# REPORT

OF THE

# ADVISORY COMMITTEE

ON

# APPELLATE RULES

TO THE

# COMMITTEE

ON

# RULES OF PRACTICE AND PROCEDURE

Asheville, North Carolina
December 17 - 19, 1992

OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544



TO: The Honorable Robert E. Keeton and Members of the Committee on Rules of Practice and Procedure

FROM: Judge Kenneth F. Ripple, Chair of the Advisory Committee on Appellate Rules KFR

DATE: December 1, 1992

SUBJECT: Report of the Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules has approved changes in Fed. R. App. P. 3, 5, 5.1, 9, 13, 21, 25, 26.1, 27, 28, 30, 31, 32, 33, 35, and 41, and requests publication of the proposed amendments for comment by the bench and bar. The Advisory Committee also has approved the addition of a new appellate rule, Rule 49, that would authorize the courts of appeals to use special masters. The committee requests publication of the proposed rule.

A summary of the proposals is offered for your convenience.

The amendments to Rules 3, 5, 5.1, 13, 25, 26.1, 27, 30, 31, and 35 deal with the number of copies of documents that must be filed with a court of appeals. The Local Rules Project noted that a number of circuits have local rules requiring a party to file a different number of copies of a document than the national rules require. The Local Rules Project also pointed out that the Appellate Rules were inconsistent regarding the authority of a court of appeals to alter the number by local rule or by order in an individual case. The Project suggested that the rules be amended either to require a uniform number in all circuits, or to consistently authorize local rulemaking. The Advisory Committee decided to authorize local variations and to make the language in the national rules consistent. Rule 25 is the general rule on filing and service and it has been amended to provide that whenever the national rules require a party to file or furnish a number of copies a court "may require the filing of a different number by local rule or by order in a particular case." The amendments to Rules 5, 5.1, 26.1, 27, 30, and 31 are identical and implement the Committee's decision. Each of those rules states that an original and a certain number of copies must be filed "unless the

court requires the filing of a different number by local rule or by order in a particular case."

Amended Rules 3, 13, and 35, differ from the others in that they do not establish a baseline number that should be filed. The amended Rules 3 and 13 require an appellant to file sufficient copies of a notice of appeal to enable the district court to serve each party with a copy. Amended Rule 35, governing in banc hearings, provides that the number of copies will be prescribed by local rule. Because the number of copies needed is directly related to the number of judges on the court, establishing the number by local rule is the most sensible approach.

Rule 9 governing review of a release decision in a criminal case has been completely rewritten. The amended rule recognizes the government's ability to appeal release decisions. The amendments also require a party seeking review to supply the court with certain basic documents: a copy of the district court's order regarding release and its statement of reasons; and, if the appellant questions the factual basis for the district court's order, a transcript of the release proceedings in the district court. In addition, subdivision (b) clarifies those instances in which review may be sought by motion rather than by notice of appeal.

Rule 21 governing writs of mandamus has been amended. The amended rule provides that a petition for mandamus should not bear the judge's name. The rule also presumes that the judge will not wish to appear and that the judge will be represented *pro forma* by counsel for the party opposing the relief.

In addition to the amendment regarding the number of copies to be filed, Rule 25 has been amended to provide that a clerk may not refuse to file any paper solely because the paper is not presented in proper form. The amendment parallels similar language in Civil Rule 5(e) and Bankruptcy Rule 5005.

Rule 28 has been amended to require that briefs include a summary of argument.

Rule 32 governs the form of documents; it has been amended in a number of ways. The amended rule requires that a brief or appendix prepared by any method other than the standard typographic process must be printed with no more than 11 characters per inch. The rule requires a brief or appendix to be bound or stapled in any manner that is secure, does not obscure the text, and that permits the document to lie flat when open. The number of a case must appear at the top center of a brief or appendix, and the title of the document must include the name of the party or parties on whose behalf the document is filed. The old rule required a petition for rehearing to be produced in the same manner as a brief or appendix; the new rule also requires that a suggestion for rehearing in banc and a response to either a petition for panel rehearing or a suggestion for rehearing in banc be prepared in the same manner. Only a pro se party proceeding in forma pauperis may file carbon copies.

Rule 33 governing appellate conferences has been completely rewritten. The amended rule makes a number of changes: 1) it permits the court to require parties to attend the conference in appropriate cases; 2) it includes settlement of the case among the possible conference topics; 3) it allows persons other than judges to preside over a conference; 4) it requires an attorney to consult with his or her client before a settlement conference and obtain as must authority as feasible to settle the case; and, 5) it provides that statements made during settlement discussions are confidential.

Rule 41 has been amended to provide that a motion for a stay of mandate must show that a petition for certiorari would present a substantial question and that there is good cause for a stay.

Rule 49 is a proposed new rule authorizing the use of special masters in the courts of appeals.

**Rule 3. Appeal as of Right - How Taken**

(a) *Filing the Notice of Appeal.*-- An appeal permitted by law as of right from a district court to a court of appeals ~~shall~~ must be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. At the time of filing, the appellant shall furnish the clerk with sufficient copies of the notice of appeal to enable the clerk to comply promptly with the requirements of subdivision (d) of this Rule 3. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292(b) and appeals in bankruptcy ~~shall~~ must be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

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Committee Note

**Subdivision (a).** The amendment requires a party filing a notice of appeal to provide the court with sufficient copies of the notice for service on all other parties.

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

* * *

(c) *Form of Papers; Number of Copies.*— All papers may be typewritten. ~~Three copies shall be filed with the original, but the court may require that additional copies be furnished.~~ An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

* * *

Committee Note

**Subdivision (c).** The amendment makes it clear that a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

**Rule 5.1. ~~Appeals~~ Appeal by Permission under 28 U.S.C. § 636(c)(5)**

* * *

(c) *Form of Papers; Number of Copies.*-- All papers may be typewritten. ~~Three copies shall be filed with the original, but the court may require that additional copies be furnished.~~ An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

* * *

Committee Note

**Subdivision (c).** The amendment makes it clear that a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

~~Rule 9. Release in criminal cases~~

~~(a) *Appeals from orders respecting release entered prior to a judgment of conviction.* An appeal authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the district court shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals or a judge thereof may order the release of the appellant pending the appeal.~~

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

~~(c). *Criteria for release.* The decision as to release pending appeal shall be made in accordance with Title 18, U.S.C. § 3143. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community and that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or in an order for a new trial rests with the defendant.~~

**Rule 9. Release in a Criminal Case**

(a) *Appeal from an Order Regarding Release Before Judgment of Conviction.* – The district court shall state in writing, or orally on the record, the reasons for an order regarding release or detention of a defendant in a criminal case. A party appealing from the order, as soon as practicable after filing a notice of appeal with the district court, shall file with the court of appeals a copy of the district court's order and its statement of reasons. An appellant who questions the factual basis for the district court's order shall file a transcript of any release proceedings in the district court or an explanation of why a transcript has not been obtained. The appeal must be determined promptly. It must be heard, after reasonable notice to the appellee, upon such papers, affidavits, and portions of the record as the parties present or the court may require. Briefs need not be filed unless the court so orders. The court of appeals or a judge thereof may order the release of the defendant pending decision of the appeal.

(b) *Review of an Order Regarding Release After Judgment of Conviction.* – A party entitled to do so may obtain review of a district court's order regarding release that is made after a judgment of conviction by filing a notice of appeal from that order with the district court, or by filing a motion with the court of appeals if the party has already filed a notice of appeal from the judgment of conviction or the terms of the sentence. Both the order and the review are subject to the terms of this Rule 9(a). In addition, the papers filed by the applicant for review must include a record of the offense or offenses of which the defendant was convicted and the date and terms of the sentence.

(c) Criteria for Release. The decision regarding release must be made in accordance with applicable provisions of Title 18 U.S.C. §§ 3142 and 3143.

Committee Note

Rule 9 has been entirely rewritten. The basic structure of the rule has been retained; subdivision (a) governs appeals from bail decisions made before sentencing, subdivision (b) governs review of bail decisions made after sentencing and pending appeal.

**Subdivision (a).** The subdivision applies to appeals from "an order regarding release or detention" of a criminal defendant before judgment of conviction, *i.e.*, before sentencing. The old rule applied only to a defendant's appeal from an order "refusing or imposing conditions of release." The new broader language is needed because the government is now permitted to appeal bail decisions in certain circumstances. 18 U.S.C. §§ 3145 and 3731. For the same reason, the rule now requires a district court to state reasons for its decision in all instances, not only when it refuses release or imposes conditions on release.

The rule requires a party appealing from a district court's decision to supply the court of appeals with a copy of the district court's order and its statement of reasons. In addition, an appellant who questions the factual basis for the district court's decision must file a transcript of the release proceedings if possible. The Advisory Committee believes those papers must be presented to a court of appeals in all cases. The rule also permits a court to require additional papers. A court must act promptly to decide these appeals; lack of pertinent information can cause delays. The old rule left the determination of what should be filed entirely within the party's discretion; it stated that the court of appeals would hear the appeal "upon such papers, affidavits, and portions of the record as the parties shall present."

**Subdivision (b).** This subdivision applies to review of a district court's decision regarding release made after judgment of conviction. Implicit in the first sentence, but less clear than in subdivision (a), is the requirement that the initial decision regarding release after sentencing must be made by the district court. As in subdivision (a), the language has been changed to accommodate the government's ability to seek review.

The word "review" is used in this subdivision, rather than "appeal" because review may be obtained, in some instances, upon motion. Review may be obtained by motion if the party has already filed a notice of appeal from the judgment of conviction or from the terms of the sentence. If the party desiring review of the release decision has not filed such a notice of appeal, review may be obtained only by filing a notice of appeal from the order regarding release.

The requirements of subdivision (a) apply to both the order and the review. That is,

the district court must state its reasons for the order. The party seeking review must supply the court of appeals with the same information required by subdivision (a). In addition, the party seeking review must also supply the court with information about the conviction and the sentence.

**Subdivision (c).** This subdivision has been amended to include references to the correct statutory provisions.

**Rule 13. Review of a Decisions of the Tax Court**

(a) *How Obtained; Time for Filing Notice of Appeal.*-- Review of a decision of the United States Tax Court ~~shall~~ must be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after ~~the decision of the Tax Court is entered.~~ entry of the Tax Court's decision. At the time of filing the appellant shall furnish the clerk with sufficient copies of the notice of appeal to enable the clerk to comply promptly with the requirements of Rule 3(d). If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after ~~the decision of the Tax Court is entered.~~ entry of the Tax Court's decision.

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Committee Note

**Subdivision (a).** The amendment requires a party filing a notice of appeal to provide the court with sufficient copies of the notice for service on all other parties.

**Rule 21. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs**

(a) *Mandamus or Prohibition to a Judge or Judges; Petition for Writ; Service and Filing.* - ~~Application~~ A party applying for a writ of mandamus or of prohibition directed to a judge or judges shall ~~be made by filing~~ file a petition therefor with the clerk of the court of appeals with proof of service on the ~~respondent~~ judge or judges and on all parties to the action in the trial court. The petition shall be titled simply, In re _____, Petitioner. All parties below other than the petitioner are respondents for all purposes. The petition ~~shall~~ must contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record ~~which~~ that may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) *Denial, Order Directing Answer.* - If the court ~~is of the opinion~~ concludes that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that the respondents ~~an~~ answer ~~to~~ the petition ~~be filed by the respondents~~ within the time fixed by the order. Two or more respondents may answer jointly. The ~~order~~ clerk shall ~~be served by the clerk~~ serve the order on the judge or judges ~~named respondents~~ to whom the writ would be directed if granted, and on all other parties to the action in the trial court. ~~All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to~~

~~appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted.~~ To the extent that relief is requested of a particular judge, unless otherwise ordered, counsel for the party opposing the relief, who shall appear in the name of the party and not of the judge, shall represent the judge pro forma. If briefs or oral argument are required, ~~T~~ the clerk shall advise the parties, ~~of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument.~~ The proceeding ~~shall~~ must be given preference over ordinary civil cases.

* * *

(d) *Form of Papers; Number of Copies.*-- All papers may be typewritten. ~~Three copies shall be filed with the original, but the court may direct that additional copies be furnished.~~ An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Committee Note

**Subdivision (a)** is amended so that a petition for a writ of mandamus or prohibition does not bear the name of the judge.

**Subdivision (b).** The amendment provides that even if relief is requested of a particular judge, the judge shall be represented *pro forma* by counsel for the party opposing the relief who appears in the name of the party and not of the judge. That is, arguments made on behalf of the party opposing the relief shall be treated as if also made on behalf of the judge. However, this provision does not create an attorney client relationship between the attorney and the judge, nor does it give rise to any right to compensation from the judge. A judge who wishes to appear may seek an order permitting the judge to appear.

**Subdivision (d).** The amendment makes it clear that a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the

number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

**Rule 25. Filing and Service**

(a) *Filing.* - ~~Papers~~ A paper required or permitted to be filed in a court of appeals ~~shall~~ must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing ~~shall not be~~ is not timely unless the clerk receives the papers ~~are received by the clerk~~ within the time fixed for filing, except that briefs and appendices ~~shall be deemed~~ are treated as filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief ~~which~~ that may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note thereon the ~~date of~~ filing date and shall thereafter ~~transmit~~ send it to the clerk. A court of appeals may, by local rule, permit papers to be filed by facsimile or other electronic means, provided such means are authorized by and consistent with standards established by the Judicial Conference of the United States. The clerk shall 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 rules or practices.

* * *

(e) *Number of Copies.*-- Whenever 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.

Committee Note

**Subdivision (a).** Several circuits have local rules that authorize the office of the clerk to refuse to accept for filing papers that are not in the form required by these rules or by local rules. This is not a suitable role for the office of the clerk and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this rule. This provision is similar to Fed. R. Civ. P. 5(e) and Fed. Bankr. R. 5005.

The Committee wishes to make it clear that the provision prohibiting a clerk from refusing a document does not mean that a clerk's office may no longer screen documents to determine whether they comply with the rules. A court may delegate to the clerk authority to inform a party about any noncompliance with the rules and, if the party is willing to correct the document, to determine a date by which the corrected document must be resubmitted. If a party refuses to take the steps recommended by the clerk or if in the clerk's judgment the party fails to correct the noncompliance, the clerk must refer the matter to the court for a ruling.

**Subdivision (e).** Subdivision (e) is a new subdivision. It makes it clear that whenever these rules require a party to file or furnish a number of copies a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

A party must consult local rules to determine whether the court requires a different number than that specified in these national rules. The Committee believes it would be helpful if each circuit either: 1) included a chart at the beginning of its local rules showing the number of copies of each document required to be filed with the court along with citation to the controlling rule; or 2) made available such a chart to each party upon commencement of an appeal; or both. If a party fails to file the required number of copies, the failure does not create a jurisdictional defect. Rule 3(a) states: "Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate . . ."

**Rule 26.1 Corporate Disclosure Statement**

Any non-governmental corporate party to a civil or bankruptcy case or agency review proceeding and any non-governmental corporate defendant in a criminal case shall file a statement identifying all parent companies, subsidiaries (except wholly owned subsidiaries), and affiliates that have issued shares to the public. The statement shall be filed with a party's principal brief or upon filing a motion, response, petition or answer in the court of appeals, whichever first occurs, unless a local rule requires earlier filing. Whenever the statement is filed before a party's principal brief, an original and three copies of the statement must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. The statement shall be included in the front of the table of contents in a party's principal brief even if the statement was previously filed.

Committee Note

The amendment requires a party to file three copies of the disclosure statement whenever the statement is filed before the party's principal brief. Because the statement is included in each copy of the party's brief, there is no need to require the filing of additional copies at that time. A court of appeals may require the filing of a greater or lesser number of copies by local rule or by order in a particular case.

**Rule 27. Motions**

* * *

(d) *Form of Papers; Number of Copies.*— All papers relating to a motions may be typewritten. ~~Three copies shall be filed with the original, but the court may require that additional copies be furnished.~~ An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Committee Note

**Subdivision (d).** The amendment makes it clear that a court may require a different number of copies either by rule or by order in an individual case. The number of copies of any document that a court of appeals needs varies depending upon the way in which the court conducts business. The internal operation of the courts of appeals necessarily varies from circuit to circuit because of differences in the number of judges, the geographic area included within the circuit, and other such factors. Uniformity could be achieved only by setting the number of copies artificially high so that parties in all circuits file enough copies to satisfy the needs of the court requiring the greatest number. Rather than do that, the Committee decided to make it clear that local rules may require a greater or lesser number of copies and that if the circumstances of a particular case indicate the need for a different number of copies in that case, the court may so order.

**Rule 28. Briefs**

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

~~* * *~~

(5) A summary of argument. The summary should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. It should not be a mere repetition of the argument headings.

~~(5)~~ (6) An argument. ~~The argument may be preceded by a summary.~~ The argument must contain the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The argument must also include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues.

~~(6)~~ (7) A short conclusion stating the precise relief sought.

(b) *Appellee's Brief.*–The brief of the appellee must conform to the requirements of paragraphs (a)(1)-~~(5)~~ (6) , except that none of the following need appear unless the appellee is dissatisfied with the statement of the appellant:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case:

(4) the statement of the standard of review.

Committee Note

**Subdivision (a).** The amendment adds a requirement that an appellant's brief contain a summary of the argument. A number of circuits have local rules requiring a summary and the courts report that they find the summary useful. *See,* D.C. Cir. R. 11(a)(5); 5th Cir. R. 28.2.2; 8th Cir. R. 28A(i)(6); 11th Cir. R. 28-2(i); and Fed. Cir. R. 28.

**Subdivision (b).** The amendment adds a requirement that an appellee's brief contain a summary of the argument.

**Rule 30. Appendix to the Briefs**

(a) *Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies.*— The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings, or opinion; (3) the judgment, order, or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law in the district court should not be included in the appendix. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant shall serve and file the appendix with the brief. Ten copies of the appendix ~~shall~~ must be filed with the clerk, and one copy ~~shall~~ must be served on counsel for each party separately represented, unless the court ~~shall~~ requires the filing or service of a different number by local rule or by order in a particular case ~~direct the filing or service of a lesser number~~.

* * *

Committee Note

**Subdivision (a).** The only substantive change is to allow a court to require the filing of a greater number of copies of an appendix as well as a lesser number.

**Rule 31. Filing and Service of a Briefs**

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(b) *Number of Copies to Be Filed and Served.*– Twenty-five copies of each brief ~~shall~~ must be filed with the clerk, ~~unless the court by order in a particular case shall direct a lesser number,~~ and two copies ~~shall~~ must be served on counsel for each party separately represented unless the court requires the filing or service of a different number by local rule or by order in a particular case. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies ~~shall~~ must be filed with the clerk, and one copy ~~shall~~ must be served on counsel for each party separately represented.

* * *

Committee Note

**Subdivision (b).** The amendment allows a court of appeals to require the filing of a greater, as well as a lesser, number of copies of briefs. The amendment also allows the required number to be prescribed by local rule as well as by order in a particular case.

**Rule 32. Form of a Briefs, ~~the~~ an Appendix, and Other Papers**

(a) *Form of a Briefs and ~~the~~ an Appendix.* — ~~Briefs and appendices~~ A brief or appendix may be produced by standard typographic printing or by any duplicating or copying process ~~which~~ that produces a clear black image on white paper. Carbon copies of ~~briefs and appendices~~ a brief or appendix may not be submitted without the court's permission ~~of the court~~, except in behalf of pro se parties ~~allowed to proceed~~ proceeding in forma pauperis.

A brief or appendix produced by the standard typographic process must be printed in 11 point type or larger; those produced by any other process must be printed with not more than 11 characters per inch with double spacing between each line of text. Quotations and footnotes must appear in the same size type as the text. Quotations more than two lines long may be indented and single spaced. Headings and footnotes may be single spaced except that footnotes that are not limited to citations must be spaced the same as the text.

All printed matter must ~~appear in at least 11 point type~~ be on opaque, unglazed paper. ~~Briefs and appendices~~ A brief or appendix produced by the standard typographic process ~~shall~~ must be bound in volumes having pages 6-1/8 by 9-1/4 inches and type matter 4-1/6 by 7-1/6 inches. Those produced by any other process ~~shall~~ must be bound in volumes having pages not exceeding 8-1/2 by 11 inches and type matter not exceeding 6-1/2 by 9-1/2 inches~~, with double spacing between each line of text~~. A brief or appendix must be stapled or bound in any manner that is secure, does not obscure the text, and that permits it to lie flat when open. ~~In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent documents.~~

Copies of the reporter's transcript and other papers reproduced in a manner

authorized by this rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

~~If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available,~~ Except for pro se parties, the cover of the appellant's brief ~~of the appellant should~~ must be blue; ~~that of the appellee~~ the appellee's, red; ~~that of~~ an intervenor's or amicus curiae's, green; ~~that of~~ and any reply brief, gray. The cover of ~~the appendix, if separately printed, should~~ a separately printed appendix must be white. The front ~~covers of the briefs and of appendices, if separately printed, shall~~ cover of a brief and of a separately printed appendix must contain:

(1) the name of the court and the number of the case; the number of the case must be centered at the top of the front cover;

(2) the title of the case (see Rule 12(a));

(3) the nature of the proceeding in the court (*e.g.*, Appeal, Petition for Review) and the name of the court, agency, or board below;

(4) the title of the document including the name of the party or parties for whom the document is filed (*e.g.*, Brief for Appellant J. Doe ~~, Appendix~~); and

(5) the ~~names~~ name, ~~and~~ office addresses , and telephone number of counsel representing the party ~~on whose behalf~~ for whom the document is filed.

(b) *Form of Other Papers.*-- ~~Petitions~~ A petition for rehearing, a suggestion for rehearing in banc, and any response to such petition or suggestion must ~~shall~~ be produced in a manner prescribed by subdivision (a).

~~Motions and other papers~~ A motion or other paper may be produced in like manner,

or ~~they~~ it may be typewritten ~~upon~~ on opaque, unglazed paper 8-1/2 by 11 inches in size. Lines of typewritten text ~~shall~~ must be double spaced. Consecutive sheets ~~shall~~ must be attached at the left margin. Carbon copies may ~~be used for filing and service if they are legible~~ not be filed or served without the court's permission except by pro se parties proceeding in forma pauperis. A motion or other paper addressed to the court ~~shall~~ need not have a cover but must contain a caption ~~setting forth~~ that includes the name of the court, the title of the case, the ~~file~~ case number, and a brief descriptive title indicating the purpose of the paper.

Committee Note

**Subdivision (a).** A number of stylistic and substantive changes have been made in subdivision (a). A new paragraph has been added governing the printing of a brief or appendix. The old rule simply stated that a brief or appendix produced by the standard typographic process must be printed in at least 11 point type or, if produced in any other manner, the lines of text must be double spaced. Today few briefs are produced by commercial printers or by typewriters; most are produced on and printed by computers. The availability of computer fonts in a variety of sizes and styles has given rise to local rules limiting type styles. D.C. Cir. R. 11(a); 5th Cir. R. 32.1; 7th Cir. R. 32; 10th Cir. R. 32.1; 11th Cir. R. 32-3; and Fed. Cir. R. 32(a). The Advisory Committee believes that some standards are needed both to insure that all litigants have an equal opportunity to present their material and to insure that the documents are easily legible. The standard adopted in this rule for documents produced by any method other than the standard typographic process is that the text, including quotations and footnotes, must be printed with no more than 11 characters per inch. That standard is identical to that used by the Seventh Circuit and was chosen for its ease of administration. The rule permits single spaced and indented quotations but requires textual footnotes to be spaced the same as the text, *i.e.*, double spaced unless the brief has been produced by the standard typographic process.

The rule allowing a party proceeding in forma pauperis to file carbon copies has been limited to pro se parties proceeding in forma pauperis. Because photocopying is inexpensive and widely available, the Committee believes that it is appropriate to prohibit parties represented by assigned counsel from filing carbon copies unless the court orders otherwise.

The rule requires a brief or appendix to be bound or stapled in any manner that is secure, does not obscure the text, and that permits the document to lie flat when open.

Many judges and most court employees do much of their work at computer keyboards and a brief that lies flat when open is more than a minor advantage. The Federal Circuit already has such a requirement, Fed. Cir. R. 32(b) and the Fifth Circuit rule states a preference for it, 5th Cir. R. 32.3.

The rule requires that the number of the case be centered at the top of the front cover of a brief or appendix. This will aid in identification of the document and again the idea was drawn from a local rule. 2d Cir. R. 32. The rule also requires that the title of the document include the name of the party or parties on whose behalf the document is filed. In those instances in which there are multiple appellants or appellees, this information is very useful to the court.

Having amended the national rule to provide additional detail, it is the Committee's hope that there will be little need for local variation and that many of the existing local rules will be repealed. It is the Committee's further hope that before a circuit adopts a local rule governing the form or style of papers, the circuit will carefully weigh the advantage of the proposed local rule against the difficulties and inefficiencies local variations create for national practitioners.

**Subdivision (b).** The old rule required a petition for rehearing to be produced in the same manner as a brief or appendix. The new rule also requires that a suggestion for rehearing in banc and a response to either a petition for panel rehearing or a suggestion for rehearing in banc be prepared in the same manner.

With regard to motions or other papers, the only substantive change is to restrict the use of carbon copies to pro se parties who are proceeding in forma pauperis. This change parallels the change in subdivision (a).

~~Rule 33. Prehearing conference~~

~~The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.~~

Rule 33. Appeal Conferences

The court may direct the attorneys, and in appropriate cases the parties, to participate in one or more conferences to address any matter that may aid in the disposition of the proceedings, including the simplification of the issues and the possibility of settlement. A conference may be conducted in person or by telephone and be presided over by a judge or other person designated by the court for that purpose. Before a settlement conference, attorneys shall consult with their clients and obtain as much authority as feasible to settle the case. As a result of a conference, the court may enter an order controlling the course of the proceedings or implementing any settlement agreement. Except to the extent disclosed in the conference order, statements made in settlement discussions held pursuant to this rule are confidential and may not be disclosed to any judge of the court, any other court personnel, or any other person who is not a party or a representative of a party.

## Committee Note

Rule 33 has been entirely rewritten. The new rule makes several changes.

The caption of the rule has been changed from "Prehearing Conference" to "Appeal Conferences" to reflect the fact that occasionally a conference is held after oral argument.

The rule permits the court to require the parties to attend the conference in appropriate cases. The Committee does not contemplate that attendance of the parties will become routine, but in certain instances the parties presence can be useful. The Committee realizes that when the party is a corporation or government agency, the party can attend only through agents. The language of the rule is broad enough to allow a court to determine that an executive or employee (other than the general counsel) with authority over the matter at issue, constitutes "the party."

The rule includes the possibility of settlement among the possible conference topics.

The rule recognizes that conferences are often held by telephone.

The rule allows a judge or other person designated by the court to preside over a conference. A number of local rules permit persons other than judges to preside over conferences. 1st Cir. R. 47.5; 6th Cir. R. 18; 8th Cir. R. 33A; 9th Cir. R. 33-1; and 10th Cir. R. 33.

The rule requires an attorney to consult with his or her client before a settlement conference and obtain as much authority as feasible to settle the case. An attorney can never settle a case without his or her client's consent. Certain entities, especially government entities, have particular difficulty obtaining authority to settle a case. The rule requires counsel to obtain only as much authority "as feasible."

The rule requires that statements made during settlement discussions are confidential. Information learned during settlement discussions may not be revealed to the court and may not be revealed to third parties such as the press.

**Rule 35. Determination of Causes by the Court in Banc**

* * *

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

Committee Note

**Subdivision (d).** Subdivision (d) is added; it authorizes the courts of appeals to prescribe the number of copies of suggestions for hearing or rehearing in banc that must be filed. Because the number of copies needed depends directly upon the number of judges in the circuit, local rules are the best vehicle for setting the required number of copies.

**Rule 41. Issuance of Mandate; Stay of Mandate**

* * *

(b) *Stay of Mandate Pending Application for Certiorari.* ~~A stay of mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties.~~ A party who files a motion requesting a stay of mandate pending application to the Supreme Court for a writ of certiorari shall file, at the same time, proof of service on all other parties. The motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The stay ~~shall~~ cannot exceed 30 days unless the period is extended for cause shown ~~. If~~ or unless during the period of the stay ~~there is filed with the clerk of the court of appeals~~ , a notice from the clerk of the Supreme Court is filed showing that the party who has obtained the stay has filed a petition for the writ ~~in that court~~, in which case the stay ~~shall~~ will continue until final disposition by the Supreme Court. ~~Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately.~~ The court of appeals shall issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed. The court may require a bond or other security ~~may be required~~ as a condition to the grant or continuance of a stay of the mandate.

Committee Note

**Subdivision (b).** The amendment requires a party who files a motion requesting a

stay of mandate to file, at the same time, proof of service on all other parties. The old rule required the party to give notice to the other parties; the amendment merely requires the party to provide the court with evidence of having done so.

The amendment also states that the motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The amendment is intended to alert the parties to the fact that a stay of mandate is not granted automatically and to the type of showing that needs to be made. The Supreme Court has established conditions that must be met before it will issue a mandate. *See, e.g.*, Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Insurance Plan, 112 S.Ct. 1 (Scalia, Circuit Justice 1991).

Rule 49. Masters

A court of appeals may appoint a special master to hold hearings, if necessary, and to make recommendations as to 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, a master shall have power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order including, but not limited to, requiring the production of evidence upon all matters embraced in the reference and putting witnesses and parties on oath and examining them. If the master is not a judge or court employee, the court shall determine the master's compensation and whether the cost will be charged to any of the parties.

Committee Note

This rule authorizes a court of appeals to appoint a special master to make recommendations concerning ancillary matters. The courts of appeals have long used masters in contempt proceedings where the issue is compliance with an enforcement order. *See Polish National Alliance v. NLRB, 159 F.2d 38 (7th Cir. 1946); NLRB v. Arcade-Sunshine Co., 132 F.2d 8 (D.C. Cir. 1942); NLRB v. Remington Rand, Inc., 130 F.2d 919 (2d Cir. 1942).* There are other instances when the question before a court of appeals requires a factual determination. An application for fees or eligibility for Criminal Justice Act status on appeal are examples.

Ordinarily when a factual issue is unresolved, a court of appeals remands the case to the district court or agency that originally heard the case. It is not the Committee's intent to alter that practice. However, when factual issues arise in the first instance in the court of appeals, such as fees for representation on appeal, it would be useful to have authority to refer such determinations to a master for a recommendation.

# Advisory Committee on the Federal Appellate Rules

## Table of Agenda Items -- Revised November 1992

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 86-10 | Amendment of Rule 4(a)(4) to give court of appeals discretion to waive requirement that new notice of appeal be filed after denial of motion to amend or alter judgment. | Hon. Francis D. Murnaghan, Jr. | Tabled indefinitely 12/83<br>Change adopted in substance;<br>Reporter to work out language 4/85<br>Language to be circulated to circuits for comment 12/86<br>Further study requested 4/88<br>Approved in substance, Reporter to redraft 10/89<br>Further redrafting requested 10/90<br>Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmiission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 86-19 | Amendment of Rule 38 to afford appellant opportunity to respond to proposed award of damages or costs. | Standing Committee & Chicago Council of Lawyers | Drafts considered by Committee, Chair to contact Circuits re current practices and possible possible committee action 10/89<br>Further research requested 10/90<br>Approved for submission to Standing Committee 12/91<br>Approved by Standing Committee for publication 1/92 |
| 86-23 | Accommodation by rule the difficulty prisoners have in receiving notice of a magistrate's report in time to file their objection. | Hon. Dolores Sloviter (CA-3) | Under study by reporter<br>Held over for further discussion 10/92 |
| 86-24 | Rule to permit sanctioning of attorneys for bringing frivolous appeals. | Chief Justice Vincent McKusick (ME) | See notes under item 86-19 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 86-25 | Amendment of Rule 28 to require statement of standard of review. | FRAP Committee | Reporter to work out language 12/86<br>Circuits' opinions to be solicited when jurisdictional statement rule is reviewed 4/88<br>Further consideration to be given 10/90<br>Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 86-26 | Amendment of Rule 4(b) to clarify whether a notice of appeal filed after conviction but before sentencing ripens into an effective notice at the time judgment is entered. | Hon. Edward Becker (CA-3) | See notes under item 86-10<br>Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 88-10 | Amend FRAP 34(c) by deleting requirement that the opening argument shall include a statement of the case. | Hon. Howard T. Markey (Fed. Cir.) | Committee opinion divided 6/89; approved in substance; reporter to redraft 10/89<br>Draft approved 10/90<br>Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 88-13 | Amend FRAP 35(a) to provide that a majority of judges eligible to participate have the power to grant in banc review. | Walter H. Beckham, Jr. on behalf of the American Bar Association | Committee opinion divided 6/89; approved in substance, to be redrafted 10/89<br>Draft approved 10/90<br>Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Advisory Committee voted to withdraw the proposal 4/92<br>Standing Committee approved withdrawal 6/92 |
| 89-2 | Amend filing rules to accommodate Houston v. Lack. | Hon. Joseph Weis, Jr. (CA-3) | Reporter asked to redraft to cover persons in mental institutions; Chair to contact prison officials re procedures 10/89<br>Additional information requested from reporter, clerks, and Justice Department 10/90<br>Approved in substance; redraft as 4(c), for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 89-3 | Review of Local Circuit Rules. | Pub.L.No. 100-702 | Local Rules Project |
| 89-5 | Amendment of FRAP 35(c). | Mr. Robert St. Vrain (CA-8) | Under study by reporter<br>Discussion with Supreme Court Clerk to precede any further action 10/90<br>Additional drafts requested 12/91<br>Approved for submission to Standing Committee 4/92<br>Standing Committee requested that Advisory Committee reconsider 6/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 90-1 | Amend FRAP 35(b) and (c) to change "suggestion" for an in banc to a "petition" for an in banc. | Hon. Jon Newman (CA-2)<br>Mr. St. Vrain (CA-8) | Under study<br>See notes under item 89-5 |
| 90-4 | Amendment of Rule 3(c) in light of of Torres. | Hon. Gilbert S. Merritt (CA-6) and Public Citizen Litigation Group | Awaiting initial Committee discussion<br>Approved for submission to Standing Committee 12/91<br>Approved for shortened publication period by Standing Committee 1/92; published 2/92<br>Revised for resubmission to Standing Committee 5/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 90-5 | Technical amendment to Rule 10(b)(3). | Mr. Greacen (CA-5) | Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication to bench and bar 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 91-1 | Change "Magistrate" to "Magistrate Judge" in all relevant rules. | Judicial Improvements Act of 1990 | Approved for submission to Standing Committee 4/91<br>Approved by Standing Committee for publication 7/91; published 8/91<br>Revised for resubmission to Standing Committee 4/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 91-2 | Amend rules 40(a) and 41(a) to lengthen time for filing a petition for rehearing in civil cases involving the U.S. | Solicitor General, Kenneth Starr | Approved for submission to Standing Committee 12/91<br>Approved by Standing Committee for publication 1/92 |
| 91-3 | Final decision by rule. | Federal Courts Study Committee<br>Judicial Improvement Act of 1990 | Discussion on-going 4/91 |
| 91-4 | Typeface, re: rule 32. | Mr. Greacen (CA-5) | Reporter asked to draft language 12/91<br>Approved for submission to Standing Committee 11/92 |
| 91-5 | Use of special masters in courts of appeals. | Hon. Kenneth Ripple<br>Hon. Gilbert Merritt<br>Hon. Delores Sloviter | Reporter asked to draft language 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-6 | Amendment of Rule 39 to allocate word processing equipment costs between producing originals and producing "copies." Martin v. United States, 931 F.2d 453 (7th Cir. 1991). | Hon. Kenneth Ripple | Further discussion requested 12/91 |
| 91-7 | To allow appeal of remand orders in removal cases. | Craig R. Nelson, Esq. | Awaiting initial Committee discussion<br>No further action deemed appropriate 10/92 |
| 91-8 | Amendment of Rule 25 so that whenever service is accomplished by mailing, the proof of service shall include the addresses to which the papers were mailed. | Local Rules Project | Approved for submission to Standing Committee 12/91<br>Approved by Standing Committee for publication 1/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 91-9 | Amendment of Rule 32(a) to require counsel to include their telephone numbers on the covers of briefs and appendices. | Local Rules Project | Approved for submission to Standing Committee 12/91<br>Approved by Standing Committee for publication 1/92 |
| 91-10 | Amendment of FRAP 15 to require payment of the docketing fee. | Local Rules Project | Approved for submission to Standing Committee 12/91<br>Approved by Standing Committee for shortened publication period 1/92; published 2/92<br>Approved by Standing Committee for submission to Judicial Conference 6/92<br>Approved by Judicial Conference 9/92 |
| 91-11 | Amendment of Rule 42 re: authority of clerks to return or refuse documents that do not comply with federal or local rules. | Local Rules Project | Reporter asked to prepare draft 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-12 | Amendment of Rule 33. | Local Rules Project | Judge Hall, Judge Logan, Mr. Kopp, & Reporter asked to develop drafts 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-13 | Amendment of Rule 41 to provide a uniform standard for granting a stay of a mandate. | Local Rules Project | Reporter asked to draft language 12/91<br>Approved for submission to Standing Committee 10/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 91-14 | Amendment of Rule 21 so that a petition for mandamus does not bear the name of the district judge and the judge is represented pro forma by counsel for the party opposing the relief unless the judge requests an order permitting the judge to appear. | Local Rules Project | Reporter asked to draft language 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-15 | Uniform effective date for local rules. | Local Rules Project | Further study recommended 12/91 |
| 91-16 | National procedures for death penalty cases. | Local Rules Project | Further study recommended 12/91<br>Judge Boggs, Judge Hall, & Judge Jolly -- subcommittee formed 3/92<br>No further action deemed appropriate 10/92 |
| 91-17 | Uniform plan for publication of opinions. | Local Rules Project & Federal Courts Study Committee | Further study recommended 12/91 |
| 91-18 | Amendment of Rule 5.1 to require additional information or to authorize courts of appeals to require additional information by rule or order. | Local Rules Project | For future discussion 12/91 |
| 91-19 | Uniform format and filing time for docketing statements. | Local Rules Project | For future discussion 12/91 |
| 91-20 | Expand requirements of Rule 26.1 or limit local rulemaking in area. | Local Rules Project | For future discussion 12/91 |
| 91-21 | Uniform appendix | Local Rules Project | For future discussion 12/91 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 91-22 | Amend Rule 9(a) or (b) to specify the type of information that should be presented to a court. | CA-5 in response to Local Rules Project | Adopted in substance, Reporter asked to draft language 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-23 | Single brief for each side in consolidated or multi-party appeals. | CA-4 in response to Local Rules Project | For future discussion 12/91 |
| 91-24 | Page limits for and contents of amicus briefs. | CA-5 in response to Local Rules Project | For future discussion 12/91 |
| 91-25 | Amendment of Rule 35 to specify contents of suggestions for rehearing in banc. | CA-5 in response to Local Rules Project | For future discussion 12/91 |
| 91-26 | Amendment of Rule 28 to require a summary of argument, any claim for attorney's fees with statutory basis & amendment of Rule 32 | Advisory Committee in response to Local Rules Project | For future discussion 12/91<br>Mr. Kopp and Mr. Strubbe asked to assist reporter 12/91<br>Summary of argument -- approved for submission to Standing Committee 10/92<br>Attorney fees -- no further action deemed appropriate 10/92 |
| 91-27 | Number of copies. | Local Rules Project | Reporter asked to draft language 12/91<br>Mr. Kopp, Mr. Strubbe, & Mr. Spaniol asked to study chart question 12/91<br>Approved for submission to Standing Committee 10/92 |
| 91-28 | Updating Rule 27 | Advisory Committee | Mr. Kopp asked to prepare memo 12/91<br>Held over 10/92 |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 92-1 | Amendment of Rule 47 to require that local rules follow uniform numbering system and delete repetitious language. | Standing Committee | Draft requested 1/92<br>Approved for submission to Standing Committee 4/92<br>Standing Committee referred to Committee of Reporters 6/92<br>New draft approved 10/92 |
| 92-2 | Amendment permitting technical amendments without full procedures. | Standing Committee | Draft requested 1/92<br>Draft discussed 4/92; discussion ongoing<br>New draft approved 10/92 |
| 92-3 | Study Rule 4(b) in light of § 3731. | Advisory Committee | For future discussion; Mr. Kopp asked to consult with the Solicitor General 4/92<br>Held over 10/92 |
| 92-4 | Amendment of Rule 35 to include intercircuit conflict as ground for seeking in banc. | Solicitor General Starr | Subcommittee consisting of Judges Logan and Williams and Mr. Kopp to consult with Reporter |
| 92-5 | Amendment of Rule 25 re "most expeditious form . . . except special delivery". | Advisory Committee | Awaiting initial Committee discussion |
| 92-6 | Amendment of Rule 25 to eliminate the mailbox rule for briefs and appendices. | Mr. Greacen | Awaiting initial Committee discussion |
| 92-7 | Amendment of Rule 30(a)(3) to require a copy of the notice of appeal. | Hon. Jon Newman (CA-2) | Awaiting initial Committee discussion |

| FRAP Item | Proposal | Source | Current Status |
|---|---|---|---|
| 92-8 | Amendment of Rule 38 re:<br>1) defining "frivolous";<br>2) whether responsibility falls on the client or the attorney;<br>3) requiring a court to state reasons. | Alan B. Morrison, Esq. | Awaiting initial Committee discussion |