FEDERAL RULES
OF
APPELLATE PROCEDURE
___
WITH FORMS
___
DECEMBER 1, 2018

Printed for the use
of
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
FEDERAL RULES

OF

APPELLATE PROCEDURE

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HOUSE OF REPRESENTATIVES

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Shelley Husband, Chief of Staff & General Counsel
Perry Apelbaum, Minority Staff Director & Chief Counsel
FOREWORD

This document contains the Federal Rules of Appellate Procedure together with forms, as amended to December 1, 2018. The rules and forms have been promulgated and amended by the United States Supreme Court pursuant to law, and further amended by Acts of Congress. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 28, United States Code, following the particular rule to which they relate.

December 1, 2018.

Chairman, Committee on the Judiciary.

(III)
AUTHORITY FOR PROMULGATION OF RULES
TITLE 28, UNITED STATES CODE

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.


§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.
(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.


§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.


§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

HISTORICAL NOTE

The Supreme Court prescribes Federal Rules of Appellate Procedure pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV "Rules Enabling Act" of Pub. L. 100–702 (approved Nov. 19, 1988, 102 Stat. 4648), effective December 1, 1988, and section 2075 of Title 28. Pursuant to section 2074 of Title 28, the Supreme Court transmits to Congress (not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective) a copy of the proposed rule. The rule takes effect no earlier than December 1 of the year in which the rule is transmitted unless otherwise provided by law.

Prior to enactment of Pub. L. 100–702, the Supreme Court promulgated Federal Rules of Appellate Procedure pursuant to section 3772 of Title 18 and sections 2072 and 2075 of Title 28 of the United States Code. Pursuant to this authority the Rules of Appellate Procedure were adopted by order of the Court on December 4, 1967, transmitted to Congress by the Chief Justice on January 15, 1968, and became effective on July 1, 1968 (389 U.S. 1063; Cong. Rec., vol. 114, pt. 1, p. 113, Exec. Comm. 1361; H. Doc. 204, 90th Cong.). Effective December 1, 1988, section 3772 of Title 18 and former section 2072 of Title 28 were repealed and supplanted by new sections 2072 and 2074 of Title 28, see first paragraph of Historical Note above.

By the same order, the Court abrogated several rules relating to appellate procedure formerly contained in the Rules of Criminal Procedure for the District Courts and the Rules of Civil Procedure for the District Courts.

Amendments were adopted by the Court by order dated March 30, 1970, transmitted to Congress by the Chief Justice on the same day, and became effective July 1, 1970 (398 U.S. 971; Cong. Rec., vol. 116, pt. 7, p. 9861, Exec. Comm. 1838; H. Doc. 91–290). The amendments affected Rules 30(a), (c) and 31(a).

Additional amendments were adopted by the Court by order dated March 1, 1971, transmitted to Congress by the Chief Justice on the same day, and became effective July 1, 1971 (401 U.S. 1029; Cong. Rec., vol. 117, pt. 4, p. 4629, Exec. Comm. 341; H. Doc. 92–57). The amendments affected Rules 26(a) and 45(a).

An additional amendment was adopted by the Court by order dated April 24, 1972, transmitted to Congress by the Chief Justice on the same day, and became effective October 1, 1972 (406 U.S. 1005; Cong. Rec., vol. 118, pt. 11, p. 14262, Exec. Comm. 1903; H. Doc. 92–285). The amendment affected Rule 9(c).

Additional amendments were adopted by the Court by order dated April 30, 1979, transmitted to Congress by the Chief Justice on the same day, and became effective August 1, 1979 (441 U.S. 969; Cong. Rec., vol. 125, pt. 8, p. 9366, Exec. Comm. 1456; H. Doc. 96–112). The amendments affected Rules 1(a), 3(c), (d), (e), 4(a), 5(d), 6(d), 7(d), 8(e), 10(a).
7, 10(b), 11(a), (b), (c), (d), 12, 13(a), 24(b), 27(b), 28(g), (j), 34(a), (b), 35(b), (c), 39(c), (d), and 40.


Additional amendments were adopted by the Court by order dated March 10, 1986, transmitted to Congress by the Chief Justice on the same day (475 U.S. 1153; Cong. Rec., vol. 132, pt. 3, p. 4267, Exec. Comm. 2971; H. Doc. 99–179), and became effective July 1, 1986. The amendments included new Rules 3.1, 5.1, and 15.1, and affected Rules 3(d), 8(b), 10(b), (c), 11(b), 12(a), 19, 23(b), (c), 24(a), 25(a), (b), 26(a), (c), 28(c), (j), 30(a), (b), (c), 31(a), (c), 34(a), (e), 39(c), (d), 43(a), (c), 45(a), (b), (d), and 46(a), (b).

Section 7111 of Public Law 100–690 (approved November 18, 1988, 102 Stat. 4419) amended Rule 4(b).

Additional amendments were adopted by the Court by order dated April 25, 1989, transmitted to Congress by the Chief Justice on the same day (490 U.S. 1125; Cong. Rec., vol. 135, pt. 6, p. 7542, Exec. Comm. 1058; H. Doc. 101–453), and became effective December 1, 1989. The amendments affected Rules 1(a), 3(a), 26(a), 27(a), and 28(g) and included new Rules 6 and 26.1 and a new Official Form 5.

Additional amendments were adopted by the Court by order dated April 30, 1991, transmitted to Congress by the Chief Justice on the same day (500 U.S. 1007; Cong. Rec., vol. 137, pt. 7, p. 9721, Exec. Comm. 1192; H. Doc. 102–79), and became effective December 1, 1991. The amendments affected Rules 4(a), 6, 10(c), 25(a), 26(a), 26.1, 28(a), (b), (h), 30(b), and 34(d).

Additional amendments were adopted by the Court by order dated April 22, 1993, transmitted to Congress by the Chief Justice on the same day (507 U.S. 1059; Cong. Rec., vol. 139, pt. 6, p. 8127, Exec. Comm. 1100; H. Doc. 103–72), and became effective December 1, 1993. The amendments affected Rules 3, 3.1, 4, 5.1, 6, 10, 12, 15, 25, 28, and 34, and Forms 1, 2, and 3.


Additional amendments were adopted by the Court by order dated April 27, 1995, transmitted to Congress by the Chief Justice on the same day (514 U.S. 1137; Cong. Rec., vol. 141, pt. 8, p. 11745, Exec. Comm. 809; H. Doc. 105–66), and became effective December 1, 1995. The amendments affected Rules 4, 8, 10, and 47.

Additional amendments were adopted by the Court by order dated April 23, 1996, transmitted to Congress by the Chief Justice on the same day (517 U.S. 1255; Cong. Rec., vol. 142, pt. 6, p. 8831, Exec. Comm. 24(9); H. Doc. 106–203), and became effective December 1, 1996. The amendments affected Rules 21, 25, and 26.


Additional amendments were adopted by the Court by order dated April 24, 1998, transmitted to Congress by the Chief Justice on the same day (523 U.S. 1147; Cong. Rec., vol. 144, pt. 6, p. 8652,
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Additional amendments were adopted by the Court by order dated March 27, 2003, transmitted to Congress by the Chief Justice on the same day (538 U.S. 1071; Cong. Rec., vol. 149, pt. 6, p. 7689, Ex. Comm. 1496; H. Doc. 108–59), and became effective December 1, 2003. The amendments affected Rules 1, 2, 3, and 5.


Additional amendments were adopted by the Court by order dated April 12, 2006, transmitted to Congress by the Chief Justice on the same day (547 U.S. 1221; Cong. Rec., vol. 152, pt. 6, p. 7213, Ex. Comm. 7318; H. Doc. 109–106), and became effective December 1, 2006. The amendments affected Rule 25 and added new Rule 32.1.

An additional amendment was adopted by the Court by order dated April 30, 2007, transmitted to Congress by the Chief Justice on the same day (550 U.S. 983; Cong. Rec., vol. 153, pt. 8, p. 10611, Ex. Comm. 1374; H. Doc. 110–24), and became effective December 1, 2007. The amendment affected Rule 25.

Additional amendments were adopted by the Court by order dated March 26, 2009, transmitted to Congress by the Chief Justice on March 25, 2009 (556 U.S. 1291; Cong. Rec., vol. 155, pt. 8, p. 10210, Ex. Comm. 1283; H. Doc. 111–28), and became effective December 1, 2009. The amendments affected Rules 4, 5, 52, 10, 12, 15, 19, 22, 25, 26, 27, 28, 30, 31, 39, and 41, and added new Rule 12.1.

Additional amendments were adopted by the Court by order dated April 28, 2010, transmitted to Congress by the Chief Justice on the same day (559 U.S. 1119; Cong. Rec., vol. 156, pt. 6, p. 8139, Ex. Comm. 7474; H. Doc. 111–122), and became effective December 1, 2010. The amendments affected Rules 1, 4, 29, and Form 4.

Additional amendments were adopted by the Court by order dated April 26, 2011, transmitted to Congress by the Chief Justice on the same day (563 U.S. 1045; Cong. Rec., vol. 157, pt. 6, p. 7770, Ex. Comm. 1663; H. Doc. 112–30), and became effective December 1, 2011. The amendments affected Rules 4 and 40.

Additional amendments were adopted by the Court by order dated April 16, 2013, transmitted to Congress by the Chief Justice on the same day (569 U.S. 1125; Cong. Rec., vol. 159, pt. 5, p. 6968, Ex. Comm. 1493; H. Doc. 113–27), and became effective December 1, 2013. The amendments affected Rules 13, 14, 24, 26, and 28.1 and Form 4.

An additional amendment was adopted by the Court by order dated April 25, 2014, transmitted to Congress by the Chief Justice on the same day (572 U.S. 1161; Cong. Rec., vol. 160, p. H7933, Daily
Historical Note

Issue, Ex. Comm. 7577; H. Doc. 113–161), and became effective December 1, 2014. The amendment affected Rule 6.


An additional amendment was adopted by the Court by order dated April 27, 2017, transmitted to Congress by the Chief Justice on the same day (581 U.S.—; Cong. Rec., vol. 163, p. H4175, Daily Issue, Ex. Comm. 1257; H. Doc. 115–35), and became effective December 1, 2017. The amendment affected Rule 4.

Additional amendments were adopted by the Court by order dated April 26, 2018, transmitted to Congress by the Chief Justice on the same day (584 U.S.—; Cong. Rec., vol. 164, p. H3927, Daily Issue, Ex. Comm. 1788; H. Doc. 115–121), and became effective December 1, 2018. The amendment affected Rules 8, 11, 25, 26, 28.1, 29, 31, 39, and 41, and Forms 4 and 7.

Committee Notes

Committee Notes prepared by the Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States, explaining the purpose and intent of the amendments are set out in the Appendix to Title 28, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Committee Notes, are set out in the House documents listed above.
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FEDERAL RULES OF APPELLATE PROCEDURE
Effective July 1, 1968, as amended to December 1, 2018

TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Definition; 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) Definition. In these rules, ‘state’1 includes the District of Columbia and any United States commonwealth or territory.

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


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).


TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

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.

1 So in original.
Rule 3  FEDERAL RULES OF APPELLATE PROCEDURE  2

(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.


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 entry of the judgment or order appealed from.
(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:
(i) the United States;
(ii) a United States agency;
(iii) a United States officer or employee sued in an official capacity; or
(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States’ behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.
(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 files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—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 28 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’s alteration or amendment 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 14 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 court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; 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) does not require a separate document, when the judgment 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) requires a separate document, when the judgment 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 judgment or order is set forth on a separate document, or
  • 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment 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 14 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 14 days after the entry of the order disposing of the last such remaining motion, or within 14 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 14 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(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

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

(e) **Appeal by an Inmate Confined in an Institution.**

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate 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 and:

(A) it is accompanied by:
   (i) a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
   (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(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 docketed 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.

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 10 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; Length Limits. All papers must conform to Rule 32(c)(2). 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. Except by the court’s permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

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

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:
Rule 5.1  FEDERAL RULES OF APPELLATE PROCEDURE

(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).


Rule 6. Appeal in a Bankruptcy Case

(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)(1) 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 with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 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;

(C) when the appeal is from a bankruptcy appellate panel, “district court,” as used in any applicable rule, means “appellate panel”; and

(D) in Rule 12.1, “district court” includes a bankruptcy court or bankruptcy 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 8022 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) If a party intends to challenge the order disposing of the motion—or the alteration or amendment of a judgment, order, or decree upon the motion—then
the party, in compliance with Rules 3(c) and 6(b)(1)(B),
must file a notice of appeal or amended notice of ap-
peal. The notice or amended notice must be filed with-
in 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 14 days after filing the notice of appeal,
the appellant must file with the clerk possessing the
record assembled in accordance with Bankruptcy Rule
8009—and serve on the appellee—a statement of the is-
ssues to be presented on appeal and a designation of the
record to be certified and made available to the circuit
clerk.
(ii) An appellee who believes that other parts of the
record are necessary must, within 14 days after being
served with the appellant's designation, file with the
clerk and serve on the appellant a designation of addi-
tional parts to be included.
(iii) The record on appeal consists of:
• the redesignated record as provided above;
• the proceedings in the district court or bank-
ruptcy appellate panel; and
• a certified copy of the docket entries prepared
by the clerk under Rule 3(d).

(C) Making the Record Available.

(i) When the record is complete, the district clerk or
bankruptcy-appellate-panel clerk must number the
documents constituting the record and promptly make
it available to the circuit clerk. If the clerk makes the
record available in paper form, the clerk will not send
documents of unusual bulk or weight, physical exhibits
other than documents, or other parts of the record des-
ignated for omission by local rule of the court of ap-
peals, unless directed to do so by a party or the circuit
clerk. If unusually bulky or heavy exhibits are to be
made available in paper form, 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 the record and make it
available. When the record is made available in paper
form, the court of appeals may provide by rule or order
that a certified copy of the docket entries be made
available 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 made avail-
able.

(D) Filing the Record. When the district clerk or bank-
ruptcy-appellate-panel clerk has made the record avail-
able, the circuit clerk must note that fact on the docket.
The date noted on the docket serves as the filing date of
Rule 7

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.


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 bond or other security provided to obtain a stay of judgment; 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 security in the district court.

(b) **Proceeding Against a Security Provider.** If a party gives security with one or more security providers, each provider submits to the jurisdiction of the district court and irrevocably appoints the district clerk as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider’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 send a copy to each security provider 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.


**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).


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 14 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 14 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 14 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 14 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 14 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 14 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.
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
Rule 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) Notice to the Court of Appeals. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, 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 bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order—
the district clerk must send the court of appeals any parts of the record designated by any party.


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 14 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.

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

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

(A) An appeal as of right from 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.

(B) 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.

(2) 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.

(3) 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.

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

(A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the appeal 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.

(B) If an appeal 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.
(b) **Appeal by Permission.** An appeal by permission is governed by Rule 5.


**Rule 14. Applicability of Other Rules to Appeals from the Tax Court**

All provisions of these rules, except Rules 4, 6–9, 15–20, and 22–23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.


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

**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 21 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.
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.


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.


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.


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.
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 10 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.

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.

TITLED V. EXTRAORDINARY WRITS

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.
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 clerk must
Rule 23  FEDERAL RULES OF APPELLATE PROCEDURE  22

send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. §2254 or §2255 (if any), along 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 it.

(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.


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.

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 and states 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 from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding. 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):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.
(e) 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.


TITLE VII. GENERAL PROVISIONS

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) Nonelectronic Filing.

(i) In General. For a paper not filed electronically, 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.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution’s internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing and Signing.

(i) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) By an Unrepresented Person—When Allowed or Required. A person not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) Signing. A filing made through a person’s electronic-filing account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.

(iv) Same as a Written Paper. A paper filed electronically is a written paper for purposes of 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.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(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) Nonelectronic service may be any of the following:

   (A) personal, including delivery to a responsible person at the office of counsel;
   (B) by mail; or
   (C) by third-party commercial carrier for delivery within 3 days.

(2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court’s electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing.

(3) When reasonable considering such factors as the immediacy of the relief 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 filing or sending, 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)(A)(ii), 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.

Rule 26. Computing and Extending Time
(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.
(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:
   (A) exclude the day of the event that triggers the period;
   (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
   (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
(2) Period Stated in Hours. When the period is stated in hours:
   (A) begin counting immediately on the occurrence of the event that triggers the period;
   (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
   (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
(3) Inaccessibility of the Clerk’s Office. Unless the court orders otherwise, if the clerk’s office is inaccessible:
   (A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
   (B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on
the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) **“Last Day” Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court’s time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk’s principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(A)(ii), and 25(a)(2)(A)(iii)—and filing by mail under Rule 13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk’s office is scheduled to close.

(5) **“Next Day” Defined.** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **“Legal Holiday” Defined.** “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: 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 Certain Kinds of Service.** When a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is treated as delivered on the date of service stated in the proof of service.

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 that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) 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(a) 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.


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 10 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 10-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 gov-
erned by Rule 27(a)(3)(A) and (a)(4). The title of the re-
sponse must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed
within 7 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 mo-
tion 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 other-
wise 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; Length Limits; 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 in-
dicating the purpose of the motion and identifying the
party or parties for whom it is filed. If a cover is used, it
must be white.
(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 1⁄2 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.
(E) Typeface and type styles. The document must comply
with the typeface requirements of Rule 32(a)(5) and the
type-style requirements of Rule 32(a)(6).

(2) Length Limits. Except by the court’s permission, and ex-
cluding the accompanying documents authorized by Rule
27(a)(2)(B):
(A) a motion or response to a motion produced using a
computer must not exceed 5,200 words;
(B) a handwritten or typewritten motion or response to
a motion must not exceed 20 pages;
(C) a reply produced using a computer must not exceed
2,600 words; and
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 concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));
(7) 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;
(8) 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);
(9) a short conclusion stating the precise relief sought; and
(10) the certificate of compliance, if required by Rule 32(g)(1).
(b) Appellee’s Brief. The appellee’s brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), 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; and
(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee’s brief. 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) [Reserved]

(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
Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7(A)–(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 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 the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant’s statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee’s statement in the cross-appeal:

(A) the jurisdictional statement;
(B) the statement of the issues;
(C) the statement of the case; and
(D) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length. Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not exceed 30 pages; the
appellee’s principal and response brief, 35 pages; the appellant’s response and reply brief, 30 pages; and the appellee’s reply brief, 15 pages.

(2) Type-Volume Limitation.
   (A) The appellant’s principal brief or the appellant’s response and reply brief is acceptable if it:
   (i) contains no more than 13,000 words; or
   (ii) uses a monospaced face and contains no more than 1,300 lines of text.
   (B) The appellee’s principal and response brief is acceptable if it:
   (i) contains no more than 15,300 words; or
   (ii) uses a monospaced face and contains no more than 1,500 lines of text.
   (C) The appellee’s reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:
   (1) the appellant’s principal brief, within 40 days after the record is filed;
   (2) the appellee’s principal and response brief, within 30 days after the appellant’s principal brief is served;
   (3) the appellant’s response and reply brief, within 30 days after the appellee’s principal and response brief is served; and
   (4) the appellee’s reply brief, within 21 days after the appellant’s response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.


Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.
   (1) Applicability. This Rule 29(a) governs amicus filings during a court’s initial consideration of a case on the merits.
   (2) When Permitted. The United States or its officer or agency or a state may file an amicus 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, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge’s disqualification.
   (3) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:
      (A) the movant’s interest; and
      (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.
   (4) 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 affirmation or reversal. An amicus
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brief need not comply with Rule 28, but must include the following:
(A) if the amicus curiae is a corporation, a disclosure
statement like that required of parties by Rule 26.1;
(B) a table of contents, with page references;
(C) a table of authorities—cases (alphabetically ar-
ranged), statutes, and other authorities—with references
to the pages of the brief where they are cited;
(D) a concise statement of the identity of the amicus cu-
riae, its interest in the case, and the source of its author-
ity to file;
(E) unless the amicus curiae is one listed in the first sen-
tence of Rule 29(a)(2), a statement that indicates whether:
(i) a party’s counsel authored the brief in whole or in
part;
(ii) a party or a party’s counsel contributed money
that was intended to fund preparing or submitting the
brief; and
(iii) a person—other than the amicus curiae, its
members, or its counsel—contributed money that was
intended to fund preparing or submitting the brief and,
if so, identifies each such person;
(F) an argument, which may be preceded by a summary
and which need not include a statement of the applicable
standard of review; and
(G) a certificate of compliance under Rule 32(g)(1), if
length is computed using a word or line limit.
(5) 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.
(6) Time for Filing. An amicus curiae must file its brief, ac-
companied by a motion for filing when necessary, no later
than 7 days after the principal brief of the party being sup-
ported is filed. An amicus curiae that does not support either
party must file its brief no later than 7 days after the appel-
licant’s or petitioner’s principal brief is filed. A court may grant
leave for later filing, specifying the time within which an op-
posing party may answer.
(7) Reply Brief. Except by the court’s permission, an amicus
curiae may not file a reply brief.
(8) Oral Argument. An amicus curiae may participate in oral
argument only with the court’s permission.
(b) During Consideration of Whether to Grant Rehearing.
(1) Applicability. This Rule 29(b) governs amicus filings dur-
ing a court’s consideration of whether to grant panel rehear-
sing or rehearing en banc, unless a local rule or order in a case
provides otherwise.
(2) When Permitted. The United States or its officer or agen-
cy or a state may file an amicus brief without the consent of
the parties or leave of court. Any other amicus curiae may file
a brief only by leave of court.
(3) Motion for Leave to File. Rule 29(a)(3) applies to a motion
for leave.
(4) Contents, Form, and Length. Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) Time for Filing. An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.


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 14 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 14 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.


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 21 days after service of the appellee’s brief but a reply brief must be filed at least 7 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.


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 8½ 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 10½ 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).

(B) **Type-Volume Limitation.**

(i) A principal brief is acceptable if it:
- contains no more than 13,000 words; or
- 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).

(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 8½ by 11 inches, and need not lie reasonably flat when opened.
(e) **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 party’s attorneys.

(e) **Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(f) **Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:
   
   • the cover page;
   • a corporate disclosure statement;
   • a table of contents;
   • a table of citations;
   • a statement regarding oral argument;
   • an addendum containing statutes, rules, or regulations;
   • certificates of counsel;
   • the signature block;
   • the proof of service; and
   • any item specifically excluded by these rules or by local rule.

(g) **Certificate of Compliance.**

1. **Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document 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 document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

2. **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.


**Rule 32.1. Citing Judicial Dispositions**

(a) **Citation Permitted.** A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:
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.


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 28.1(b) 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.
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 and who are not disqualified 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) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits 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
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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.


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.


Rule 37. Interest on Judgment

(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.


Rule 38. Frivolous Appeal—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.

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 14 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 bond or other security to preserve rights pending appeal; and
   (4) the fee for filing the notice of appeal.


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, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:
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(A) the United States;
(B) a United States agency;
(C) a United States officer or employee sued in an official capacity; or
(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States’ behalf—including all instances in which the United States represents that person when the court of appeals’ judgment is entered or files the petition for that person.

(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 re-submission; or
(C) issue any other appropriate order.

Rule 42. 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 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

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

(d) Staying the Mandate Pending a Petition for Certiorari.

(1) Motion to Stay. 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 petition would present a substantial question and that there is good cause for a stay.

(2) Duration of Stay; Extensions. The stay must not exceed 90 days, unless:
(A) the period is extended for good cause; or
(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:
   (i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or
   (ii) that the petition has been filed, in which case the stay continues until the Supreme Court’s final disposition.

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

(4) Issuance of Mandate. The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.


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.


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.


Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party

(a) Constitutional Challenge to Federal Statute. 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) Constitutional Challenge to State Statute. 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.


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, Washington's Birthday, 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.


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.


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 non-compliance 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.


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.

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the ____________________________

District of ____________________________

File Number ____________________________

A.B., Plaintiff  
v.  
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 __________, 20__.

(s) ____________________________________  
Attorney for ____________________________  
Address: ________________________________

[Note to inmate filers: If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.]

* 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.
Commissioner of Internal Revenue, Respondent

Docket No. _________

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 ____________, 20___ (relating to _________).

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.
XYZ Commission, Respondent

Petition for Review

________ (here name all parties bringing the petition)* ______ hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on ____________, 20__.

Attorney for Petitioners
Address: _____________

* See Rule 15.

Form 4. Affidavit Accompanying Motion for Permission to Appeal
In Forma Pauperis

UNITED STATES DISTRICT COURT
for the
<__________________> DISTRICT OF <__________________>

{Name(s) of plaintiff(s)},

Plaintiff(s)

v.

{Name(s) of defendant(s)},

Defendant(s)

Case No. <Number>

AFFIDAVIT ACCOMPANYING MOTION
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

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: ______________________________ Date: ______________________________

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.

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, semianually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise,
Form 4  FEDERAL RULES OF APPELLATE PROCEDURE  54

<table>
<thead>
<tr>
<th>Income source</th>
<th>Average monthly amount during the past 12 months</th>
<th>Amount expected next month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>You</td>
<td>Spouse</td>
</tr>
<tr>
<td>Employment</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Self-employment</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Income from real property (such as rental income)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Interest and dividends</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Gifts</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Alimony</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Child support</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Retirement (such as social security, pensions, annuities, insurance)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Disability (such as social security, insurance payments)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Unemployment payments</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Public-assistance (such as welfare)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other (specify):</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total monthly income:</strong></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

<table>
<thead>
<tr>
<th>Employer</th>
<th>Address</th>
<th>Dates of employment</th>
<th>Gross monthly pay</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>
3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

<table>
<thead>
<tr>
<th>Employer</th>
<th>Address</th>
<th>Dates of employment</th>
<th>Gross monthly pay</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>Type of Account</th>
<th>Amount you have</th>
<th>Amount your spouse has</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, 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.

<table>
<thead>
<tr>
<th>Home (Value) $</th>
<th>Other real estate (Value) $</th>
<th>Motor vehicle #1 (Value) $</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Make and year:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Model:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Registration #:</td>
</tr>
</tbody>
</table>
Form 4  
FEDERAL RULES OF APPELLATE PROCEDURE  

<table>
<thead>
<tr>
<th>Motor vehicle #2</th>
<th>Other assets</th>
<th>Other assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Value) $</td>
<td>(Value) $</td>
<td>(Value) $</td>
</tr>
<tr>
<td>Make and year:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration #:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. **State every person, business, or organization owing you or your spouse money, and the amount owed.**

<table>
<thead>
<tr>
<th>Person owing you or your spouse money</th>
<th>Amount owed to you</th>
<th>Amount owed to your spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

7. **State the persons who rely on you or your spouse for support.**

<table>
<thead>
<tr>
<th>Name [or, if under 18, initials only]</th>
<th>Relationship</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.**

<table>
<thead>
<tr>
<th>Rent or home-mortgage payment (include lot rented for mobile home)</th>
<th>You</th>
<th>Your Spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are real estate taxes included?</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>[ ] Yes [ ] No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is property insurance included?</td>
<td>[ ] Yes [ ] No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Category</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>Utilities (electricity, heating fuel, water, sewer, and telephone)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Home maintenance (repairs and upkeep)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Clothing</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Laundry and dry-cleaning</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Medical and dental expenses</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Transportation (not including motor vehicle payments)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Recreation, entertainment, newspapers, magazines, etc.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Insurance (not deducted from wages or included in mortgage payments)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homeowner's or renter's:</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Life</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Motor vehicle</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Taxes (not deducted from wages or included in mortgage payments)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Installment payments</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Credit card (name):</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Department store (name):</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Alimony, maintenance, and support paid to others</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Regular expenses for operation of business, profession, or farm</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(attach detailed statement)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other (specify):</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Total monthly expenses:</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>
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 spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit? [ ] Yes [ ] No
    If yes, how much? $__________

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

12. State the city and state of your legal residence.

    Your daytime phone number: (____) ____________

    Your age: ______  Your years of schooling: ________

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

______________________________

Plaintiff v. ________________________________

Defendant

File No. ______

Notice of Appeal to 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 ______, 20____ [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: ________________________________

(Note to inmate filers: If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.)

Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [insert Rule citation; e.g., 32(a)(7)(B)] [the word limit of Fed. R. App. P. [insert Rule citation; e.g., 5(c)(1)]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [insert applicable Rule citation, if any]]:

☐ this document contains [state the number of] words, or

☐ this brief uses a monospaced typeface and contains [state the number of] lines of text.

2. This document 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 document 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 document 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: __________________________

Form 7. Declaration of Inmate Filing

---

[insert name of court; for example, United States District Court for the District of Minnesota]

A.B., Plaintiff
v.
C.D., Defendant

I am an inmate confined in an institution. Today, [insert date], I am depositing the [insert title of document; for example, “notice of appeal”] in this case in the institution’s internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here____________________

Signed on __________ [insert date]

[Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).]

(As added Apr. 28, 2016, eff. Dec. 1, 2016; amended Apr. 26, 2018, eff. Dec. 1, 2018.)
Appendix:
Length Limits Stated in the
Federal Rules of Appellate Procedure

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, 35, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

<table>
<thead>
<tr>
<th>Rule</th>
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<td>5,200</td>
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<td>Answer in opposition</td>
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<td>(where no cross-appeal)</td>
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| 28.1(c) | • Appellant's principal brief  
• Appellant's response and reply brief | 13,000 | 30 | 1,300 |
| 28.1(c) | • Appellee's principal and response brief | 15,300 | 35 | 1,500 |
| 28.1(e) | • Appellee's reply brief | 6,500 | 15 | 650 |
| 28(j) | • Letter citing supplemental authorities | 350 | Not applicable | Not applicable |
| 29(o)(5) | • Amicus brief during initial consideration of case on merits | One-half the length set by the Appellate Rules for a party's principal brief | One-half the length set by the Appellate Rules for a party's principal brief | One-half the length set by the Appellate Rules for a party's principal brief |
| 29(b)(4) | • Amicus brief during consideration of whether to grant rehearing | 2,600 | Not applicable | Not applicable |
| 35(b)(2) & 40(b) | • Petition for hearing en banc  
• Petition for panel rehearing; petition for rehearing en banc | 3,900 | 15 | Not applicable |

(As added Apr. 28, 2016, eff. Dec. 1, 2016.)