(b) *Number of Briefs Required*. The clerk of this court is authorized to accept 15 copies of briefs as substantial compliance with Rule 31(b), Fed. R. App. P. Appointed counsel shall also file 15 copies.

(c) *Failure of Appellant to File Brief*. When an appellant's original brief is not filed when it is due, the procedure shall be as follows:

(1) *All Criminal Cases in Which the Defendant Has Counsel and Civil Cases With Court-Appointed Counsel*. The clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should not be taken. The court will then take appropriate action.

(2) *All Other Cases*. The clerk shall enter an order directing counsel, or a pro se appellant, to show cause why the appeal should not be dismissed. The court will then take appropriate action.

(d) *Failure of Appellee to File Brief*. When an appellee's brief is not filed on time, the clerk shall enter an order requiring the appellee to show cause within 14 days why the case should not be treated as ready for oral argument or submission and the appellee denied oral argument. The court will then take appropriate action.

(e) *Digital Versions.*

(1) A digital version of each brief (including the appendix required by Circuit Rule 30(a) to (c)) must be furnished to the court at the time the paper brief is filed, unless counsel certifies that the material is not available electronically. The full contents of the brief (from cover through conclusion) must be furnished even if digital versions of some materials in the Rule 30 appendix are not available.

(2) The digital version must be furnished on floppy disk, on CD-ROM, or via the Internet. Detailed instructions appear on the court's web page <http://www.ca7.uscourts.gov>. The label of a disk, if one is used, must show the case name, docket number, and party on whose behalf the brief is presented.

(3) The electronic version must be in Portable Document Format (also known as PDF or Acrobat format). This format must be generated by printing to PDF from the original word processing file, so that the text of the digital brief may be searched and copied: PDF images created by scanning paper documents do

not comply with this rule.

(4) One copy of the digital version must be furnished to each party separately represented by counsel.

(As amended Dec. 1, 2001.)

FEDERAL RULE OF APPELLATE PROCEDURE 32:

RULE 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) *Reproduction*.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) *Cover*. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;
(B) the name of the court;
(C) the title of the case (see Rule 12(a));
(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;
(E) the title of the brief, identifying the party or parties for whom the brief is filed; and
(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) *Binding*. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) *Paper Size, Line Spacing, and Margins*. The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single- spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface*. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ½ characters per inch.

(6) *Type Styles*. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) *Length*.

(A) *Page limitation*. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B),(C).

(B) *Type-volume limitation*.

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) *Certificate of Compliance*.

(i) A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) Form 6 in the appendix of forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rule 32(a)(7)(C)(i).

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) *Motion*. The form of a motion is governed by Rule 27(d).

(2) *Other Papers*. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the parties attorneys.

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

CIRCUIT RULE 32. Form of a Brief

(a) A brief need not comply with the portion of Fed. R. App. P. 32(a)(3) requiring it to "lie reasonably flat when open." A brief's binding is acceptable if it is secure and does not obscure the text.

(b) A brief need not comply with the 14-point-type requirement in Fed. R. App. P. 32(a)(5)(A). A brief is acceptable if proportionally spaced type is 12 points or larger in the body of the brief, and 11 points or larger in footnotes.

(As amended Dec. 1, 2001.)

FEDERAL RULE OF APPELLATE PROCEDURE 33:

RULE 33. Appeal Conferences

The court may direct the attorneys-and, when appropriate, the parties-to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

CIRCUIT RULE 33. Prehearing Conference

At the conference the court may, among other things, examine its jurisdiction, simplify and define issues, consolidate cases, establish the briefing schedule, set limitations on the length of briefs, and explore the possibility of settlement.

FEDERAL RULE OF APPELLATE PROCEDURE 34:

RULE 34. Oral Argument

(a) In General.

(1) *Party's Statement*. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) *Standards*. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28(h) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

CIRCUIT RULE 34. Oral Argument

(a) *Notice to Clerk*. The names of counsel intending to argue orally shall be furnished to the clerk not later than two days before the argument.

(b) *Calendar*.

(1) The calendar for a particular day will generally consist of three appeals scheduled for oral argument at 9:30 a.m., one appeal scheduled for oral argument at 10:30 a.m., and two appeals scheduled for oral argument at 2:00 p.m. The amount of time allotted for oral argument will be set based on the nature of the case. The clerk will notify counsel of the allocation approximately 21 days before the argument. The types of cases listed below are to be given priority, though the sequence of listing here is not intended to indicate relative priority among the types of cases.

(i) Appeal from an order of confinement after refusal of an immunized witness to testify before the grand jury. (These appeals must be decided within 30 days.) 28 U.S.C. § 1826.

(ii) Criminal Appeals. Rule 45(b), Fed. R. App. P.

(iii) Appeals from orders refusing or imposing conditions of release, which will be heard without the necessity of briefs. Rule 9, Fed. R. App. P.

(iv) Appeals involving issues of public importance.

(v) Habeas corpus and 28 U.S.C. § 2255 appeals.

(vi) Appeals from the granting, denying, or modifying of injunctions.

(vii) Petitions for writs of mandamus and prohibition and other extraordinary writs. Rule 21(b) and (c), Fed. R. App. P.

(viii) "Any other action if good cause therefore is shown. For purposes of this subsection, 'good cause' is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of Title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit." 28 U.S.C. § 1657.

(2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule more than one appeal for oral argument the same day in order to minimize travel time and expenses.

(3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the court avoid scheduling the oral argument for a particular day or week will be respected, if possible.

(4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule it. Requests under subparagraphs (2) and (3) of this paragraph should therefore be made as early as possible. Counsel should have in mind that, when practicable, criminal appeals are scheduled for oral argument shortly after the appellant's brief is filed and civil appeals shortly after the appellee's brief is filed.

(c) *Divided Argument Not Favored*. Divided arguments on behalf of a single party or multiple parties with the same interests are not favored by the court. When such arguments are nevertheless divided or when more than one counsel argues on the same side for parties with differing interests, the time allowed shall be apportioned between such counsel in their own discretion. If counsel are unable to agree, the court will allocate the time.

(d) *Preparation*. In preparing for oral arguments, counsel should be mindful that this court follows the practice of reading briefs prior to oral argument.

(e) *Waiver or Postponement*. Any request for waiver or postponement of a scheduled oral argument must be made by formal motion, with proof of service on all other counsel or parties. Postponements will be granted only in extraordinary circumstances.

(f) *Statement Concerning Oral Argument*. A party may include, as part of a principal brief, a short statement explaining why oral argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34(a).

(g) *Citation of Authorities at Oral Argument*. Counsel may not cite or discuss a case at oral argument unless the case has been cited in one of the briefs or

drawn to the attention of the court and opposing counsel by a filing under Fed R. App. P. 28(j). The filing may be made on the day of oral argument, if absolutely necessary, but should be made sooner.

(h) *Argument by Law Student.* The court may permit a law student to present oral argument under supervision of a member of this court's bar, with the client's written approval, if the representation is part of a program of an accredited law school. The supervising attorney's motion must be filed at least 14 days before the date on which argument is to be held and must state the reasons why presentation of argument by a law student is appropriate.

(As amended Dec. 1, 2001.)

FEDERAL RULE OF APPELLATE PROCEDURE 35:

RULE 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

CIRCUIT RULE 35. Petitions for Rehearing En Banc

Every petition for rehearing en banc, and every brief of an amicus curiae supporting or opposing a petition for rehearing en banc, must include a statement providing the information required by Fed. R. App. P. 26.1 and Circuit Rule 26.1 as of the date the petition is filed.

FEDERAL RULE OF APPELLATE PROCEDURE 36:

RULE 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion-but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all

parties a copy of the opinion-or the judgment, if no opinion was written-and a notice of the date when the judgment was entered.

CIRCUIT RULE 36. Reassignment of Remanded Cases

Whenever a case tried in a district court is remanded by this court for a new trial, it shall be reassigned by the district court for trial before a judge other than the judge who heard the prior trial unless the remand order directs or all parties request that the same judge retry the case. In appeals which are not subject to this rule by its terms, this court may nevertheless direct in its opinion or order that this rule shall apply on remand.

FEDERAL RULE OF APPELLATE PROCEDURE 37:

RULE 37. Interest on Judgments

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

FEDERAL RULE OF APPELLATE PROCEDURE 38:

RULE 38. Frivolous Appeals—Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

FEDERAL RULE OF APPELLATE PROCEDURE 39:

RULE 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must-within 14 days after entry of judgment-file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 10 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must-upon the circuit clerk's request-add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

CIRCUIT RULE 39. Costs of Printing Briefs and Appendices

The cost of printing or otherwise producing copies of briefs and appendices shall not exceed the maximum rate per page as established by the clerk of the court of appeals. If a commercial printing process has been used, a copy of the bill must be attached to the itemized and verified bill of costs filed and served by the party.

FEDERAL RULE OF APPELLATE PROCEDURE 40:

RULE 40. Petition for Panel Rehearing

(a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) *Time*. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

(2) *Contents*. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer*. Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) *Action by the Court*. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

CIRCUIT RULE 40. Petitions for Rehearing

(a) *Table of Contents*. The petition for rehearing shall include a table of contents with page references and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(b) *Number of Copies*. Fifteen copies of a petition for rehearing shall be filed, except that 30 shall be filed if the petitioner suggests rehearing en banc.

(c) *Time for Filing After Decision in Agency Case*. The date on which this court enters a final order or files a dispositive opinion is the date of the "entry of judgment" for the purpose of commencing the period for filing a petition for rehearing in accordance with Fed. R. App. P. 40, notwithstanding the fact that a formal detailed judgment is entered at a later date.

(d) *Time for Filing after Decision from the Bench*. The time limit for filing a petition for rehearing shall run from the date of this court's written order following a decision from the bench.

(e) *Rehearing Sua Sponte before Decision*. A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted. In the discretion of the panel, a proposed opinion which would establish a new rule or procedure may be similarly circulated before it is issued. When the position is adopted by the panel after compliance with this procedure, the opinion, when published, shall contain a footnote worded, depending on the circumstances, in substance as follows:

This opinion has been circulated among all judges of this court in regular active service. (No judge favored, or, A majority did not favor) a rehearing en banc on the question of (e.g., overruling *Doe v. Roe.*)

FEDERAL RULE OF APPELLATE PROCEDURE 41:

RULE 41. Mandate; Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate.

(1) *On Petition for Rehearing or Motion*. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending Petition for Certiorari*.

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

CIRCUIT RULE 41. Immediate Issuance of Mandate After Certain Dispositions

The mandate will issue immediately when an appeal is dismissed (1) voluntarily, (2) for failure to pay the docket fee, (3) for failure to file the docketing statement under Circuit Rule 3(c), or (4) for failure by the appellant to file a brief.

FEDERAL RULE OF APPELLATE PROCEDURE 42:

RULE 42. Voluntary Dismissal

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

FEDERAL RULE OF APPELLATE PROCEDURE 43:

RULE 43. Substitution of Parties

(a) Death of a Party.

(1) *After Notice of Appeal Is Filed*. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) *Before Notice of Appeal Is Filed-Potential Appellant*. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative-or, if there is no personal representative, the decedent's attorney of record-may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) *Before Notice of Appeal Is Filed-Potential Appellee*. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) *Identification of Party*. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) *Automatic Substitution of Officeholder*. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

CIRCUIT RULE 43. Change in Public Offices

Whenever any of the parties to the litigation appears in an official capacity and there is a change in the occupant of the office after the filing of the Rule 3(c)(1) docketing statement, the official-capacity litigant (other than a member of the Cabinet) must notify the court of the identity of the new occupant of the office. Similarly, in collateral attacks on confinement, the parties must notify the court of any change in custodian or custodial status.

FEDERAL RULE OF APPELLATE PROCEDURE 44:

RULE 44. Case Involving a Constitutional Question Where United States is Not a Party

(a) If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

FEDERAL RULE OF APPELLATE PROCEDURE 45:

RULE 45. Clerk's Duties

(a) General Provisions.

(1) *Qualifications*. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) *When Court Is Open*. The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

(1) *The Docket*. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) *Calendar*. Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) *Other Records*. The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must

not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

Circuit Rule 45 will be redrafted to reflect changes approved by the Judicial Conference, effective Nov. 1, 2003 . . .

CIRCUIT RULE 45. Fees

(a) *Fees To Be Collected by the Clerk*. The fees to be collected by the clerk are as follows:

(1) For docketing a case on appeal or review, or docketing any other proceeding, $100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results of the same, $20.

(3) For certifying or exemplifying any document or paper, whether the certification or exemplification is made directly on the document, or by separate instrument, $7.

(4) For reproducing any record or paper, 50 cents per page. This fee does not include certification.

(5) For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, $20.

(6) For each printed copy of any opinion, including any separate and dissenting opinions in the case, regardless of whether the copy is certified, $2, but no charge shall be assessed for:

(i) A copy of the opinion furnished to each party of record in the case, and

(ii) Copies of opinions furnished those appearing upon a "Public Interest List" established by order of the court in the interest of providing proper and adequate media of dissemination to the general public.

(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $35.

(8) For a check paid into the court which is returned for lack of funds, $35.

(9) No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

(b) *Fees To Be Paid in Advance*. The clerk shall not be required to docket any proceeding or perform any other service until all fees due to the clerk have been paid, except at the direction of a judge of this court or at the instance of a party who is entitled to proceed without prepayment of fees.

FEDERAL RULE OF APPELLATE PROCEDURE 46:

RULE 46. Attorneys

(a) Admission to the Bar.

(1) *Eligibility*. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) *Application*. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

"I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) *Admission Procedures*. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) *Standard*. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) *Procedure*. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) *Order*. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

CIRCUIT RULE 46. Attorneys

(a) *Admission*. The lead attorney for all parties represented by counsel in this court must be admitted to practice in this court. Counsel have thirty days from docketing of the matter in this court to comply. In addition, any attorney who orally argues an appeal must be admitted to practice in this court. An applicant for admission to the bar of this court shall file with the clerk an application on the form furnished by the clerk. The oath or affirmation thereon may be taken before any officer authorized by federal or state law to administer an oath. When an appropriate application and motion have been filed and fee tendered, if a fee be required, the clerk shall present the papers to an active or senior circuit judge for action in chambers unless the applicant requests admission in open court. If admission is in open court, the applicant must appear in person and the sponsor shall make an oral motion in support of the written application. If admission is in chambers, the applicant and sponsor need not appear.

(b) *Admission Fees*. The prescribed fee for admission is $15.00, except that attorneys who have been appointed by the district court or this court to represent a party on appeal in forma pauperis, law clerks to judges of this court or the district courts, and attorneys employed by the United States or any agen-

cy thereof need not pay the fee. The clerk shall receive the fee as trustee of the lawyers fund and shall deposit it in a bank designated by the court. Payments from the fund shall be made for the purchase of law books, for library conveniences, or other court purposes, by checks duly signed by the clerk as trustee and countersigned by two judges of this court.

(c) *Government Attorneys*. Attorneys for any federal, state or local government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(d) *Striking a Name from the Roll of Attorneys*. Whenever it is shown to this court that any members of its bar have been disbarred or suspended from practice, or their names have been stricken from the roll of attorneys, in any state, or the District of Columbia, they will be forthwith suspended from practice before this court. They will thereupon be afforded the opportunity to show cause, within 30 days, why their names should not be stricken from the roll of attorneys admitted to practice before this court. Upon the attorney's response to the rule to show cause, or upon the expiration of the 30 days if no response is made, this court will enter an appropriate order.

FEDERAL RULE OF APPELLATE PROCEDURE 47:

RULE 47. Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with-but not duplicative of-Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may

regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

CIRCUIT RULE 47. Advisory Committee

The court shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one law school professor, and two attorneys from each state of the circuit, Illinois, Indiana, and Wisconsin, and, as *ex officio* members, the President and First Vice-President of the Seventh Circuit Bar Association, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this court. The district judges, attorneys, and law school professors on the committee shall serve three-year terms with the appointments being staggered.

The court shall appoint a chairman from the membership of the committee to serve for a two-year term. The advisory committee shall promulgate its own rules, and call its own meetings. The advisory committee shall arrange for notice of proposed rule changes and shall consider comments received. From time to time, as it deems necessary or advisable, it shall make recommendations to the circuit council or to the court. Suggestions for consideration by the advisory committee may be filed with the clerk of this court.

FEDERAL RULE OF APPELLATE PROCEDURE 48:

RULE 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the

reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

CIRCUIT RULE 50. Judges to Give Reasons when Dismissing a Claim, Granting Summary Judgment, or Entering an Appealable Order

Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court (as by remanding or transferring the case, or denying leave to proceed in forma pauperis with or without prejudice), or enters an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons, either orally on the record or by written statement. The court urges the parties to bring to this court's attention as soon as possible any failure to comply with this rule.

CIRCUIT RULE 51. Summary Disposition ofCertain Appeals by Convicted Persons; Waiver of Appeal

(a) *Duties of Criminal Trial Counsel***.**

Trial counsel in a criminal case, whether retained or appointed by the district court, is responsible for the continued representation of the client desiring to appeal unless specifically relieved by the court of appeals upon a motion to withdraw. Such relief shall be freely granted. If trial counsel was appointed by the district court and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the client's eligibility for appointed counsel. If the client was not found to be eligible for Criminal Justice Act representation in the district court but appears to qualify on appeal, trial counsel must immediately assist the client in filing in the district court a motion to proceed as one who is financially unable to obtain an adequate defense in a criminal case. This motion must be accompanied by an affidavit containing substantially the same information as contained in Form 4 of the Appendix to the Federal Rules of Appellate Procedure. If the motion is granted, the court of appeals will appoint trial counsel as appellate counsel unless the district court informs the court of appeals that new counsel should be appointed. If the motion is denied by the district court, trial counsel may file a similar motion in the court of appeals. Counsel may have additional duties under Part V of the Circuit's Plan implementing the Criminal Justice Act of 1964.

(b) *Withdrawal of Court-Appointed Counsel in a Criminal Case*. When representing a convicted person in a proceeding to review the conviction, court-appointed counsel who files a brief characterizing an appeal as frivolous and moves to withdraw (see *Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) shall file with the brief a proof of service which also indicates the current address of the client. Except as provided in paragraph (g) of this rule, the clerk shall then send to the client by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix I to these rules. The same procedures shall be followed by court-appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the appellant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.

(c) *Time for Filing Motion to Withdraw in a Criminal Case*.
Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed in the court of appeals within 10 days of the notice of appeal. The court of appeals will make all appellate appointments.

(d) *Notice of Motion to Dismiss Pro Se Appeal*. When a convicted person appears *pro se* in a proceeding to review the conviction, and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix II to these rules.

(e) *Dismissal if No Response*. If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.

(f) *Voluntary Waiver of Appeal*. Notwithstanding the preceding paragraphs, if the convicted person consents to dismissal of the appeal after consultation with appellate counsel, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to these rules. See Rule 42(b), Fed. R. App. P.

(g) *Incompetent Appellant*. If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the convicted person has been found incompetent or there is reason to believe that person is incompetent, the motion shall so state and the matter shall be referred directly to the court by the clerk for such action as law and justice may require.

CIRCUIT RULE 52. Certification of Questions of State Law

(a) When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the rules of that court, and may stay the case in this court to await the state court's decision of the question certified. The certification will be made after the briefs are filed in this court. A motion for certification shall be included in the moving party's brief.

(b) If the state court decides the certified issue, then within 21 days after the issuance of its opinion the parties must file in this court statements of their positions about what action this court should take to complete the resolution of the appeal.

CIRCUIT RULE 53. Plan for Publication of Opinions of the Seventh Circuit Promulgated Pursuant to Resolution of the Judicial Conference of the United States

(a) *Policy*. It is the policy of the circuit to reduce the proliferation of published opinions.

(b) *Publication*. The court may dispose of an appeal by an order or by an opinion, which may be signed or per curiam. Orders shall not be published and opinions shall be published.

(1) "Published" or "publication" means:

(i) Printing the opinion as a slip opinion;

(ii) Distributing the printed slip opinion to all federal judges within the circuit, legal publishing companies, libraries and other regular subscribers, interested United States attorneys, departments and agencies, and the news media; and

(iii) Unlimited citation as precedent.

(2) Unpublished orders:

(i) Shall be typewritten and reproduced by copying machine;

(ii) Shall be distributed only to the circuit judges, counsel for the parties in the

case, the lower court judge or agency in the case, and the news media, and shall be available to the public on the same basis as any other pleading in the case;

(iii) Shall be available for listing periodically in the Federal Reporter showing only title, docket number, date, district or agency appealed from with citation of prior opinion (if reported), and the judgment or operative words of the order, such as "affirmed," "enforced," "reversed," "reversed and remanded," and so forth;

(iv) Except to support a claim of res judicata, collateral estoppel or law of the case, shall not be cited or used as precedent

(A) in any federal court within the circuit in any written document or in oral argument; or

(B) by any such court for any purpose.

(c) *Guidelines for Method of Disposition*.

(1) *Published opinions*.

A published opinion will be filed when the decision

(i) establishes a new, or changes an existing rule of law;

(ii) involves an issue of continuing public interest;

(iii) criticizes or questions existing law;

(iv) constitutes a significant and non-duplicative contribution to legal literature

(A) by a historical review of law,

(B) by describing legislative history, or

(C) by resolving or creating a conflict in the law;

(v) reverses a judgment or denies enforcement of an order when the lower court or agency has published an opinion supporting the judgment or order; or

(vi) is pursuant to an order of remand from the Supreme Court and is not rendered merely in ministerial obedience to specific directions of that Court.

(2) *Unpublished orders*.

When the decision does not satisfy the criteria for publication, as stated above, it will be filed as an unpublished order. The order will ordinarily contain reasons for the judgment, but may not do so if the court has announced its decision and reasons from the bench. A statement of facts may be omitted from the order or may not be complete or detailed.

(d) *Determination of Whether Disposition is to be by Order or Opinion*.

(1) The determination to dispose of an appeal by unpublished order shall be made by a majority of the panel rendering the decision.

(2) The requirement of a majority represents the policy of this circuit. Notwithstanding the right of a single federal judge to make an opinion available for publication, it is expected that a single judge will ordinarily respect and abide by the opinion of the majority in determining whether to publish.

(3) Any person may request by motion that a decision by unpublished order be issued as a published opinion. The request should state the reasons why the publication would be consistent with the guidelines for method of disposition set forth in this rule.

(e) Except to the purposes set forth in Circuit Rule 53(b)(2)(iv), no unpublished opinion or order of any court may be cited in the Seventh Circuit if citation is prohibited in the rendering court.

CIRCUIT RULE 54. Remands from Supreme Court

When the Supreme Court remands a case to this court for further proceedings, counsel for the parties shall, within 21 days after the issuance of a certified copy of the Supreme Court's judgment pursuant to its Rule 45.3, file statements of their positions as to the action which ought to be taken by this court on remand.

CIRCUIT RULE 55. Prohibition of Photographs and Broadcasts

The taking of photographs in, or radio or television broadcasting from the courtroom or any other place on the 27th floor or judges' chambers or corridors

adjacent thereto on the 26th floor of the Federal Courthouse located at 219 South Dearborn Street, Chicago, Illinois, without permission of the court, is prohibited.

CIRCUIT RULE 56. Opportunity to Object and Make Proposals on the Record

(a) *Opportunity to State Objections and their Rationale*. Whenever a rule of court requires concrete proposals or objections and reasons in order to preserve a claim for appeal (e.g., Fed. R. Civ. P. 51, Fed. R. Crim. P. 30, Fed R. Evid. 103(a)), the judge must ensure that parties have an adequate opportunity to put their proposals, objections, and reasons on the record. When the judge entertains proposals or objections off the record (for example, a sidebar conference or a jury instruction conference in chambers), as soon as practicable the judge must offer an opportunity to summarize on the record the proposal or objection discussed, and the reasons for the proposal or objection. The judge then must state the ruling made.

(b) *Waiver*. Parties offered an opportunity to make a record under part (a) of this rule must use it in order to preserve a position for appeal. No proposal, objection, or reason may be urged as a ground of appeal unless placed on the record. A lawyer who believes that he or she has not been given an adequate opportunity to make a record under this rule must so state on the record. This rule does not alter any obligation imposed by any other rule to make concrete proposals or to state objections and reasons in order to preserve a claim for appeal.

CIRCUIT RULE 57. Remands for Revision of Judgment

A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or 60(b), Fed. R. Crim. P. 35(b), or any other rule that permits the modification of a final judgment, should request the district court to indicate whether it is inclined to grant the motion. If the district court so indicates, this court will remand the case for the purpose of modifying the judgment. Any party dissatisfied with the judgment as modified must file a fresh notice of appeal.

CIRCUIT RULE 60. Seventh Circuit Judicial Conference

(a) *Purpose of the Conference*. Each year the Chief Judge shall call a circuit judicial conference in accordance with 28 U.S.C. § 333 for the purpose of considering the business of courts and advising means of improving the

administration of justice within the circuit. The Chief Judge shall designate the location of the conference and either preside at it or designate officers of the Seventh Circuit Bar Association, or others, to preside.

(b) *Members of the Conference*. Each active Circuit, District, Bankruptcy, and Magistrate Judge of the Circuit shall be a member of the conference. The following shall be members of the conference and are encouraged to attend: (1) Senior Circuit, District and Bankruptcy Judges; (2) Circuit Executive, Deputy Circuit Executive, Senior Staff Attorney for the Seventh Circuit, staff attorneys and law clerks to all Circuit, District, Bankruptcy, and Magistrate Judges; (3) Clerks of the Court of Appeals, District Courts and Bankruptcy Courts in the Circuit; (4) United States Attorneys in the Circuit and their legal staffs; (5) Federal Defenders in the Circuit and their legal staffs; (6) Members of the Seventh Circuit Bar Association; (7) Special guests invited by the Chief Judge or by the President of the Seventh Circuit Bar Association with the approval of the Chief Judge; (8) United States Trustees in the Circuit and their legal staffs.

(c) *Planning of the Conference*. The Judicial Conference shall be planned by a committee composed of eight persons, four judges appointed annually by the Chief Judge from the active judges in the Circuit and four members of the Seventh Circuit Bar Association appointed annually by the President of the Bar Association. The Chief Judge, after consultation with the President of the Bar Association, shall designate one of the members to chair the committee.

(d) *Executive Session*. All or part of one day of the conference shall be designated by the Chief Judge as an executive session to be attended only by active Circuit, District and Bankruptcy Judges, Magistrate Judges and other court personnel.

(e) *Record of the Conference*. The Clerk of the Court of Appeals shall make and preserve a record of the proceedings at the Judicial Conference.

APPENDIX OF FORMS TO FEDERAL RULES OF APPELLATE PROCEDURE

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

United States District Court for the_____
District of_____
File Number _____

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

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

(s) _____
Attorney for _____
Address: _____

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

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

UNITED STATES TAX COURT
Washington, D.C.

A. B., Petitioner,]
]
v.] Docket No. _____
]

Commissioner of Internal]
Revenue, Respondent.]

Notice of Appeal

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

(s) _____
Counsel for _____
Address: _____

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

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

United States Court of Appeals
for the _____ Circuit

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

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

(s) _____
Attorney for Petitioner
Address _____

* See Rule 15.

FORM 4.
AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

United States District Court for the
_____ District of _____

A.B., Plaintiff

v. Case No. _____

C.D., Defendant

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed:_____

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date:_____

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	**Spouse**	**You**	**Spouse**
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$

Alimony	$	$	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):_____	$	$	$	$
Total monthly income:	$	$	$	$

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

Employer	Address	Dates of Employment	Gross monthly pay

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

Employer	Address	Dates of Employment	Gross monthly pay

4. How much cash do you and your spouse have? $_____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	**Other real estate** (Value)	**Motor Vehicle #1** (Value)
_____	_____	Make & year: _____
_____	_____	Model: _____
_____	_____	Registration # _____

Motor Vehicle #2 (Value)	**Other assets** (Value)	**Other assets** (Value)
Make & year: _____	_____	_____
Model: _____	_____	_____
Registration # _____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____

_____ _____ _____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	Your spouse	You
Rent or home-mortgage payment (including lot rented for mobile home)	$ _____	$ _____
Are real estate taxes included? [ ] Yes [ ]No		
Is property insurance included? [ ] Yes [ ]No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ _____	$ _____
Home maintenance (repairs and upkeep)	$ _____	$ _____
Food	$ _____	$ _____
Clothing	$ _____	$ _____
Laundry and dry-cleaning	$ _____	$ _____
Medical and dental expenses	$ _____	$ _____
Transportation (not including motor vehicle expenses	$ _____	$ _____
Recreation, entertainment, newspapers, magazines, etc.	$ _____	$ _____
Insurance (not deducted from wages or included in mortgage payments) Homeowner's or renter's	$ _____	$ _____
Life	$ _____	$ _____
Health	$ _____	$ _____
Motor vehicle	$ _____	$ _____

Other: _____	$ _____	$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	$ _____	$ _____
Installment payments	$ _____	$ _____
Motor Vehicle	$ _____	$ _____
Credit card (name): _____	$ _____	$ _____
Department store (name): _____	$ _____	$ _____
Other: _____	$ _____	$ _____
Alimony, maintenance, and support paid to others	$ _____	$ _____
Regular expenses for operation of business, profession, or farm (attach detail)	$ _____	$ _____
Other (specify): _____	$ _____	$ _____
Total monthly expenses:	$ _____	$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

[ ] Yes [ ] No If yes, describe on an attached sheet.

10. Have you paid-or will you be paying-an attorney any money for services in connection with this case, including the completion of this form?

[ ] Yes [ ] No If yes, how much? $_____

If yes, state the attorney's name, address, and telephone number:

_____

_____

_____

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[ ] Yes [ ] No If yes, how much? $_____

If yes, state the person's name, address, and telephone number:

_____

_____

_____

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.

_____

_____

_____

Your daytime phone number: (____) _____

Your age:_____ Your years of schooling: _____

Your social-security number: _____

FORM 5.
NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL

United States District Court for the
_____ District of _____

In re	)	
_____,	)	
Debtor	)	
_____,	)	File No. _____
Plaintiff	)	
v.	)	
_____,	)	
Defendant	)	

Notice of Appeal to the United States Court
of Appeals for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, 19_ [here describe the judgment, order, or decree]_____ The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____
Signed _____
Attorney for Appellant
Address _____

FORM 6.

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

☐ this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

☐ this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

☐ this brief has been prepared in a proportionally spaced typeface using [*state name and version of word processing program*] in [*state font size and name of type style*], or

☐ this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

(s) _____

Attorney for _____

Dated: _____

APPENDIX OF FORMS TO THE CIRCUIT RULES

APPENDIX I
NOTICE RE: DEFENDANT COUNSEL'S MOTION FOR LEAVE TO WITHDRAW UNDER CIRCUIT RULE 51(b)

To: _____
(Name)

_____
(Street Address or Prison Box)

_____
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No. _____

_____
v.

_____

Your attorney filed a brief on _____, 19 __, stating a belief that your appeal is frivolous and requesting permission to withdraw from the case. Please be advised as follows:

(1) You have 30 days from the date this notice was mailed in which to raise any points that you choose which show why your conviction should be set aside.

(2) If you do not respond within the 30 days, the court may affirm or dismiss your appeal. An affirmance or dismissal would mean that your case would be finally decided against you.

(3) If you want to make a showing why the court should not affirm or dismiss your appeal and believe that there is a very good reason why you will not be able to file your objections with the court within the 30-day limit, you should immediately write to the court and ask for additional time up to 30 days. If additional time is granted, you must file your reasons why the court should not

affirm or dismiss your appeal before your additional time expires.

(4) You do not have a right to another attorney unless this court finds that your showing requires that your case be further briefed or argued. If the court finds that your case should be further briefed or argued, an attorney will be appointed for you who will argue your appeal.

If you want to write to this court, you should address your letter to:

Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

Be sure, when writing, to show clearly the name and number of your case.

Notice mailed _____, 19_

_____
Deputy Clerk, U.S. Court of Appeals

Attorney for appellant

_____
(Name)

_____
(Street Address)

_____
(City, State, Zip Code)

_____
(Area Code and Telephone Number)

APPENDIX II
FORM OF NOTICE FOR MOTION FOR DISMISSAL UNDER CIRCUIT RULE 51(d)

To:_____
(Name)

_____
(Street Address or Prison Box)

_____
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No. _____

_____
v.
_____

A motion was filed by the opposing party on _____, 19_, which asks the court to dismiss your appeal. You have 30 days in which to answer the motion. Please be advised as follows:

1) You have a right to answer. You can either agree to the requested dismissal or object to the motion.

2) If you object, you should explain your objections carefully and show why you contend the court should hear your case.

3) If you agree that your case should be dismissed, you should write the court immediately that you agree.

4) If you do not respond within 30 days after this notice was mailed, the court may affirm or dismiss your appeal. An affirmance or dismissal would mean that your case would be finally decided against you.

5) If you want to file objections and feel that there is a very good reason why you will not be able to file your objections with the court within the 30-day limit, you should immediately write to the court and ask for additional time up to 30 days. If additional time is granted, you must file your objections before your additional time expires.

6) If you are appealing from a conviction and upon receiving notice of motion for dismissal of your appeal you desire an attorney, you should immediately

(a) employ an attorney if you can afford one; or

(b) request this court to appoint an attorney for you if you cannot afford one.

The court will appoint an attorney if it concludes that your appeal is not

frivolous.

If you want to write to this court, you should address your letter to:

Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

Be sure, when writing, to show clearly the name and number of your case.

Notice mailed _____, 19 ___

_____
Deputy Clerk, U.S. Court of Appeals

Attorney for appellant

_____
(Name)

_____
(Street Address)

_____
(City, State, Zip Code)

_____
(Area Code and Telephone Number)

APPENDIX III
FORM OF ACKNOWLEDGMENT OF ATTORNEY'S MOTION FOR DISMISSAL AND CONSENT TO THE DISMISSAL OF THE APPEAL

Case No. _____

_____
v.

_____

To: Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

I have been informed of my attorney's intention to move to dismiss my appeal.

I concur in my attorney's decision and hereby waive all rights to object or raise any points on appeal.

_____
(Name)

_____
(Street Address or Prison Box)

_____
(City, State, Zip Code)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
OPERATING PROCEDURES

(As of December 1, 2001.)

These are procedures for the court's internal operations. The court may dispense with their use in particular cases. Litigants acquire no rights under these procedures.

1. Motions

(a) *Number of Judges Necessary to Determine Motions*.

(1) *Ordinary Practice*. At least two judges shall act on requests for bail, denials of certificates of appealability, and denials of leave to proceed on appeal in forma pauperis. Ordinarily three judges shall act to dismiss or otherwise finally determine an appeal or other proceeding, unless the dismissal is by stipulation or is for procedural reasons. Three judges shall also act to deny a motion to expedite an appeal when the denial may result in the mooting of the appeal. All other motions shall be entertained by a single judge in accordance with the practice set forth in paragraph (c). In the interest of expediting a decision or for other good cause, a fewer number of judges than provided in these procedures may decide any motion.

(2) *En Banc Requests*. If en banc consideration of a motion is requested, no more than the normal number of judges required for such a motion need act on it. If en banc reconsideration of the decision on a motion is requested, the motion will be considered by the same judge or judges who acted on the motion originally and, if and to the extent necessary to constitute a panel of three, one or more members of the motions panel. A judge may request that any motion be considered by the court en banc.

(b) *Selection of Judges to Determine Motions*. The responsibility to handle

motions shall be rotated among the judges. If a single judge to whom a motion is presented orders a response, the motion and response will ordinarily be presented to the same judge for ruling.

(c) *Motion Practice*.

(1) *Motions That May Require Immediate Action*. A staff attorney will read upon filing the following motions (whether labeled emergency or not): (i) for bond; (ii) for injunction; (iii) for stay of injunction; (iv) for stay of an agency order; (v) to dismiss appeals not by agreement; (vi) for leave to appeal from an interlocutory order pursuant to 28 U.S.C. § 1292(b); (vii) to stay or recall the mandate; (viii) to supplement the record; and (ix) all other emergency motions. If the motion requires immediate action, it will be taken to the motions judge and, if necessary, a panel. If it does not require immediate action, the staff attorney will wait up to ten days for a response to be filed before taking the motion to the motions judge or panel.

(2) *Routine Motions*. Routine motions (see subparagraph (7)) will be given to court staff who will read the motion and any affidavit in support thereof as well as any response to the motion. The designated staff member is then authorized, acting pursuant to such general directions and criteria as the court prescribes, to prepare an order in the name of the court either granting or denying the motion or requesting a response to the motion. If the designated staff member has any questions about what action should be taken, the motions judge will be consulted. Once a panel has been assigned for the oral argument or submission of an appeal, or after an appeal has actually been orally argued or submitted for decision without oral argument, the court staff should consult the presiding judge on motions that would otherwise be considered routine.

(3) *Nonroutine Motions*. A staff attorney shall read each nonroutine motion (see subparagraph (7)) and then present it to the motions judge and, if necessary, the motions panel. The judge or panel will then advise the staff attorney as to the decision and direct that an order be prepared accordingly. The staff attorney will then prepare the order. If the order states detailed reasons for the decision, the staff attorney will take the original of the order to the motions judge or one of the judges on the motions panel to read and approve. The same procedure will be followed whenever a judge asks to see the prepared order before it is released.

(4) *Duties of Clerk of Court*. When an order is in final form and ready for release, copies of the order will be reproduced and mailed to the litigants and to any other persons who are affected by the order, such as the district court

clerk, the district judge, the United States Marshal, *et al.* The clerk will make certain that the language of the order is technically proper.

(5) *Automatic Reconsideration When Response Filed After Ruling*. If a response to a motion is properly filed after the court has ruled on the motion adversely to the respondent, the motion and response will be reconsidered and a new order stating this fact and ruling on the motion shall be issued.

(6) *Record Keeping*. The clerk shall keep a record of all orders by date of entry and also place a copy of each order in the file folder of the appeal.

(7) *Classification of Motions and Actions by Court*. Motions and actions of the court are classified for purposes of this paragraph as follows:

Type	**Classification**
To extend time or to file instanter	Routine
To consolidate appeals	Routine
To hold briefing in abeyance	Routine
To expedite or schedule briefing (But see 1(a) *supra*.)	Routine
To intervene as of right	Routine
To withdraw exhibits for preparation of a brief by counsel of record or party appearing *pro se* prior to case being scheduled for oral argument	Routine
To listen to tapes of oral argument under supervision of the clerk's office	Routine
To withdraw as counsel in criminal cases when other counsel has filed or is simultaneously filing an appearance	Routine
To withdraw as counsel in civil cases	Routine
To correct error in the caption of a case	Routine
To withdraw a previously filed motion before the court has acted upon it	Routine
To file a deferred appendix (generally denied)	Routine
To dismiss by agreement (except in cases to which panels have already been assigned)	Routine
To supplement record	
(if no objection)	Routine
(with an item before district court)	Routine
(with item not clearly before district court)	Routine
(to deny with leave to renew after moving to correct record in district court pursuant to Fed. R. App. P.10(e))	Routine
For leave to appeal in forma pauperis (if denied without prejudice to renewal after district court denial)	Routine

(if denied for any other reason) . . . . . Nonroutine
(if granted) . . . . . Nonroutine
For leave to file brief amicus curiae . . . . . Nonroutine
For leave to file oversized brief . . . . . Nonroutine
To stay or recall mandate . . . . . Nonroutine
For appointment of counsel . . . . . Nonroutine
To postpone oral argument . . . . . Nonroutine
For certificate of appealability
(if denied) . . . . . Nonroutine
(if granted) . . . . . Nonroutine
For leave to commence second or successive collateral attack . . . Nonroutine
To dismiss, not by agreement . . . . . Nonroutine
For bond, injunction, or stay of injunction . . . . . Nonroutine
To reconsider any order of court
(other than pursuant to subparagraph (5)) . . . . . Nonroutine
For leave to appeal from interlocutory order,
pursuant to 28 U.S.C. § 1292(b) . . . . . Nonroutine
All other motions . . . . . Nonroutine

The following actions by the court shall be handled similarly to the stated procedures for routine or nonroutine motions:

Issuance of orders to show cause pursuant to Circuit Rule 31(c) and (d) Routine
Discharge of rules to show cause under Fed. R. App.P. 31 (c)
and Circuit Rule 31 (c) and (d)
(granting discharge) . . . . . Routine
(denying discharge) . . . . . Nonroutine
Orders pursuant to Fed. R. App. P. 34 . . . . . Nonroutine

(8) The clerk is authorized to reject repetitious motions to reconsider.

2. Titles and Precedence of Judges

(a) Except to the extent required by law, the court does not distinguish between judges in regular active service and senior judges with respect to title, precedence, and eligibility to participate in the court's decisions.

(b) Judges hold precedence in this sequence for the purpose of presiding at a session of the court: (1) Circuit Justice; (2) the Chief Judge of the circuit; (3) the judge of this circuit in regular active service with the greatest seniority according to the terms of 28 U.S.C. § 45(b). Every panel includes at least one circuit judge in regular active service, so no further provision for the selection of a presiding

judge is necessary.

(c) Subject to part (b) of this rule, judges have precedence and are listed on opinions in the following order: (1) Circuit Justice; (2) Chief Judge of the circuit; (3) Associate Justice (Retired); (4) Circuit Judges by seniority of commission (without distinction between judges of this and other circuits); (5) District Judges by seniority of commission.

(d) Clerk's office personnel will ensure that all orders and opinions comply with this rule. The Clerk's office also will ensure that the description of the panel is consistent and conforms to the appropriate model: "X, Chief Judge, and Y and Z, Circuit Judges"; "X, Y, and Z, Circuit Judges"; "X and Y, Circuit Judges, and Z, District Judge."

3. Issuance of Opinions

(a) When an opinion is ready for release, the author will send the opinion (together with any concurring or dissenting opinions) to the printer immediately.

(b) The Clerk's office will provide each writing judge with page proofs of the opinion. Each judge will review the proofs promptly. If within three business days the Clerk's office has not received a response, the Clerk will call to inquire about the status of the opinion.

(c) The Clerk's office will release the opinion immediately after receipt of the printed copies, unless the writing judge has asked the clerk to delay release to permit the judge to check the corrected proofs against the printed opinion.

4. Inclusion of Costs [abrogated]

5. Hearings and Rehearings En Banc

(a) *Request for Answer and Subsequent Request for Vote*. If a petition for rehearing en banc is filed, a request for an answer (which may be made by any Seventh Circuit judge in regular active service or by any member of the panel that rendered the decision sought to be reheard) must be made within 10 days after the distribution of the en banc petition. If an answer is requested, the clerk shall notify the prevailing party that an answer be filed within 14 days from the date of the court's request. Within 10 days of the distribution of the answer, any judge entitled to request an answer, may request a vote on the petition for rehearing en banc.

(b) *Request for Vote When No Answer Requested*. Ordinarily an answer will be requested prior to a request for a vote. A request for a vote on the petition (which may be made by any judge entitled to request an answer) must be made within 10 days from the distribution of the petition. If a vote is so requested, the clerk shall notify the prevailing party that an answer to the petition is due within 14 days.

(c) *Notification to File Answer*. The judge who requests an answer pursuant to paragraph (a) or who requests a vote pursuant to paragraph (b) shall be responsible for having the clerk notify the prevailing party to file an answer to the petition.

(d) *Voting*.

(1) *Majority*. A simple majority of the voting active judges is required to grant a rehearing en banc.

(2) *Time for Voting*. Judges are expected to vote within 10 days of the request for a vote or within 10 days of the filing of the answer pursuant to the request for a vote, whichever is later.

(e) *Preparation of Order*. After the vote is completed, the authoring judge, or the presiding judge of the panel if the author is a visiting judge, will prepare and send to the clerk an appropriate order. Minority positions will be noted in the denial of a petition for rehearing en banc or the denial of a petition for rehearing unless the judges in the minority request otherwise. Minority positions will not be noted in orders granting a rehearing or rehearing en banc unless so requested by the minority judge. An order granting rehearing en banc should specifically state that the original panel's decision is thereby vacated.

(f) *Participants in Rehearings En Banc*. Only Seventh Circuit active judges and any Seventh Circuit senior judge who was a member of the original panel may participate in rehearings en banc.

(g) *Similar Procedures for Hearings En Banc*. Similar voting procedures and time limits shall apply for requests for hearings en banc except that a staff attorney may circulate such a request.

(h) *Distribution of Petitions*. Petitions for rehearing that do not suggest rehearing en banc are distributed only to the panel. Petitions for rehearing en banc are distributed to all judges entitled to vote on the petition.

6. Panel Assignments in Certain Cases

(a) *Remands from the Supreme Court*. A case remanded by the Supreme Court to this court for further proceedings will ordinarily be reassigned to the same panel that heard the case previously. If a member of that panel was a visiting judge and it is inconvenient for the visitor to participate further, that judge may be replaced by designation or by lot, as the chief judge directs.

(b) *Successive Appeals*. Briefs in a subsequent appeal in a case in which the court has heard an earlier appeal will be sent to the panel that heard the prior appeal. That panel will decide the successive appeal on the merits unless there is no overlap in the issues presented. When the subsequent appeal presents different issues but involves the same essential facts as the earlier appeal, the panel will decide the subsequent appeal unless it concludes that considerations of judicial economy do not support retaining the case. If the panel elects not to decide the new appeal, it will return the case for reassignment at random. If the original panel retains the successive appeal, it will notify the circuit executive whether oral argument is necessary. If oral argument is scheduled, any visiting judge will be replaced by a member of this court designated by lot. Cases that have been heard by the court en banc are outside the scope of this procedure, and successive appeals will be assigned at random unless the en banc court directs otherwise.

(c) *Successive Collateral Attacks*. An application for leave to file a second or successive petition under 28 U.S.C. §2254 or §2255 (see also 28 U.S.C. §2244(b) and Circuit Rule 22.2) will be assigned to the panel that heard the prior appeal. If there was no appeal in the prior case, the application will be assigned to the current motions panel.

(d) *Certain Cases before Motion Panels*. When a motion panel decides that a motion or petition should be set for oral argument or the appeal expedited, it may recommend to the chief judge that the matter be assigned for argument and decision to the same panel. In the absence of such a recommendation, the matter will ordinarily be assigned in the same manner as other appeals.

7. Routine Action by the Clerk

(a) *Dismissal for Failure to Prosecute*. Statutes and rules of court call for the parties to take specified steps at particular times, and the court treats failure to take some of these steps as failure to prosecute, leading to dismissal. Failure to pay the docket fee, failure to file the docketing statement required by Circuit Rule 3(c), and failure by the appellant or petitioner to file a brief, amount to

abandonment of the appeal.

(1) Seven days after the docket fee, docketing statement, or brief is due, the Clerk will send a notice, by certified mail, reminding the party of the obligation. The notice will inform the party about the consequence of continued delay in satisfying the obligation.

(2) If the party or counsel does not respond within 21 days of the date of the notice, the Clerk will enter an order dismissing the appeal for want of prosecution. In a criminal appeal with appointed counsel, however, the Clerk will not dismiss the appeal but will instead discharge the lawyer and appoint new counsel. When counsel is discharged under this procedure, the Clerk also will enter an order requiring the lawyer to show cause why abandonment of the client should not lead to disbarment.

(3) If the party responds within 21 days but does not comply with the obligation, or if the Clerk has not received a receipt showing delivery of the notice, a staff attorney will present the papers to the motions panel for decision.

(b) *Removal from the List of Attorneys Authorized to Practice*. States within the jurisdiction of this circuit send the court lists of attorneys who have been suspended from practice, disbarred, or resigned to prevent consideration of a pending ethical complaint. As a rule, these attorneys have had ample opportunity to contest that adverse action and do not oppose parallel action by other jurisdictions, leading to routine handling in this court.

(1) Promptly after learning that a member of this court's bar has been suspended for a year or more, has been disbarred, or has resigned from the bar of a jurisdiction in which the attorney is authorized to practice, the Clerk will send a notice, by certified mail, directing the lawyer to explain within 30 days why this court should not strike him from the roll of attorneys authorized to practice.

(2) If the lawyer does not respond within 30 days, or if the lawyer consents to the proposed disposition, the Clerk will enter an order removing the lawyer from the roll of attorneys authorized to practice in this court.

(3) If the lawyer responds within 30 days but does not consent to the proposed disposition, or if within that time the Clerk has not received a receipt showing delivery of the notice, a staff attorney will present the papers to the motions panel for decision.

(c) *Review of the Clerk's Action*. A petition for rehearing contesting the entry of a routine order under this operating procedure will be treated as a motion and referred to the motions panel. An order by the motions panel permitting the appeal to continue has the effect of reinstating the appeal, and the Clerk will reset the briefing schedule accordingly.

8. Multiple Appeals

When multiple parties to the same case have taken appeals, the court's senior staff attorney will review the docketing statements filed under Circuit Rule 3 and issue a scheduling order governing the filing of briefs.

When multiple appellants have the same or a closely related interest in the appeal, the senior staff attorney ordinarily will provide for the filing of a joint opening brief, with provision in appropriate cases for separate individual briefs to present points that do not concern all appellants. When the parties have filed cross appeals, the scheduling order usually will call on the party principally aggrieved by the judgment to file the opening brief. For example, when the judgment holds the defendant liable and the plaintiff's cross appeal concerns the amount of damages or an award of attorney's fees, the defendant normally will file the opening brief.

9. Presumptive Times for Action

Expeditious preparation and release of opinions and orders is important not only to litigants ("Justice delayed is justice denied") but also to the operation of the court. Delay in the preparation of or response to opinions means that other judges must re-read the briefs and re-study the record in order to act conscientiously on their colleagues' drafts. Dispatch in circulating drafts and responding to a colleague's circulations therefore reduces duplicative work and improves the quality of justice. With these considerations in mind, the court establishes the following presumptive times for action, anticipating that in most cases judges will take less time but understanding that circumstances may make it imprudent to adhere to these norms mechanically. Every judge should, and may, take the time required for adequate study and reflection.

(a) A judge assigned to write a draft after a case has been identified at conference as suitable for disposition by a brief unpublished order should circulate the draft to the other members of the panel within 21 days of the date the case was argued or submitted.

(b) A judge assigned to write a published opinion should circulate the draft to

the other members of the panel within 90 days of the date the case was argued or submitted. When the case is unusually complex, extended research is required, or other special circumstances apply, however, the writing judge may extend this time to 180 days by giving appropriate notice to the other members of the panel.

(c) Responding to drafts circulated by other judges is the first order of business. Every judge should respond by approval, memorandum suggesting changes, or notice that a separate opinion is under active consideration within 10 days of the circulation of a draft.

(d) As a rule, writing separate concurring or dissenting opinions takes precedence over all business other than initial responses to newly circulated drafts. Separate opinions should be circulated to the panel within 28 days after the initial response described in part (c) of this procedure.

(e) Once the opinion has issued, judges should act promptly on any further motions. In particular, members of the panel should vote within 10 days on any petition for rehearing. Under Operating Procedure 5, judges have 10 days to request a response to a petition for rehearing en banc, and 10 days to call for a vote on the petition once the response has been received. Once a judge has called for a vote, all other judges should register their votes within 10 days. Once this time (including extensions described below) has passed, and sufficient votes have been received to grant or deny the petition for rehearing or petition for rehearing en banc, the court will enter an order to that effect without waiting for additional responses.

(f) Each judge should establish a tickler system designed to ensure adherence to these norms. When one chambers does not receive a draft, vote or response within the time presumptively established, secretaries or law clerks should inquire. This step not only catches communications lost in transmission but also serves as a backup reminder system.

(g) A judge who believes that additional time is required to permit full consideration should notify the other members of the panel to that effect. If the judge believes that more than 30 days (in the case of opinions) or 10 days (in the case of other actions), in addition to the time presumptively established by this procedure, is essential, the judge also should notify the chief judge of the delay and the reasons for it.

(h) The presiding judge of a panel should reassign the case if the judge initially assigned to draft the order or opinion has not circulated the draft within the time

provided by parts (a) and (b) of this procedure, plus the extra time allowed by part (g), unless in consultation with the assigned author and the chief judge the presiding judge decides that reassignment would delay disposition still further.

(i) If two members of the panel have agreed on an opinion, and the third member does not respond within the time provided by part (c), or does not complete a separate opinion within the time presumptively established by parts (d) and (g), the writing judge should inquire of the third member whether a response is imminent. If further delay is anticipated, the majority should issue the opinion with a notation that the third judge reserves the right to file a separate opinion later.

(j) When the presumptive time for action established by this procedure is 10 days, the time may be extended on notice that a judge is unavailable to act on judicial business. The time specified by this notice is added to the time presumptively established by this procedure.

10. Sealing Portions of the Record

(a) Requirement of Judicial Approval. Except to the extent portions of the record are required to be sealed by statute (e.g., 18 U.S.C. §3509(d)) or a rule of procedure (e.g., Fed. R. Crim. P. 6(e), Circuit Rule 26.1(b)), every document filed in or by this court (whether or not the document was sealed in the district court) is in the public record unless a judge of this court orders it to be sealed.

(b) Delay in Disclosure. Documents sealed in the district court will be maintained under seal in this court for 14 days, to afford time to request the approval required by section (a) of this procedure.

THE PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT TO SUPPLEMENT THE PLANS OF THE SEVERAL UNITED STATES DISTRICT COURTS WITHIN THE SEVENTH CIRCUIT

INTRODUCTION

Pursuant to the approval of the Judicial Council of the Seventh Circuit, the United States Court of Appeals for the Seventh Circuit adopts the following Plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations defined in the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A ("Act"), and 21 U.S.C. § 848(q), and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures* ("CJA Guidelines"). This Plan supplements the plans heretofore adopted by the several United States District Courts within the Seventh Circuit and approved in final form by the Judicial Council of the Seventh Circuit.

Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

I

STATEMENT OF POLICY

The Judicial Council recognizes that the successful operation of this plan will require the active and continual cooperation of members of the bar, appropriate bar associations and legal aid agencies. In particular, it is expected that the advice and assistance of the Seventh Circuit Bar Association will contribute greatly to the successful working of this Plan.

The judges, circuit executive, clerk, all federal public defender organizations and community defender organizations, and private attorneys appointed under the CJA should comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with the Plan.

The payment of compensation to counsel under the Act, in most cases, probably will be something less than compensatory. Service of counsel by appointment under the Act will continue to require a substantial measure of dedication and public service. The responsibility of members of the bar to accept appointments and to serve in these cases is the same as it traditionally has been in the past and is in no way lessened by the passage of the Act. We have complete confidence in the professional integrity of the bar to fulfill this

responsibility.

In the administration of this Plan, the Court will be particularly careful to safeguard against the opportunity for any charges of fiscal laxity, favoritism or other abuse which may cast a shadow on the general judicial system. The public funds involved will be expended with characteristic judicial responsibility.

It is deemed advisable at all times to coordinate efficiently the operation of this Plan with the several state courts to the end that there be a proper cooperation between the federal and state judicial systems.

The Court will welcome any proper and approved plan of cooperation whereby the services of advanced law school students may be made available to provide legal research assistance to appointed counsel, thereby to furnish such assistance to appointed counsel who may find it helpful and to broaden the interest and capabilities of law school students in the field of criminal law.

Finally, and most important, the Plan shall be administered so that those accused of crime will not, because they are financially unable to pay for adequate representation, be deprived of any element of representation necessary to enable them to have a fair opportunity to be heard on appeal in this Court.

II

PREPARATION OF PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision and with approval of the Court, shall forthwith prepare and maintain a panel of practicing attorneys, or attorneys from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan, in areas of the principal places of holding district court within the Seventh Circuit, who are deemed competent to provide adequate representation on appeal for persons qualifying under the Act. The Clerk of this Court shall reexamine the panel of attorneys annually to assure that it is kept current at all times.

2. Attorneys for the panel shall be selected without regard to race, color, creed, or membership in any organized bar association.

3. The Clerk shall solicit the assistance of the Seventh Circuit Bar Association, law schools, and any other appropriate bar association, in the preparation and maintenance of the panel of attorneys.

4. Additions to and removals from the panel of attorneys may be made at any time by the Court or any active member thereof.

5. The clerk of court shall provide each appointed attorney a copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the panel and shall also make available to them a current copy of the *Guidelines*.

III

DETERMINATION OF NEED FOR APPOINTMENT OF COUNSEL

1. In all cases where the defendant was found by the district court to be financially unable to obtain adequate representation, the Court may accept this finding and appoint an attorney without further proof. *But see* Fed. R. App. P. 24(a).

2. At any time before or after the appointment of counsel, the Court may examine or reexamine the financial status of the defendant. If the Court finds upon such inquiry that the defendant is financially able to employ counsel or make partial payment for his representation, then the Court may make an order appropriate under the circumstances denying or terminating such appointment pursuant to subsection (c) of the Act, or requiring such partial payment to be made pursuant to subsection (f) of the Act, as the interests of justice may dictate.

3. In determining the need for appointment of counsel under the Act, the Courts shall not be governed by a requirement of indigence on the part of the defendant, but rather by his financial inability to employ counsel, in harmony with Congressional intent in formulating this program of assistance to those found to be in need within the spirit and purpose of the Act.

IV

APPOINTMENT OF COUNSEL

1. Counsel furnishing representation under the Plan shall be selected from a panel of attorneys designated or approved by the Court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan. When the Court determines that the appointment of an attorney who is not a member of the panel is in the interest of justice, judicial economy, or continuity of representation, or there is some other exceptional circumstance warranting his or her appointment, the attorney

may be admitted to the panel and appointed to represent the individual. Agreeable with the directives of the Judicial Conference of the United States, at least 25% of all such appointments shall be assigned to members of the private bar. Such order of appointment of counsel may be entered by the current motion judge or by any active member of the Court.

2. In all cases on appeal where the defendant was represented in the district court by court appointed counsel, such counsel shall continue to represent the defendant on appeal, unless and until relieved by order of this Court. The Court may, in appropriate cases, designate such counsel to continue on appeal.

3. At the time such appeals are docketed in this Court, the Clerk shall notify defendant's court appointed trial counsel that he shall continue such representation of defendant in this Court unless and until relieved by order of this Court, and shall request such trial counsel to advise the Court whether he desires to continue such representation throughout the appeal.

4. In appeals under the Act involving more than one defendant, if the Court finds the need, because of conflicting interests of certain defendants or where circumstances otherwise warrant, separate counsel may be appointed for any one or more of the defendants as may be required for their adequate representation.

5. The Court may, in its discretion, at any stage of the proceedings on appeal, substitute one appointed attorney for another.

6. If, at any stage of the proceedings on appeal, the Court finds the defendant is financially unable to pay counsel whom he has retained, the Court may appoint counsel as provided in subsection (b) of the Act and authorize payment as provided in subsection (d) of the Act and the *CJA Guidelines*, pursuant to subsection (c) of the Act.

7. More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In a capital case, at least two attorneys should be appointed. Except as provided by section 848(q)(7) of title 21, U.S.C., at least one attorney appointed in a capital case shall meet the experience qualifications required by section 848(q)(6) of title 21, U.S.C. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under section 848(q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

8. The selection of counsel to represent any person under the Act shall remain the sole and exclusive responsibility of the Court.

V

DUTIES OF APPOINTED COUNSEL

1. The services to be rendered a defendant by counsel appointed under the Act shall be reasonably commensurate with those rendered if counsel were privately employed, having regard for the circumstances of each case and as the interests of justice may require.

2. If, at any stage of the proceedings on appeal, appointed counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

3. After an adverse decision on appeal by this Court, appointed counsel shall advise the defendant in writing of his right to seek review of such decision by the Supreme Court of the United States. If, after consultation (by correspondence, or otherwise), the represented person requests it and there are reasonable grounds for counsel properly to do so, the appointed attorney must prepare and file a petition for writ of certiorari and other necessary and appropriate documents and must continue to represent the defendant until relieved by the Supreme Court. Counsel who conclude that reasonable grounds for filing a petition for writ of certiorari do not exist must promptly inform the defendant, who may by motion request this Court to direct counsel to seek certiorari.

4. Attorneys appointed pursuant to any provisions of the Act shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model Rules of Professional Conduct.

5. Appointed appellate attorneys have a duty to continue to represent their clients after remand to the district court. An attorney appointed for the appeal who is unable to continue at the trial level should move in the district court for withdrawal and appointment of trial counsel.

6. Attorneys appointed in a federal death penalty case, unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, shall represent the defendant throughout every stage of the available judicial proceedings, including all available post-conviction process,

together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in proceedings for executive or other clemency as may be available to the defendant.

VI

PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

1. An attorney, bar association, legal aid agency, or community defender organization appointed by the Court pursuant to the Plan shall be compensated for their services and reimbursed for their expenses reasonably incurred within the limitations and subject to the conditions of subsection (d) of the Act.

2. The hourly rates of compensation fixed by the Act are designated and intended to be maximum rates only and shall be treated as such.

3. No appointed representative under the Plan shall accept a payment from or on behalf of the person represented in this Court without prior authorization by a United States circuit judge on the form provided for such purpose. All such authorized payments shall be received subject to the directions contained in such order and pursuant to the provisions of subsection (f) of the Act.

4. Each appointed representative under the Plan shall be entitled to reimbursement for expenses reasonably incurred for travel and out-of-pocket expenditures. Travel by privately owned automobile should be claimed at the rate per mile set forth in the *Travel and Transportation* regulations, Volume I, *Guide to Judiciary Policies and Procedures*, plus parking fees and tolls. Transportation other than by privately owned automobile should be claimed on an actual cost basis. Per diem in lieu of subsistence is not allowable. Meals and lodging expenses, which are reasonably incurred based upon the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing travel regulations, as well as telephone toll calls, telegrams and copying (except printing), are reimbursable. Non-reimbursable items include general office overhead, personal items for the person represented, filing fees, and printing. (A person represented under the Act is not required to pay filing fees.)

5. An appointed attorney or other authorized legal entity shall not incur any expense subject to claim for reimbursement in excess of $300 except for necessary travel and maintenance to and from this Court for hearing on oral argument, without prior Court approval. In the event it is deemed necessary to provide an appendix of the record on appeal of more than 50 pages, they shall

first petition the Court for authority to incur such expense and obtain approval therefor.

6. All claims for compensation and reimbursement for expenses reasonably incurred shall be itemized and prepared on prescribed forms and filed with the Clerk of this Court. All such claims should be filed promptly and in any event not more than 30 days after the conclusion of such services.

7. A panel of judges hearing an appeal, or any active member of the Court if designated by such panel, shall, in each instance, fix the compensation and allow the reimbursement for expenses to be paid to the appointed representative as provided in the Act. After such approval, the Clerk of this Court shall forthwith forward such claims to the Director of the Administrative Office of the United States Courts for payment.

8. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari shall be considered as applicable to the case before this Court, and should be vouchered as such.

VII

MISCELLANEOUS

1. The United States Court of Appeals shall submit a report of the appointment of counsel to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may direct, and otherwise comply with such rules, regulations, and guidelines governing the operation of Plans formulated by the Judicial Conference of the United States, pursuant to subsection (h) of the Act.

2. Where standard forms have been prescribed and distributed by the Director of the Administrative Office of the United States Courts, such forms shall be used, where applicable, in all proceedings under this Plan.

3. Amendments to the Plan may be made from time to time by the Judicial Council of this circuit, and such amendments shall be forwarded immediately to the Administrative Office of the United States Courts.

VIII

EFFECTIVE DATE

This Plan shall become effective January 1, 1991.

Approved and adopted by the Seventh Circuit Judicial Council on December 3, 1990. As amended January 1, 1996.

STANDARDS FOR PROFESSIONAL CONDUCT WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding, in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

LAWYERS' DUTIES TO OTHER COUNSEL

1. We will practice our profession with a continuing awareness that our role is to

advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition

questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an expense or undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

LAWYERS' DUTIES TO THE COURT

1.We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

COURTS' DUTIES TO LAWYERS

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.