United States Court of Appeals
for the Federal Circuit

RULES OF PRACTICE

Federal Rules of Appellate Procedure
Federal Circuit Rules
Practice Notes
Appellate Mediation Program Guidelines
Guide for *Pro Se* Petitioners and Appellants
Federal Circuit Attorney Discipline Rules

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Title I. Applicability of Rules

Federal Rules of Appellate Procedure

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" 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.

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Rule 1. Scope of Rules; Title

(a) Reference to District and Trial Courts and Agencies.

(1) The terms "district court" and "trial court" include:

(A) the United States district courts;

(B) the United States Court of International Trade;

(C) the United States Court of Federal Claims; and

(D) if applicable, the United States Court of Appeals for Veterans Claims.

(2) The term "agency" includes an administrative agency, board, commission, bureau, or officer of the United States, including each of the following:

(A) the Board of Patent Appeals and Interferences of the Patent and Trademark Office;

(B) the Director of Patents and Trademarks;

(C) the Trademark Trial and Appeal Board;

(D) the United States International Trade Commission;

(E) the Secretary of Commerce acting under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);

(F) the Secretary of Agriculture acting under 7 U.S.C. § 2461;

(G) the Merit Systems Protection Board;

(H) certain arbitrators;

(I) the Boards of Contract Appeals in federal agencies;

(J) the Secretary of Veterans Affairs acting under 38 U.S.C. § 502;

(K) the Equal Employment Opportunity Commission acting under 3 U.S.C. § 454;

(L) the Federal Labor Relations Authority acting under part D of subchapter II of chapter 5 of title 3;

(M) the Secretary of Labor or the Occupational Safety and Health Review Commission, under part C of subchapter II of chapter 5 of title 3;

(N) the Office of Compliance acting under 2 U.S.C. § 1407(a)(1);

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(O) the Government Accountability Office Personnel Appeals Board; or

(P) the Bureau of Justice Assistance.

(b) Rules of the Court of International Trade, Court of Federal Claims, and Court of Appeals for Veterans Claims.

(1) Reference in these rules to the Federal Rules of Civil Procedure includes analogous rules of the Court of International Trade and the Court of Federal Claims.

(2) Reference in these rules to the Federal Rules of Civil Procedure includes rules of the Court of Appeals for Veterans Claims only where applicable, because that court's rules are derived from the Federal Rules of Appellate Procedure.

(c) Title. These rules are to be known as the Federal Circuit Rules.

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

Federal Rules of Appellate Procedure

Rule 3. Appeal as of Right — How Taken

(a) Filing the Notice of Appeal.

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

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

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

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

(b) Joint or Consolidated Appeals.

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

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

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

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

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

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

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Rule 3. Appeal as of Right - How Taken

(a) Appeal Information Sheet; Opinion; Certified Copy of Docket Entries. When a notice of appeal is filed, the trial court clerk must promptly send to this court's clerk the appeal information sheet prescribed by this court. The trial court clerk must attach a copy of the opinion, if any, that accompanied the judgment or order being appealed. The trial court clerk must certify the copy of the docket entries and send it with the notice of appeal and the appeal information sheet.

(b) Petition for Certification of Judgment of the High Court of the Trust Territory of the Pacific Islands. A petition for certification of a judgment of the High Court of the Trust Territory of the Pacific Islands under the Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II, Title One, Article VII, § 174(c), and the Compact of Free Association: Palau, Title II, Title One, Article VII, § 174(c), in 48 U.S.C. § 1901 note and § 1931 note, must be filed with this court's clerk, but otherwise is deemed to be an appeal from the judgment of a district court for purposes of these rules.

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

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

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

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

(d) Serving the Notice of Appeal.

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

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

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

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

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FAILURE TO FILE A NOTICE OF APPEAL. Only a party that has filed a notice of appeal may attack all or any part of the trial court judgment. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

FEES. The fee schedule is set forth in Federal Circuit Rule 52. *See also* 28 U.S.C. § 1913, note 1 [Judicial Conference Schedule of Fees].

FILING AND DOCKETING AN APPEAL. An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk is docketed when it is assigned a docket number, a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.

FILING AND DOCKETING APPEALS UNDER 15 U.S.C. § 3416(c) AND PETITIONS UNDER 42 U.S.C. § 300aa-12(f). Appeals under 15 U.S.C. § 3416(c) from the district courts and petitions under 42 U.S.C. § 300aa-12(f) from the Court of Federal Claims are filed in this court, unlike other appeals from those courts in which the notice of appeal is filed with the clerks of those courts. However, once these appeals or petitions are filed in this court, they are forwarded to the clerks of those courts with instructions to comply with Federal Rule of Appellate Procedure 3(d).

APPEAL INFORMATION SHEET. The format to use for the appeal information sheet is found in Form 7.

Rule 4. Appeal as of Right — When Taken

(a) Appeal in a Civil Case.

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

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

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

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

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

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

Rule 4. Appeal as of Right - Untimely Notice

The clerk may return a notice of appeal that is untimely on its face.

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

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

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 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

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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).

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(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:~~

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~~(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~~.

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

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

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

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

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(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.

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TIME TO APPEAL. The table below is provided only as a convenience for counsel, who should refer to the statutes and case law before determining the period available for taking an appeal. Counsel should also be aware of the district court's authority under Federal Rule of Appellate Procedure 4 to extend or reopen the time for appeal.

COURT	STATUTE	TIME
District Courts	28 U.S.C. § 2107	30 days (60 days if U.S. is a party)
	15 U.S.C. § 3416(c)	30 days
Court of International Trade	28 U.S.C. § 2645(c)	60 days
Court of Federal Claims		
Appeals	28 U.S.C. § 2522	60 days
Petitions	42 U.S.C. § 300aa-12(f)	60 days
Court of Appeals for Veterans Claims	38 U.S.C. § 7292	60 days
High Court of the Trust Territory of the Pacific Islands	48 U.S.C. § 1901 note (1994)(Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II,Title One, Article VII, § 174(c)); 48 U.S.C.§ 1931 note (1994)(Compact of Free Association: Palau, Title II, Title One, Article VII § 174(c))	60 days

UNTIMELY NOTICE OF APPEAL. The United States Court of Appeals for the Federal Circuit cannot waive the untimely filing of a notice of appeal.

DUTY TO NOTIFY THE CLERK OF POSTJUDGMENT MOTIONS PENDING IN THE TRIAL COURT. Even though the district court clerk must forward copies of later docket entries under Federal Rule of Appellate Procedure 3(d), the appellant should promptly notify this court's clerk if any party in the case files a motion listed in Federal Rule of Appellate Procedure 4(a)(4). Any other party may also notify the clerk in such case. On receiving the appropriate docket entries from the district court, the clerk will deactivate the appeal. Deactivation of the appeal suspends all further action in the court of appeals. Upon reactivation of the appeal, the clerk will reschedule the next required filing and notify counsel.

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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.

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Rule 5. Appeal by Permission

(a) Appeal Information Sheet.

(1) A petition for permission to appeal must be accompanied by either:

(A) the appeal information sheet prescribed by this court prepared by the petitioner; or

(B) a copy of the docket entries in the trial court.

(2) If permission to appeal is granted, the trial court clerk must promptly prepare and send the appeal information sheet to this court's clerk.

(b) Record; Certified Copy of Docket Entries. In an allowed appeal, the trial court must retain the record as provided in Federal Rule of Appellate Procedure 11(e) and in Federal Circuit Rule 11(a). The trial court clerk must send a certified copy of the docket entries instead of the record.

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(c) **Form of Papers; Number of Copies.** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by the local rule or by order in a particular case.

(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:

(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)~~.

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Practice Note

APPEAL INFORMATION SHEET. The format for the appeal information sheet is found in Form 7.

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

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

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

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

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

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

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

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

(A) **Motion for rehearing.**

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

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree

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must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 — excluding Rules 4(a)(4) and 4(b) — measured from the entry of the order disposing of the motion.

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

(B) The record on appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

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

(C) Forwarding the record.

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

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and

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~~forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.~~

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

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

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

Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

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

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

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

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

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Rule 8. Stay or Injunction Pending Appeal

(a) Notice of Appeal; Trial Court's Judgment or Order. A motion for a stay or injunction pending appeal must be accompanied by:

(1) a copy of the notice of appeal that has been filed with the trial court clerk;

(2) a copy of the trial court's judgment or order on the merits; and

(3) a copy of any order on the motion for a stay or injunction pending appeal.

(b) Length of Motion, Response, and Reply; Copies; Brief.

(1) A motion or a response to a motion for a stay or injunction pending appeal may not exceed 20 pages. A reply may not exceed 10 pages.

(2) An original and 4 copies of a motion, response, or reply must be filed.

(3) A separate brief supporting a motion, response, or reply is not permitted.

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(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

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

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

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

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

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

Federal Circuit Rules

(c) Notice and Service When Requesting Immediate Action; Facsimile.

(1) A party moving for a stay or injunction pending appeal who requests immediate action by the court must—before filing—notify all parties that a motion will be filed and must utilize an expedited method of service.

(2) If a motion for a stay or injunction pending appeal is sent to the court by facsimile transmission, a certificate of interest must be included and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.

(d) Statement. If an initial motion for a stay or injunction pending appeal was not made in the district court under Federal Rule of Appellate Procedure 8(a)(1), movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay or injunction pending appeal was made in the district court under Federal Rule of Appellate Procedure 8(a)(1) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the district court and why it is not practicable to await a ruling by the district court on that motion.

Practice Notes

FORM REQUIREMENTS. See Federal Rule of Appellate Procedure 27(d) for form requirements concerning motions.

CERTIFICATE OF INTEREST. The format for the certificate of interest is found in Form 9.

Federal Rules of Appellate Procedure

~~**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:

Federal Circuit Rules

Rule 10. The Record on Appeal

Delay in preparing the transcript. When a trial transcript is not filed in the trial court within 60 days after it was ordered, the clerk may direct the parties to proceed under Rule 10(c) or (d) of the Federal Rules of Appellate Procedure.

Federal Rules of Appellate Procedure

(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

Federal Circuit Rules

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Federal Circuit Rules

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.

Practice Notes

DAILY COPY. Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription after trial.

PROCEDURES TO EXPEDITE DELIVERY OF TRANSCRIPTS. District courts and regional circuit councils have procedures to expedite transcripts that may be available to counsel experiencing difficulty with late delivery of transcripts by court reporters.

Federal Rules of Appellate Procedure

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~~

Federal Circuit Rules

Rule 11. Forwarding the Record

(a) Retaining the Record; Certified Copy of the Docket Entries; Physical Exhibits; Archival Storage.

(1) The District Court Clerk Must:

(A) retain the assembled record unless this court, on motion or sua sponte, orders otherwise; and

(B) send to this court a certified copy of the docket entries instead of the record.

(2) Archival Storage. The district court clerk must not send the record to archival storage until this court issues its mandate.

(b) Access of Parties and Counsel to the Original Record.

(1) Material Not Subject to a Protective Order; Inspection and Copying. When a notice of appeal is filed, the trial court clerk must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the trial court.

(2) Material Subject to a Protective Order; Inspection and Copying. A party or counsel for a party must be permitted to inspect and copy material in the record governed by a protective order of the trial court in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

(c) Preserving a Protective Order on Appeal. Any portion of the record that was subject to a protective order in the trial court remains subject to that order unless otherwise ordered.

(d) Agreement by Parties to Modify a Protective Order; Certificate of Compliance. If any portion of the record in the trial court is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance within 45 days of docketing stating it complied with this rule. This Federal Circuit Rule 11(d) does not apply in a case arising under 19 U.S.C. § 1516a.

(e) Motion to Modify the Protective Order. A party may move at any time in this court to modify a protective order

Federal Rules of Appellate Procedure

~~of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record~~.

(d) [**Abrogated.**]

(e) Retaining the Record by Court Order.

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

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

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

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

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

~~• for dismissal;~~

~~• for release;~~

~~• for a stay pending appeal;~~

~~• for additional security on the bond on appeal or on a supersedeas bond; or~~

~~• for any other intermediate order —~~

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

Federal Circuit Rules

to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

Federal Rules of Appellate Procedure

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.

Federal Circuit Rules

Rule 12. Docketing the Appeal

The clerk must notify all parties of the date the appeal is docketed.

Rule 12.1 Remand After an Indicative Ruling by

Practice Notes

DATE OF DOCKETING. The date of docketing starts the time running for filing briefs. *See* Federal Circuit Rule 31(a).

REPRESENTATION STATEMENT. The requirements of Federal Rule of Appellate Procedure 12(b) are met by filing the entry of appearance and certificate of interest required under Federal Circuit Rules 47.3 and 47.4.

OFFICIAL CAPTION; PARTICIPATION IN THE APPEAL BY APPELLEES; CONSOLIDATION OF PREVIOUSLY CONSOLIDATED CASES AND CROSS-APPEALS. The clerk will provide the parties with the official caption in the case at the time of docketing. Any objection to the official caption should be made within 14 days of receipt. It is the court's usual practice to include in the caption all parties that participated in the court below, even if they are no longer participating in the case on appeal. Parties included in the trial court title who have an adverse interest to the appellant but who are not cross-appealing will be deemed appellees. Parties permitted to intervene in the trial court as plaintiffs or defendants will be identified only as plaintiff or defendant to avoid confusion with any third party permitted to intervene in the appeal. An appellee desiring not to file a brief or join in another party's brief must notify the clerk who will strike the party's designation as an appellee from the official caption. An appeal in a case that was consolidated in the trial court will be docketed under the title used for the consolidated case. When more than one party appeals from the same trial court case, the appeals or cross-appeals will be consolidated by the clerk. Other appeals may be consolidated on motion or by the court sua sponte.

TRANSFERRED APPEAL. An appeal transferred from another court will be given a new docket number and will be consolidated by the clerk with any previously docketed appeal from the same judgment or order.

FILING AND DOCKETING AN APPEAL. An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk is docketed when it is assigned a docket number, a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.

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 movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(**b**) **Remand After an Indicative Ruling.** If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

Title III. Review of a Decision of the United States Tax Court

Federal Rules of Appellate Procedure

Rule 13. Review of a Decision of the Tax Court

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

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

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

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

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

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

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

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

Federal Circuit Rules

Federal Rules of Appellate Procedure

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

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

Federal Circuit Rules

Title IV. Review or Enforcement of an Order of an Administrative Agency, Board, Commission, or Officer

Federal Rules of Appellate Procedure

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 (Federal Circuit Form 5 herein) 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.

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

Federal Circuit Rules

Rule 15. Review of an Agency Order - How Obtained

(a) Petition for Review or Notice of Appeal; Payment of Fees; Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant; Number of Copies.

(1) **From the Patent and Trademark Office.** To appeal a decision of the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Director under 15 U.S.C. § 1071(a), the appellant must file in the Patent and Trademark Office a notice of appeal within the time prescribed by law. The appellant must simultaneously send to the clerk three copies of the notice with the fee set forth in Federal Circuit Rule 52. The Director must promptly advise the clerk that the notice is or is not timely.

(2) **From Another Agency.**

(A) Except as provided in Federal Circuit Rule 15(a)(1), to petition or appeal from a decision or order of an agency, the petitioner must file a petition for review or notice of appeal with this court's clerk within the time prescribed by law. Upon filing, the petitioner must pay the clerk the fee set forth in Federal Circuit Rule 52.

(B) A petition filed by the Director of the Office of Personnel Management must be filed as prescribed in Federal Circuit Rule 47.9.

(3) **Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant.** Each petition for review or notice of appeal must contain the counsel's — or the pro se petitioner's or appellant's — name, current address, and telephone number.

(4) **Copies.** A petition for review or notice of appeal must be filed in an original (except when the original is filed in the Patent and Trademark Office under 15 U.S.C. § 1071(a)) and three copies.

(b) Docketing Petition or Appeal; Notice of Docketing.

(1) **From the Patent and Trademark Office.**

(A) In an appeal from the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Director under 15 U.S.C. § 1071(a)(2), the clerk will docket the appeal when the Director of Patents and Trademarks sends a copy of the notice of appeal and the certified list as required by Federal Circuit Rule 17(b)(1).

Federal Rules of Appellate Procedure

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

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

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

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

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

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

Federal Circuit Rules

(B) If the Director advises the clerk concerning the untimeliness of an appeal, the clerk may order the appellant to show cause why the appeal should not be dismissed and refer appellant's response to the court.

(C) The clerk will notify all parties of the date the appeal is docketed.

(2) **From Another Agency.** In a petition for review or appeal from an administrative agency other than the Patent and Trademark Office, the clerk will docket a timely appeal or petition upon receipt.

(3) **Notice of Docketing.** The clerk must notify all parties of the date the appeal or petition for review is docketed.

(c) Statement Concerning Discrimination.

(1) **Petitioner's Statement.** Within 14 days after a petition for review of a decision of the Merit Systems Protection Board or a decision of an arbitrator under 5 U.S.C. § 7121 is docketed, the petitioner must serve on the respondent and file with the clerk, see Form 10:

(A) one of the following statements:

(i) no claim of discrimination by reason of race, sex, age, national origin, or handicapped condition has been or will be made in the case;

(ii) any claim of discrimination by reason of race, sex, age, national origin, or handicapped condition raised before the Board has been abandoned and will not be raised or continued in this or any other court;

(iii) the petition seeks review only of the Board's or arbitrator's dismissal of the case for lack of jurisdiction or for untimeliness;

(iv) the case involves an application to the Office of Personnel Management for benefits; or

(v) the case was transferred to the Court of Appeals for the Federal Circuit from a district court and petitioner continues to contest the transfer; and

(B) a statement whether petitioner has filed a discrimination case:

(i) in a United States district court; or

(ii) in the Equal Employment Opportunity Commission.

Federal Rules of Appellate Procedure

Federal Circuit Rules

(2) **Response When a Claim of Discrimination is Raised in a Motion or Brief.** If the petitioner in a case described in Federal Circuit Rule 15(c)(1) files a motion or brief making a claim of discrimination as to the case before the court, the respondent must:

(A) state, in a responsive motion or brief, one of the following:

(i) the respondent concurs in the petitioner's statement concerning discrimination;

(ii) any claim of discrimination the petitioner made to the Merit Systems Protection Board was frivolous, with supporting reasons; or

(iii) the petitioner presented no evidence of discrimination to the Merit Systems Protection Board;

(B) state, if known, whether a discrimination claim has been filed in a United States district court or in the Equal Employment Opportunity Commission; and

(C) include in the response or brief any other information relevant to the statement concerning discrimination.

(d) Untimely Petition for Review or Notice of Appeal. The clerk may return a petition for review or notice of appeal that is untimely on its face.

(e) Notice of Election Under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1). A party filing a notice of election under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1) with the Director of Patents and Trademarks must file a copy of the notice with the clerk, and the clerk must dismiss the appeal.

(f) Judicial Review of Department of Veterans Affairs Rules and Regulations. See Federal Circuit Rule 47.12.

Practice Notes

TIME TO APPEAL OR PETITION. The table below is provided only as a convenience to counsel, who should refer to the statutes, rules, and case law before determining the period available for taking an appeal or filing a petition for review. Counsel should also note that the event that causes the period to run varies in each case.

AGENCY	STATUTE	TIME
Arbitrator	5 U.S.C. §§ 7121, 7703	60 days
Merit Systems Protection Board	5 U.S.C. § 7703	60 days
Government Accountability Office	31 U.S.C. § 755	30 days
Personnel Appeals Board		
Board of Patent Appeals and Interferences; Trademark Trial and Appeal Board; Director of Patents and Trademarks	35 U.S.C. § 142 15 U.S.C. § 1071 37 C.F.R. §§ 1.304, 2.145	2 months; 14 days for cross appeal
International Trade Commission	19 U.S.C. § 1337	60 days
Board of Contract Appeals	41 U.S.C. § 607(g)	120 days
Secretary of Commerce	19 U.S.C. § 1202	20 days
Secretary of Agriculture	7 U.S.C. § 2461	60 days
Secretary of Veterans Affairs	38 U.S.C. § 502	60 days
Secretary of Labor; Occupational Safety and Health Review Commission; Federal Labor Relations Authority	28 U.S.C. § 1296	30 days
Office of Compliance, Congressional Accountability Act	2 U.S.C. § 1407(c)(3)	90 days
Equal Employment Opportunity Commission	3 U.S.C. § 454; 28 U.S.C. § 1296(b)	30 days
Bureau of Justice Assistance	42 U.S.C. § 3796c-2; 28 C.F.R. § 32.55	

FILING IN THE PATENT AND TRADEMARK OFFICE. A notice of appeal mailed to the Patent and Trademark Office should be addressed:

Office of the Solicitor
United States Patent and Trademark Office
Mail Stop 8
Post Office Box 1450
Alexandria, Virginia 22313-1450

The general counsel requests that hand delivery, if any, be made to the Office of the General Counsel, Patent and Trademark Office, Madison East 10B20, 600 Dulaney Street, Alexandria, Virginia 22314, between the hours of 8:30 a.m. and 5:00 p.m.

COPY OF DECISION OR ORDER. A party filing a petition for review or notice of appeal is urged to attach a copy of the decision or order of the agency for which review is sought.

Practice Notes (continued)

INTERVENTION. A party with the right to appeal or to petition for review may not, instead of exercising that right, intervene in another appeal or petition to seek relief in its own cause. Because the United States or an agency of the United States is the only appellee or respondent in cases under this rule, any other party seeking to intervene on the side of the appellee or respondent must move for leave to intervene within 30 days of the date when the petition for review or notice of appeal is filed. A motion for leave to intervene out of time will be granted only in extraordinary circumstances.

DISCRIMINATION STATEMENT. A discrimination statement form with a preaddressed, postage-paid return envelope will be provided to any petitioner seeking review of a decision of the Merit Systems Protection Board or arbitrator. Failure to complete the discrimination statement will result in dismissal of the petition for review. *See* Form 10.

TIMELINESS. Except in inter partes appeals from decisions of the Board of Patent Appeals and Interferences or the Trademark Trial and Appeal Board, parties in agency proceedings do not have the 14-day "cross-appeal" period that Federal Rule of Appellate Procedure 4(a)(3) grants to parties appealing from trial courts. The court cannot waive the statutory time requirements for filing a petition for review or notice of appeal.

CONSOLIDATION. When more than one party files a petition for review or notice of appeal from the same decision or order, the parties should inform the clerk and the petitions or appeals may be consolidated and an adjusted briefing schedule may be issued.

ARBITRATION AWARDS IN THE UNITED STATES POSTAL SERVICE. These arbitration awards may not be appealed to this court.

PROPER GOVERNMENTAL PARTY IN APPEALS FROM BOARDS OF CONTRACT APPEALS. In appeals from the boards of contract appeals, the head of the federal agency is named in the caption along with the name of the agency he or she heads.

FILING AND DOCKETING A PETITION FOR REVIEW OR APPEAL. A petition for review or appeal is filed when the petition for review or notice of appeal is received in the court or, in the case of an appeal from the Patent and Trademark Office, when the notice of appeal is received by the Director of Patents and Trademarks. A petition for review or appeal is docketed when it is assigned a docket number, a docket card for the petition for review or appeal is made available to the public, and the names of the parties to the petition for review or appeal are recorded in the party index that is available to the public.

JUDICIAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS RULES AND REGULATIONS. Federal Circuit Rule 47.12 governs actions for judicial review of Department of Veterans Affairs rules and regulations under 38 U.S.C. § 502. The procedures to be followed in such actions are the same as provided in this rule, except as provided in Federal Circuit Rule 47.12.

CHANGE OF HEAD OF AGENCY. In appeals in which the proper governmental party is the head of the agency, counsel for the government should promptly notify the clerk of any change that would affect the accuracy of the caption.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

Federal Rules of Appellate Procedure

~~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.~~

Federal Circuit Rules

Rule 17. Filing the Record

(a) Retaining the Record; Sending the Certified List. The agency must retain the record and send to this court a certified list or index unless this court, on motion or sua sponte, orders otherwise.

(b) Certified List or Index.

(1) **From the Patent and Trademark Office.** No later than 40 days after receiving the notice of appeal, the Director must send to the clerk the certified list and a copy of the decision or order appealed. This constitutes compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071(a)(3) for sending a certified record to the court.

(2) **From Another Agency.** No later than 40 days after the court serves a petition for review or notice of appeal on an agency, the agency must send to the clerk the certified list or index and a copy of the decision or order being appealed.

(3) **Index of VA Rulemaking Record.** In petitions for review under 38 U.S.C. § 502, if a petitioner has not adequately identified the rulemaking proceeding complained of, so that the Secretary of Veterans Affairs cannot send the certified list or index within the time provided in Federal Circuit Rule 17(b)(2), the Secretary must promptly move to waive or extend the time for filing the certified list or index.

Federal Rules of Appellate Procedure

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

Federal Circuit Rules

(c) Service of Certified List or Index by Agency. When an agency sends a certified list or index to the clerk, it must simultaneously serve a copy on the parties and provide a certificate of service to the clerk. Service must be made on counsel for the appellant or petitioner who has served the agency with a copy of an entry of appearance in this court; otherwise, service must be made on counsel who appeared before the agency or, if none, on the party. This service constitutes notice to the parties of the date the record was filed.

(d) Access of Parties and Counsel to Original Record.

(1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a petition for review or notice of appeal is filed, the agency must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the agency.

(2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material contained in the record governed by a protective order of an agency in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

(e) Preserving a Protective Order on Appeal. Any portion of the record that was subject to a protective order in an agency remains subject to that order unless otherwise ordered.

(f) Agreement by Parties to Modify Protective Order; Certificate of Compliance. If any portion of the record in an agency is subject to a protective order and a petition for review or notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the agency, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance within 45 days of docketing stating it complied with this rule.

(g) Motion to Modify the Protective Order. A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the agency. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

Practice Notes

TRANSCRIPT OF AGENCY PROCEEDING AT GOVERNMENT EXPENSE. These rules do not require an agency to provide a party with a written transcript at the agency's expense. Any party seeking a written transcript of a hearing should direct the request to the agency, not the court.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

Rule 18. Stay Pending Review

(a) Motion for a Stay.

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

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

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

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

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

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

Rule 18. Stay Pending Review

(a) Petition for Review or Notice of Appeal; Agency Order. A petition for review or notice of appeal must be filed with this court before it will entertain a motion for a stay pending review. A motion for stay pending review must be accompanied by a copy of the agency decision on the merits and a copy of any agency order on the motion for a stay pending review.

(b) Length of Motion, Response, and Reply; Copies; Brief.

(1) A motion or a response to a motion for a stay pending review may not exceed 20 pages. A reply may not exceed 10 pages.

(2) An original and four copies of a motion, response, or reply must be filed.

(3) A separate brief supporting a motion, response, or reply is not permitted.

(c) Notice and Service When Requesting Immediate Action; Facsimile.

(1) A party moving for a stay pending review who requests immediate action by the court must – before filing – notify all parties that a motion will be filed and must utilize an expedited method of service.

(2) If a motion for stay pending review is sent to the court by facsimile transmission, a certificate of interest must be included and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.

(d) Statement. If an initial motion for a stay pending review was not made in the agency under Federal Rule of Appellate Procedure 18(a), movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay pending review was made in the agency under Federal Rule of Appellate Procedure 18(a) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the agency and why it is not practicable to await a ruling by the agency.

Practice Notes

FORM REQUIREMENTS. *See* Federal Rule of Appellate Procedure 27(d) for form requirements concerning motions.

CERTIFICATE OF INTEREST. The form for the certificate of interest is found in Form 9.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

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.

Rule 20. Applicability of Rules to the Review of an Agency Order

All provisions of these Federal Circuit Rules, except Federal Circuit Rules 3 – 12, apply to the review of an agency order. In these Federal Circuit Rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

Title V. Extraordinary Writs

Federal Rules of Appellate Procedure

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

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

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

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

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

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

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

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

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

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

(3) Two or more respondents may answer jointly.

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

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

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

Federal Circuit Rules

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

(a) Title; Fee; Answer.

(1) A petition for writ of mandamus or prohibition directed to a court or an agency must be entitled: "In Re [name of petitioner], Petitioner."

(2) The petition must include a certificate of interest. An entry of appearance must accompany the petition, unless the petitioner is pro se.

(3) The petition must state the name, address, telephone number and, if applicable, facsimile number of each person served.

(4) The fee set forth in Federal Circuit Rule 52 must accompany the petition.

(5) No answer may be filed by any respondent unless ordered by the court.

(b) Copies; Brief.

(1) An original and four copies of the petition or answer must be filed.

(2) A separate brief supporting or answering a petition is not permitted.

(c) Reply. If the court directs the filing of a response to a petition, then the petitioner may file a reply within 7 days of the date of the filing of the response. The court may act on the petition before the receipt of any reply, and thus the filing of a reply should be expedited if appropriate. The reply may not exceed 15 pages.

(d) Service of Order Denying Petition. If the petition is denied, the petitioner must serve a copy of the order denying the petition on all persons served with the petition unless such a person has entered an appearance in the proceeding or has been sent a copy of the order by the clerk.

Federal Rules of Appellate Procedure

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

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

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

~~Rule 22. Habeas Corpus and Section 2255 Proceedings~~

Federal Circuit Rules

Title VI. ~~Habeas Corpus~~; Proceedings in Forma Pauperis

Federal Rules of Appellate Procedure

~~(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 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.~~

Federal Circuit Rules

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~~**(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 (Federal Circuit Form 6 herein) 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

Federal Circuit Rules

Rule 24. Proceeding in Forma Pauperis

(a) Form. If an appeal or petition for review is docketed without payment of the docketing fee, the clerk in providing notice of docketing will forward to the appellant or petitioner the form prescribed by this court for the motion to proceed on appeal in forma pauperis. (*See* Form 6.) Except as provided in Federal Rule of Appellate Procedure 24(a), if the clerk does not receive a completed motion, the docketing fee, or a completed Form 6B within 14 days of the date of docketing of the appeal or petition, the clerk is authorized to dismiss the appeal or petition. *See also* Federal Circuit Rule 52(d). The motion and affidavit may be made on the form provided in the Federal Rules of Appellate Procedure, but the court may request additional information from the movant.

(b) Supplemental Form. If movant is incarcerated, in addition to Form 6 movant must file a supplemental form for prisoners, Form 6A.

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

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

Federal Circuit Rules

Practice Notes

DOCKETING FEE; TRANSCRIPT REQUEST. A party permitted to proceed in forma pauperis on appeal is not required to pay the docketing fee. Any request for a transcript of an agency proceeding at government expense is governed by agency regulations and must be directed to the agency.

PROCEEDING ON ORIGINAL RECORD. A request under Federal Rule of Appellate Procedure 24(c) that an appeal be heard on the original record is rarely granted because the available informal brief procedure permits an appendix consisting only of a copy of the decision or order sought to be reviewed. *See* Federal Circuit Rules 28(g); 30(i); 31(e); and 32(c). *See* Forms 11-16.

EFFECT OF PRISON LITIGATION REFORM ACT. Under the Prison Litigation Reform Act of 1995, a prisoner granted pauper status before the district court is not automatically entitled to pauper status on appeal. *See* 28 U.S.C. § 1915. A prisoner seeking to proceed in forma pauperis is directed to the Guide for Pro Se Petitioners and Appellants for further information.

USERRA CASES. In a petition for review of a Merit Systems Protection Board decision, a petitioner is not required to pay the docketing fee or costs if the case involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 38 U.S.C. § 4323. A petitioner claiming exemption from the fee pursuant to USERRA should submit Form 6B within 14 days of the date of docketing of the petition and may be required to submit documentation that his or her case before the Board involved a USERRA claim.

Title VII. General Provisions

Federal Rules of Appellate Procedure

Rule 25. Filing and Service

(a) Filing.

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

(2) **Filing: Method and Timeliness.**

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

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

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

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

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

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

(4) **Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented

Federal Circuit Rules

Rule 25. Filing and Service

(a) Facsimile Filing. A motion, response to a motion, reply to a response or letter may be filed by facsimile transmission if the certificate of service by facsimile transmission states that a copy has been served on all parties by facsimile transmission and that the appropriate number of copies of the motion, response, reply, or letter have been mailed or shipped for delivery to the clerk and the parties on the next business day.

(b) Facsimile Filing Limitation. No document other than a motion, response to a motion, reply to a response, or letter may be filed or served by facsimile transmission.

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 extra ordinary 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) Service may be any of the following:

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

(B) by mail;

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

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

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

(3) When reasonable considering such factors as the immediacy of the 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 transmission, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

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

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

Federal Rules of Appellate Procedure

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

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

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

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

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

Federal Circuit Rules

Practice Notes

LOCATION OF CLERK'S OFFICE; HOURS OF OPERATION; NIGHT BOX. The clerk's office is in Room 401 of the National Courts Building, 717 Madison Place, NW, Washington, DC 20439, and is open from 9:00 a.m. to 5:00 p.m. on workdays. After the office closes on workdays, papers may be deposited until midnight in a night box at the garage entrance on H Street NW, between 15th Street and Madison Place.

CLERK'S MAILING ADDRESS. Address mail as follows:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

The clerk will not pay postage due.

CLERK'S FACSIMILE NUMBER. Documents which Federal Circuit Rule 25 permits to be sent by facsimile to the Clerk of Court should be sent to: 202-275-9678.

PROOF OF SERVICE. Each brief, petition, motion, response, or reply must contain proof of service. Only the original filed with the court must be signed. A copy of the unsigned proof of service must be attached to any copies.

RETURN COPY MARKED RECEIVED. When a brief or other paper presented for filing includes an extra copy, the clerk will mark it received and return it on request. If the filing is by mail or if the night box is used, a self-addressed, postage-paid (first class) return envelope must accompany the request.

FILING REJECTED BY THE CLERK. The clerk may reject material submitted for filing that does not substantially conform with the Federal Rules of Appellate Procedure and the Federal Circuit Rules. The clerk will issue a rejection letter advising of the nature of the nonconformity and guidelines for resubmission. Opposing counsel will be notified of the rejection. The timeliness of a response is computed from date of service of the original material. Because of occasional delays with some mail transmitted by the United States Postal Service, due to screening or other issues, if a document such as a notice of appeal, petition for review, motion, or other document must be received by the court on a particular date, then the filer might consider using an alternative method of delivering the document to the court, such as a commercial carrier or hand-delivery. The court cannot waive the deadlines for filing a notice of appeal or petition for review, even if the document was deposited in the mail in a timely fashion. Federal Rule of Appellate Procedure 26(b).

Federal Rules of Appellate Procedure

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;

Federal Circuit Rules

Rule 26. Computing and Extending Time

(a) Computation of Time; Closing the Clerk's Office. "Legal holiday" also means a day on which the clerk's office is closed by order of the court or the chief judge. Such an order will be posted publicly and its contents placed on a recording for telephone callers.

(b) Motion to Extend Time.

(1) A motion to extend the time prescribed by the Federal Rules of Appellate Procedure, the Federal Circuit Rules, or an order of this court must be made at least 7 days before the date sought to be extended, except that in extraordinary circumstances a motion may be made later than that deadline if accompanied by an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 that describes the extraordinary circumstances.

(2) Before filing the motion, the movant must inform all other parties that it will seek an extension.

(3) The movant must state in the motion whether any other parties object and, if so, whether a response in opposition will be filed.

(4) In addition to showing good cause, the motion must state:

(A) the date to be extended;

(B) the revised date sought;

(C) the number of days of extension sought; and

(D) the total number of days of extension previously granted to the movant.

(5) A request for an extension of more than 14 days must be accompanied by an affidavit or unsworn declaration of counsel or a pro se party under penalty of perjury under 28 U.S.C. § 1746 showing good cause for the extension.

Federal Rules of Appellate Procedure

(C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C) — and filing by mail under Rule 13(b) — 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 Service. When a party may or must act within a specified time after service, 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 not treated as delivered on the date of service stated in the proof of service.

Federal Circuit Rules

Practice Notes

OPPOSITION TO EXTENSION. If a party opposes a motion for extension of time, that party should file its response promptly. The court will not necessarily wait for an opposition before ruling on a motion.

BENEFIT OF TIMELY EXTENSION REQUEST. Unless the court has previously ordered that there will be no further extensions, an appeal will not be dismissed for failure to file appellant's brief if appellant's motion to extend the time for filing was filed and served at least 7 days before the due date for the brief, but the motion has not been acted on by the due date.

EXTENSION DURING SETTLEMENT NEGOTIATIONS. Parties jointly stipulating that they are actively pursuing settlement of the case will be granted a reasonable extension of time to accomplish settlement.

COURT ORDER. Federal Rule of Appellate Procedure 26(c) does not apply when a court order requires action within a specified time; the due date is as specified in the order.

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 26.1. Corporate Disclosure Statement

The corporate disclosure statement must be included in the certificate of interest prescribed in Federal Circuit Rule 47.4. A certificate of interest must be filed by any party represented by counsel within 14 days of the date of docketing of the appeal or petition. *See* Federal Circuit Rule 47.4 for additional requirements.

Practice Note

The requirements of Federal Rule of Appellate Procedure 26.1 are satisfied by filing a certificate of interest under Federal Circuit Rule 47.4. *See* Form 9.

Federal Rules of Appellate Procedure

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 governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) **Reply to Response.** Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

Federal Circuit Rules

Rule 27. Motions

(a) Content of Motion. The preferred content and organization of a motion are:

(1) the name of this court;

(2) the caption. If the motion is for a procedural order on consent, the authorized abbreviated caption may be used. For any other motion, the official caption must be used;

(3) the title of the motion;

(4) the grounds for the motion, the relief sought, and the legal argument to support the motion;

(5) the movant's statement of consent or opposition to the motion. The movant must state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response;

(6) counsel's or pro se party's signature;

(7) the certificate of interest. The certificate of interest (*see* Federal Circuit Rule 47.4) must be included in each motion;

(8) supporting affidavit. If the facts relied on in the motion are subject to dispute, an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 must be attached to the motion;

(9) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(b) Response; When Filed; Content. If a motion states that it is consented to or unopposed, a response is not required. If a motion does not state whether – or incorrectly states that – it is consented to or unopposed, a response should be filed as soon as the omission or error becomes known. The preferred organization of a response is comparable to the organization of a motion provided in (a) of this rule and the preferred content of a response is:

(1) as provided in (a)(1), (2), (6), (7), (8), and (9) of this rule; and

(2) the grounds for denying the motion, limiting the relief granted, or modifying the order sought, and the legal argument to support the response; or the responding party's statement of consent or lack of opposition.

(c) Content of Reply. The preferred organization of a reply is comparable to the organization of a motion as provided in (a) of this rule and the preferred content of the reply is:

(1) as provided in (a)(1), (2), (6), (7), (8), and (9) of this rule; and

Federal Rules of Appellate Procedure

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

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

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

(1) **Format.**

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

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

Federal Circuit Rules

(2) the reply to the response and the legal argument to support it.

(d) Length of Motion, Response, or Reply; Cover and Backing; Attachments. Items listed in Federal Circuit Rule 27(a)(7)-(9) do not count toward the page limitation in Federal Rule of Appellate Procedure 27(d)(2). Cover and backing for a motion, response, or reply are not required. If a motion includes several attachments or exhibits, the court prefers that the attachments or exhibits be separately tabbed for ease of reference.

(e) Motion to Strike; Response. A motion to strike all or part of a brief, except to strike scandalous matter, is prohibited as long as the party seeking to strike has the right to file a responsive brief in which the objection could be made. A response, if any, in opposition to a motion to strike must be included in the responsive brief if one is authorized, or may be filed if leave is sought and obtained, or may be made at oral argument.

(f) Motion to Dismiss or to Remand; Response. A motion to dismiss for lack of jurisdiction or to remand should be made as soon after docketing as the grounds for the motion are known. After the appellant or petitioner has filed the principal brief, the argument supporting dismissal for lack of jurisdiction or remand should be made in the brief of the appellee or respondent. A response in opposition, if any, should be included in the responsive brief. Joint or unopposed motions or stipulations to dismiss or to remand may be made at any time.

(g) Motion Incorporated in a Brief. Except as provided in Federal Circuit Rule 27(e) and (f), a motion must not be incorporated in a brief.

(h) Delegation of Authority to the Clerk. The clerk is authorized to act on any procedural motion or unopposed nonprocedural motion, but may not act on an opposed nonprocedural motion or any motion that requires action by a judge or panel of judges. The clerk may also direct an expedited response to a motion or petition and may direct the parties to show cause why an appeal or petition should not be dismissed. Even if the clerk is authorized to act on a particular motion, the clerk may nonetheless refer the matter to a judge or panel, or may defer the matter to the merits panel, when appropriate.

(i) Ex Parte Application. Neither the court nor any judge of the court will conduct an ex parte hearing on an application for relief.

(j) Copies in an En Banc Case. When an appeal is pending before the court en banc, motions and responses must be filed in an original and 18 copies.

(k) Application for Consideration, Vacation, or Modification of Procedural Order. A party adversely affected by a

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

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

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

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procedural order entered on a motion without awaiting the response time or by an order of the clerk may move for relief within 14 days of the order or action. The application must be made by motion.

(l) **Review or Reconsideration of the Order of a Single Judge or Panel of Judges.** Except for a dispositive order issued by a panel, which time will be governed by Federal Rule of Appellate Procedure 40(a)(1), a party seeking review by the court of the action of a single judge or reconsideration of the action of a panel of judges must file a motion for reconsideration within 14 days of the entry of the order.

(m) **Motion Papers Containing Material Subject to a Protective Order.**

(1) **Two Sets of Motion Papers.** If a party refers in motion papers to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of motion papers must be filed.

(A) Confidential set; labeling; number of copies. One set of motion papers, consisting of the original and three copies, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) Nonconfidential set; labeling; number of copies. The second set of motion papers, consisting of the original and three copies from which confidential matter has been deleted, must be labeled "nonconfidential" and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The introductory paragraph of the nonconfidential motion or response must describe the general nature of the confidential material that has been deleted.

(2) **Service.** Each party to the appeal must be served two copies of the nonconfidential motion papers and, when permitted by the applicable protective order, two copies of the confidential motion papers.

(3) **Availability to the Public.** The confidential motion papers will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential motion papers (except those protected by statute) should not be made available to the public.

Practice Notes

CONTENT OF A MOTION, RESPONSE, OR REPLY. Using Federal Circuit Rule 27's preferred content and organization for a motion, response, or reply will help avoid delays caused by the need for additional information. Although motions, responses, and replies need not have the formality of briefs, a motion, response, or reply may be rejected if it is not substantially complete.

MOOT RESPONSE. A response to a motion for a procedural order that is received after the motion has been acted on is considered moot.

AUTHORITY TO ACT ON MOTIONS; MOTIONS REFERRED TO PANEL. Neither the clerk nor the court is required to grant relief just because the parties agree it should be granted. The clerk's authority to act on procedural or unopposed nonprocedural motions includes the authority to grant or deny the requested relief in whole or in part or to refer the motion to a judge or a panel. Examples of procedural motions include motions for extensions of time, motions to reform the caption, motions for leave to file various documents, motions for leave to proceed in forma pauperis, etc. Examples of nonprocedural motions include motions to dismiss, motions to remand, motions to transfer, motions to summarily affirm judgments, motions for stays of injunctions, motions to strike portions of briefs or appendices, motions for leave to intervene, motions for leave to file briefs as amici curiae, etc. Motions to exceed the permitted word or page limitation for a brief will be decided by a judge. If the clerk grants a motion to extend the time to file a principal brief by 60 days, no further extensions should be anticipated. Once a case is assigned to a merits panel, the clerk refers all motions to the merits panel.

TELEPHONE INQUIRY ABOUT PENDING MOTIONS; ACCESS TO ORDERS ON WEBSITE. Telephone inquiries about pending motions are discouraged because they divert the clerk's office staff from more pressing duties. When an order on a motion directs counsel to take prompt action, the clerk's office will telephone counsel. All other orders are considered routine and counsel may await notification by mail. Alternatively, counsel or the parties may often determine the status of a pending motion and obtain copies of court orders on this court's website, http://www.cafc.uscourts.gov/index.html. First, one may view on PACER the court's current docket sheet in any pending appeal or petition to determine the current status of a motion. Second, if a motion has been processed by the court's senior staff attorney, the order will normally be available on the website the same day it is filed. Third, many other pertinent orders, including en banc orders, are promptly posted on the court's opinions and orders page. Under no circumstances should anyone telephone a judge or the office of the senior staff attorney about a motion. In an emergency, you may call the clerk's office.

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

Rule 28. Briefs

(a) Contents of Brief; Organization of Contents; Addendum; Binding. Briefs must be bound as prescribed in Rule 32 of the Federal Rules of Appellate Procedure and must contain the following in the order listed:

(1) the certificate of interest (*see* Federal Circuit Rule 47.4);

(2) the table of contents;

(3) the table of authorities;

(4) the statement of related cases (*see* Federal Circuit Rule 47.5);

(5) the jurisdictional statement including a representation that the judgment or order appealed from is final or, if not final, the basis for appealability (e.g., preliminary injunction, Fed. R. Civ. P. 54(b) certification of final judgment as to fewer than all of the claims or parties, etc.);

(6) the statement of the issues;

(7) the statement of the case, including the citation of any published decision of the trial tribunal in the proceedings;

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

(5) a statement of the issues presented for review;

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

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

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

(10) a short conclusion stating the precise relief sought; and

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

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

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

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

Federal Circuit Rules

(8) the statement of the facts;

(9) the summary of the argument;

(10) the argument, including statement of the standard of review;

(11) the conclusion and statement of relief sought;

(12) the judgment, order, or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an addendum placed last within the initial brief of the appellant or petitioner. This requirement is met when the appendix is bound with the brief. (*See* Federal Circuit Rule 30(c)(1) and (d) for a duplicative requirement of the appendix.) Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety. (*See also* Federal Circuit Rule 30(a)(2)(A)(iii) and Federal Circuit Rule 30(a)(3) for a requirement that the patent in suit be included in its entirety in the appendix);

(13) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)); and

(14) the certificate of compliance, if required by Federal Rule of Appellate Procedure 32(a)(7).

(b) Appellee's Jurisdictional Statement and Statements of the Issues, the Case, the Facts, and the Standard of Review. The appellee's jurisdictional statement and statements of the issues, the case, the facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, the appellee must not include any of those statements. The statement of the case must include the citation of any published decision of the trial tribunal in the proceedings that is not included in the appellant's statement of the case.

(c) Motion to File Extended Brief. The court looks with disfavor on a motion to file an extended brief and grants it only for extraordinary reasons. Unless the order granting a motion to file an extended brief provides otherwise, when additional pages or words are allowed in the principal brief of an appellant or cross appellant, a responsive brief permitted by the rules may contain the same number of additional pages or words.

(d) Brief Containing Material Subject to a Protective Order.

(1) Two Sets of Briefs. If a party refers in a brief to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of briefs must be filed.

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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

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(A) Confidential set; labeling; number of copies. One set of briefs, consisting of the original and eleven copies, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) Nonconfidential set; labeling; number of copies. The second set of briefs, consisting of the original and four copies from which confidential matter has been deleted, must be labeled "nonconfidential" and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential brief must describe the general nature of the confidential material that has been deleted.

(2) **Service**. Each party to the appeal must be served two copies of the nonconfidential brief and, when permitted by the applicable protective order, two copies of the confidential brief.

(3) **Availability to the Public**. The confidential briefs will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential briefs (except those protected by statute) should not be made available to the public.

(e) **Citations.** Opinions of this court and its predecessors should be cited as found in the Federal Reporter. Parallel citations to any other reporters are discouraged. Examples of acceptable citations are:

Guotos v. United States, 552 F.2d 992 (Ct. Cl. 1976).

In re Sponnable, 405 F.2d 578 (CCPA 1969).

South Corporation v. United States, 690 F.2d 1368 (Fed. Cir. 1982)(en banc).

Doe v. Roe, No. 12-345, slip op. (Fed. Cir. Oct. 1, 1982).

(f) **Reference to Appendix.** Reference in the brief to pages of the joint appendix and, if permitted, of a supplemental appendix must be as short as possible consistent with clarity, e.g., A206 or SA17.

(g) **Informal Brief; Appellee's Brief.** A pro se party may file an informal brief on the form prescribed by the court. When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. An informal brief filed by an appellee or respondent must contain a statement of the case but otherwise follow

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page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

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the format prescribed for the pro se party.

(h) Briefs in a Transferred Case. When an appeal is transferred to this court by another court of appeals after briefs have been filed, the parties may stipulate to proceed on those briefs instead of filing briefs prescribed by these rules. The stipulation must be filed within 14 days of docketing, and the number of copies of briefs required by Federal Circuit Rule 31(b) must accompany the stipulation. The court may order supplemental briefs.

(i) Citation of Supplemental Authorities. An original and 6 copies of a citation of supplemental authorities must be filed.

Practice Notes

INFORMAL BRIEF. The informal brief procedure is explained in the Guide for Pro Se Petitioners and Appellants.

MULTIPLE PARTIES. When there are multiple parties represented by the same counsel or counsel from the same firm, a combined brief must be filed on behalf of all the parties represented by that counsel or firm.

DESCRIBING THE GENERAL NATURE OF CONFIDENTIAL MATERIAL DELETED FROM THE NONCONFIDENTIAL BRIEF. The following example is acceptable:

CONFIDENTIAL MATERIAL OMITTED

The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share; the material omitted in the text on page 45 describes the distributor's experiences concerning the inventories and order lead times; and the material omitted in the footnote on page 45 describes non-price factors affecting customers' preferences between competing methods.

JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY. Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

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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 compy with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts 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)-(9) and (11), 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;

(D) the statement of the facts; and

(E) 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 (11) 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;

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the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an 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.**

(1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) and (3), 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:

(i) it contains no more than 14,000 words; or

(ii) it 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:

(i) it contains no more than 16,500 words; or

(ii) it 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).

(3) **Certificate of Compliance.** A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

(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 ~~14~~ 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.

Federal Circuit Rules

Practice Notes

CROSS-APPEALS. A party may file a cross-appeal only when it seeks to modify or overturn the judgment of a trial tribunal. Although a party may present additional arguments in support of the judgment as an appellee, counsel are cautioned against improperly designating an appeal as a cross-appeal when they merely present arguments in support of the judgment. *See* Bailey v. Dart Container Corp., 292 F.3d 1360 (Fed. Cir. 2002). Further, counsel are cautioned, in cases involving a proper cross-appeal, to limit the fourth brief to the issues presented by the cross-appeal. In all cases, counsel should be prepared to defend the filing of a cross-appeal and the propriety of arguments presented in the fourth brief at oral argument.

TIME TO SERVE AND FILE A BRIEF. Please refer to Federal Circuit Rule 31 (a) for brief due dates when there is a cross-appeal.

CLARIFICATION TO FEDERAL RULE OF APPELLATE PROCEDURE 28.1(4). Where the term "appellee" is used, it refers to the "cross-appellant".

Rule 29. Brief of an Amicus Curiae

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

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

(1) the movant's interest; and

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

(c) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(1) if the amicus curiae is a corporation, a disclosure statement like that required of parties 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 concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(5) unless the amicus curiae is one listed in the first sentence of Rule 29(a), a statement that indicates whether:

Rule 29. Brief of an Amicus Curiae

(a) Content; Form. In addition to the contents required by Federal Rule of Appellate Procedure 29, the brief of an amicus curiae must include a certificate of interest (*see* Federal Circuit Rule 47.4) in front of the table of contents.

(b) List of Amicus Curiae. The clerk will maintain a list of bar associations and other organizations to be invited to file amicus curiae briefs when the court directs. Bar associations and other organizations will be placed on the list if they request. The request must be renewed annually not later than October 1.

(c) Consent. If an amicus brief is filed on consent of all parties, then no motion for leave is required and the brief should state, pursuant to Federal Rule of Appellate Procedure 29(a), that all parties have consented to its filing.

Federal Rules of Appellate Procedure

(A) a party's counsel authored the brief in whole or in part;

(B) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(C) 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;

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

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

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

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

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

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

Federal Circuit Rules

Practice Note

An amicus curiae must file an entry of appearance and a certificate of interest, if applicable. *See* Federal Circuit Rules 47.3, 47.4, and Forms 8 and 9.

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;

Rule 30. Appendix to the Briefs

(a) Purpose; Content of Appendix; Time for Filing; Number of Copies; Cover; Service.

(1) Purpose. The purpose of this rule is to limit the size of the appendix of documentary materials that is printed and filed with the court. The rule also authorizes a supplementary video recording media appendix under some circumstances.

Federal Rules of Appellate Procedure

(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.

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(2) Contents; Indiscriminate Referencing to Blocks of the Record Prohibited.

(A) In addition to the matters required by Federal Rule of Appellate Procedure 30(a)(1)(A),(B), and (C), the appendix must include:

(i) the entire docket sheet from the proceedings below;

(ii) in an appeal from a jury case, the judge's charge, the jury's verdict, and the jury's responses to interrogatories;

(iii) in an appeal involving a patent, the patent in suit in its entirety. The patent in suit may also be included as an addendum to appellant's initial brief. Any other patents included in an appendix must be included in their entirety; and

(iv) any nonprecedential opinion or order cited in accordance with Federal Circuit Rule 32.1(c).

(B) Parts of the record authorized by Federal Rule of Appellate Procedure 30(a)(1)(D) must not be included in the appendix unless they are actually referenced in the briefs, but the parties are encouraged to include in the appendix sufficient surrounding transcript pages to provide context for a referenced transcript excerpt.

(C) Indiscriminate referencing in briefs to blocks of record pages or inclusion of unnecessary pages in the appendix is prohibited.

(D) If the appellant considers that parts of the record have been referenced in violation of this rule, the appellant may so advise the appellee and the appellee must advance the costs of including those parts in the appendix.

(E) The following must not be included in the appendix except by leave of the court, and any motion for leave must state the number of pages requested to be included:

(i) briefs and memoranda in their entirety (except as otherwise provided in Federal Circuit Rule 30);

(ii) notices;

(iii) subpoenas – except where the enforcement or validity of a subpoena is at issue;

(iv) summonses – except in appeals from the Court of International Trade;

(v) motions to extend time; or

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(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 inclu-

Federal Circuit Rules

(vi) jury lists.

(F) Nothing in this Federal Circuit Rule 30 prohibits from designation and inclusion in an appendix:

(i) an examiner's answer in an ex parte patent case;

(ii) a trademark examining attorney's appeal brief in an ex parte trademark case; or

(iii) the briefs and memoranda in their entirety in a case where the only issue is the propriety of summary judgment.

(3) **Additional Mandatory Appendix Items in Patent and Trademark Office Appeals.** In an appeal from the Patent and Trademark Office, unless the parties mutually agree otherwise, the appendix must include:

(A) a copy of all rejected claims in an ex parte patent appeal;

(B) a copy of all counts in a patent interference appeal; or

(C) a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of a registered mark in an ex parte or an inter partes trademark appeal.

(4) **Time for Filing.** The appellant must serve and file an appendix within 7 days after the last reply brief is served and filed. When there is no cross appeal, if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief. In a cross appeal, if the cross appellant does not file a reply brief, the appendix must be served and filed within 7 days after the time for filing the cross appellant's reply brief has expired.

(5) **Number of Copies.** Twelve copies of the appendix must be filed with the court.

(6) **Multi-Volume Appendix: Covers and Page Numbers.** A multi-volume appendix must have a volume number in roman numerals and the pages included in the volume listed at the top of the cover of each volume (e.g., Volume II, Pages 542 to 813).

(7) **Service.** Two copies of the appendix must be served on counsel for each party separately represented. One copy must be served on each pro se party.

(8) **Consequence of Failing to File an Appendix.** If the appellant fails to file an appendix, the clerk is authorized to dismiss the case.

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sion 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.

Federal Circuit Rules

(b) Determination of Contents of Appendix; Designation of Materials; Extension of Time.

(1) The parties are encouraged to agree on the contents of an appendix that will comply with this Federal Circuit Rule 30.

(2) In the absence of an agreement, the appellant must, within 14 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency, serve on the appellee or cross appellant a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. The appellee or cross appellant may, within 14 days after receiving the designation, serve on the appellant a counterdesignation of additional parts to be included in the appendix.

(3) A designation or counterdesignation must not be filed with the court.

(4) **Table of Page Numbers; Physical Compilation.**

(A) Within 14 days after the parties have designated the material for the appendix, the appellant must assign consecutive page numbers to the designated material and serve on all parties a table reflecting the page numbers of each item designated.

(B) If not prohibited in an outstanding protective order, instead of the table the appellant may—at the appellant's option—serve on the parties one copy of a physical compilation of the designated material with the assigned page numbers shown. This copy may be in micrographic format.

(C) The first page numbers in the designated material must be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it.

(D) The table of page numbers or the physical compilation of the designated material, whichever is used, must not be filed with the court. If all designated material comprises no more than 100 pages, Federal Circuit Rule 30(d) applies.

(5) **Extension of Time Limits.** The time limits for designating, counterdesignating, and compiling the table may be extended by agreement of the parties without seeking leave of the court, as long as an extension of the time is not required for filing appellant's brief. But if a transcript of the proceedings is required before the material can be designated and if the transcript has been ordered but not completed within the time prescribed by this rule, the appellant

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must move for an extension of time within which to designate the material. An affidavit explaining in detail what has been done to expedite transcription of the trial proceedings must be attached to the motion.

(6) **Preparation of Appendix.** The appellant must prepare the appendix to be filed with the court from the designated material by selecting from that material only items required by these rules and pages specifically referred to in the briefs of the parties. Pages of the designated material not referenced in the briefs – other than items required by these rules – must be omitted from the appendix filed with the court.

(c) Format of Appendix; Pagination.

(1) **Arrangement of Appendix.** Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it must be placed first in the appendix. (*See* Federal Circuit Rule 28(a)(12) for a duplicative requirement of the appellant's or petitioner's initial brief.)

(2) **Pagination.** The page numbers used in the appendix must be the page numbers assigned by the appellant or petitioner to the designated material in accordance with Federal Circuit Rule 30(b). The page number must appear centered in the bottom margin of each page in the appendix. Other pagination marks must be redacted if necessary to avoid confusion. The materials in the appendix must be in numerical order according to the page numbers the appellant assigned to the designated materials. Omission of pages need not be noted, e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced in the appendix. References in the briefs must be only to the page numbers of the appendix.

(3) **Printing.** Pages in an appendix – even when filing a combined brief and appendix – may be printed on both sides. To the extent possible, the court encourages this.

(d) Combined Brief and Appendix.

(1) When a brief and appendix are combined, the cover must so indicate.

(2) If all designated material comprises no more than 100 pages, all of it may be included in the appendix, in which case it may be bound together with the appellant's or petitioner's initial brief and the brief must be filed as provided in Federal Circuit Rule 31(a).

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(e) Appendix in a Pro Se Case. If an appellant appearing pro se files an inadequate appendix, the appellee may file with its brief an appendix containing material permitted by Federal Circuit Rule 30(a)(2).

(f) Separate or Supplemental Appendix. If the appellant has failed to participate in determining the contents of an appendix or has filed an inadequate appendix, the United States or an officer or agency of the United States, as the appellee, may file a separate or supplemental appendix containing material permitted by Federal Circuit Rule 30(a)(2). The cover must be red. If the separate or supplemental appendix contains no more than 100 pages, it may be bound together with the appellee's initial brief. Except as provided in Federal Circuit Rule 30(e) and (f), no party may file a separate or supplemental appendix without leave of the court.

(g) Costs. The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in Federal Circuit Rule 30(b)(4) and of the appendix, including the separate segments authorized in Federal Circuit Rule 30(h), may be assessed as provided in Federal Rule of Appellate Procedure 30(b)(2).

(h) Appendices Containing Material Subject to a Protective Order.

(1) **Two Sets of Appendices.** If a party refers in appendices to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of appendices must be filed.

(A) Confidential set; labeling; number of copies. One set of appendices, consisting of 12 copies of the complete appendix, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." The confidential appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of any statutes imposing confidentiality or the entirety of any judicial or administrative protective order. Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) Nonconfidential set; labeling; number of copies. The second set of appendices, consisting of the original and four copies from which confidential matter has been deleted, must be labeled "nonconfidential" and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so

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stating. The table of contents of a nonconfidential appendix must describe the general nature of the confidential material that has been deleted.

(2) **Service.** Each party to the appeal must be served two copies of the nonconfidential appendices and, when permitted by the applicable protective order, two copies of the confidential appendices.

(3) **Availability to the Public.** The confidential appendices will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential appendices (except those protected by statute) should not be made available to the public.

(i) Appendix to Informal Brief. The appendix to an informal brief must contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case.

(j) Supplementary Video Recording Media Appendix. When the record on appeal or review has been perpetuated in whole or in part on video recording media in accordance with the rules of the court or agency, those video recording media portions of the record that would properly be included in the appendix if they were in documentary form may be included in a supplementary video recording media appendix. Four copies must be filed.

Practice Notes

FILING PAGE PROOF COPIES PROHIBITED; NOTICE OF NEW REFERENCES IN CROSS-APPELLANT'S REPLY BRIEF. Preparing the appendix requires extensive cooperation between the parties. Federal Circuit Rule 30, unlike Federal Rule of Appellate Procedure 30, does not permit filing page proof copies of briefs. An appendix prepared without careful attention to Federal Circuit Rule 30 may be rejected when submitted and may result in dismissal. To expedite preparing the joint appendix, a cross-appellant will notify the appellant promptly on being served appellant's reply brief whether the cross appellant will file a reply brief and, if so, whether it will refer to pages not referenced in the briefs already filed, listing any such pages.

DISPENSING WITH THE APPENDIX. A motion to dispense with the appendix will be granted only in extraordinary circumstances.

BRIEFS AND MEMORANDA. Briefs and memoranda presented to the trial court or agency may not ordinarily be included in their entirety in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.

TABLE OF CONTENTS OR INDEX. Parties are encouraged to include a table of contents or index in each volume of the appendix.

Federal Rules of Appellate Procedure

Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief ~~within 40 days after the record is filed~~. The appellee must serve and file a brief ~~within 30 days~~ after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 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.

Federal Circuit Rules

Rule 31. Serving and Filing Briefs

(a) Time for Service and Filing.

(1) Brief of Appellant or Petitioner.

(A) In an appeal from a court, the appellant must serve and file its initial brief within 60 days after docketing. Docketing a cross-appeal does not affect the time for serving and filing the appellant's initial brief.

(B) In an appeal from an agency, the petitioner or appellant must serve and file its initial brief within 60 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c). In an appeal from the Patent and Trademark Office, the appellant's brief is due within 60 days after the date of docketing.

(C) When two or more appellants or petitioners choose to proceed by filing a single brief, the initial brief must be served and filed no later than the latest date on which the initial brief of any of these appellants or petitioners is due.

(2) Brief of Appellee or Cross-Appellant. The appellee or cross appellant must serve and file its initial brief within 40 days after appellant's brief is served.

(3) Cross-Appeal. In a cross-appeal:

(A) the appellant must serve and file its reply brief within 40 days after cross-appellant's brief is served; and

(B) the cross-appellant must serve and file its reply brief within 14 days after appellant's reply brief is served.

(4) Single Brief Responding to Multiple Parties. A single brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of these briefs or, if no such brief is filed, after the time expires for filing the last of these briefs.

(5) Reply Brief; Oral Argument. A reply brief that is filed within 7 days of oral argument must be served so that it reaches all parties before the argument.

(b) Number of Copies. Except for briefs containing material subject to a protective order (*see* Federal Circuit Rule 28(d)), 12 copies of each brief, including the original or a copy designated as the original, must be filed with the court and 2 copies must be served on the principal counsel for each party, intervenor, and amicus curiae separately represented.

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Federal Circuit Rules

(c) Certain Motions Suspend the Due Date of the Next Brief. When a motion is filed that, if granted, would terminate the appeal, the time to serve and file the next brief due is suspended. If the motion is denied, the next brief becomes due, unless the court orders otherwise, within the balance of the time remaining under this rule when the motion was filed, but not fewer than 14 days from the date of the order.

(d) Consequence of Failure to File a Brief by Appellant or Petitioner. If the appellant fails to file an initial brief, the clerk is authorized to dismiss the case.

(e) Informal Brief; Time for Filing; Number of Copies.

(1) **Brief of Appellant or Petitioner.**

(A) In an appeal from a court, a pro se appellant filing an informal brief must serve and file the brief within 21 days after the appeal is docketed.

(B) In a petition for review or an appeal from an agency, a pro se petitioner or appellant filing an informal brief must serve and file the brief within 21 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) or within 21 days after docketing, whichever is later.

(2) **Brief of Appellee or Respondent.** An appellee or respondent filing an informal brief must serve and file the brief within 21 days after petitioner's or appellant's brief is served or within 21 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c), whichever is later.

(3) **Reply Brief.** When an informal brief is used, any reply brief must be served within 14 days after respondent's or appellee's brief is served.

(4) **Number of Copies.** An original and 3 copies of each informal brief must be filed with the court and one copy must be served on each party.

Practice Notes

REPLY BRIEFS DUE AT LEAST 7 DAYS BEFORE ORAL ARGUMENT; EXPEDITED SERVICE. The reply brief of the appellant (or cross-appellant in a cross-appeal) is due to be served and filed within 14 days of the preceding brief. The 7-day provision of Federal Rule of Appellate Procedure 31(a)(1) means that the reply period is automatically shortened if the end of the 14-day period is within 7 days of oral argument. The briefing schedule will not ordinarily run so close to oral argument, but if it does—because of extensions or otherwise—the reply brief must be filed early. Federal Circuit Rule 31(a)(5) provides that when that happens, a reply brief filed within 7 days of oral argument must be filed and served in an expedited manner. Regular mail would be inappropriate.

CONSOLIDATED APPEALS. In consolidated appeals in which more than one appellant filed a notice of appeal, the opening brief of all appellants will be governed by the docketing date of the last filed appeal.

CONSOLIDATED CROSS-APPEALS. In consolidated cross-appeals, the briefing schedule is computed according to the docketing date of the first appeal.

Federal Rules of Appellate Procedure

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

(a) Form of a Brief.

(1) **Reproduction.**

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

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

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

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

(A) the number of the case centered at the top;

(B) the name of the court;

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

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

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

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

(4) **Paper Size, Line Spacing, and Margins.** The brief must be on 8 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.

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

Federal Circuit Rules

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

(a) Nonconforming Brief. The clerk may refuse to file any brief that has not been printed or bound in conformity with Federal Rule of Appellate Procedure 32.

(b) Exclusion from Type-Volume Limitation. In addition to the items listed in Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) that are not counted in the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), the following items do not count toward that limitation:

(1) the certificate of interest;

(2) the statement of related cases; and

(3) the addendum in an initial brief of an appellant or petitioner.

(c) Informal Brief. An informal brief must be prepared on a form provided by the clerk. The form contains instructions for preparing and filing an informal brief. An informal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages must not exceed 30 pages of typewritten double-spaced text or its equivalent.

(d) Form of Appendix. Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides. To the extent possible, the court encourages this.

(e) Filing Corresponding Brief on Compact Disc. In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc - read only memory (CD-ROM), subject to the following requirements.

(1) **Consent; Motion.** Within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court a notice of intent to file a corresponding brief. If any other party does not consent, the party seeking to file a corresponding brief must promptly file a motion for leave with the court. If no response is filed within 7 days, the clerk will grant the motion for leave to file a corresponding brief. The court will deny a motion for leave to file a corresponding brief only if an opposing party demonstrates substantial prejudice.

(2) **Content.** A corresponding brief must be identical in content to the paper brief. A corresponding brief may

Federal Rules of Appellate Procedure

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

(B) A monospaced face may not contain more than 10 1/2 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) and (C).

(B) **Type-volume limitation.**

(i) A principal brief is acceptable if:
- it contains no more than 14,000 words;
- or it uses a monospaced face and contains no more than 1,300 lines of text.

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

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

(C) **Certificate of compliance.**

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:
- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

Federal Circuit Rules

provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles, and similar authorities. A corresponding brief must be self-contained and static.

(3) **Statement Concerning Instructions and Viruses.** A corresponding brief must be accompanied by a statement, preferably within or attached to the packaging, that:

(A) sets forth the instructions for viewing the brief and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the brief is virus-free.

(4) **Time for Filing.** A corresponding brief, if any, must be filed no later than the time for filing the joint appendix.

(5) **Filing and Service.** Except for the time of filing, a corresponding brief must be filed and served in the same manner and the same number of copies as the paper brief.

(6) **Single CD-ROM.** All parties to an appeal who intend to file a corresponding CD-ROM brief are encouraged to cooperate in placing all such briefs on a single CD-ROM.

(7) **Table of Contents.** Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix under Federal Rule of Appellate Procedure 30 and Federal Circuit Rule 30 and to all other parts of the record contained on the corresponding brief.

(8) **Labeling.** A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM.

(ii) Form 6 (Federal Circuit Form 19 herein) in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).

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

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

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

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

(c) Form of Other Papers.

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

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

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

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

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

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

Practice Notes

PREFERRED COVER. In addition to the requirements of Federal Rule of Appellate Procedure 32(a)(2)(D), the court encourages inclusion on the cover of the name of the judge, when applicable, from whose judgment appeal is taken.

PREFERRED BINDING. The court prefers that a brief be securely bound along the left margin to ensure that the bound copy will not loosen or fall apart; that a brief lie flat when open; that a ring-type binding, plastic or metal, or a binding that protrudes from the front and back covers (e.g., VeloBind) not be used; and that any externally positioned staple be covered with tape.

PRINT SIZE OF BRIEFS. Counsel should avoid photoreproduction that reduces the print size of the original smaller than the size required by Federal Rule of Appellate Procedure 32.

FOOTNOTES. The typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) apply to all text in the brief, including footnotes.

BRIEF COVERS IN CROSS-APPEALS. The color of the cover of the cross-appellant's principal brief is red. The color of the covers of appellant's reply brief is yellow and cross-appellant's reply brief is gray.

COPIES OF PATENT DOCUMENTS. Oversize patent documents reproduced in a brief or appendix should be photoreduced to 8 1/2 by 11 inches if readability can be maintained; otherwise, they should be folded and bound so they do not protrude from the covers of the brief or appendix.

ERRATA; CORRECTIONS TO BE MADE BY COUNSEL OR A PARTY. A brief may not be corrected merely by appending an errata sheet. Corrections, which must be limited to nonsubstantive matters, must be made by counsel or a party using suitable means directly in the briefs in the clerk's office. As a last resort, briefs may be replaced. Corrected or replacement briefs must be re-served, but the time to file a brief in response to a corrected or replaced brief runs from service of the original brief. A corrected or replacement brief should so indicate on the cover. Counsel or a party must file a "Notice of Correction" with the court and serve opposing counsel or unrepresented party, specifically delineating each correction. Any individual making corrections on briefs in the clerk's office must provide written authorization and present proper photo identification.

TESTIMONY IN THE APPENDIX. To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.

CERTIFICATE OF COMPLIANCE. Federal Rule of Appellate Procedure 32(a)(7)(C)(ii) states that the use of Federal Rules of Appellate Procedure Form 6 is sufficient to satisfy the requirements of Rule 32(a)(7)(C)(i). That form is reproduced as Federal Circuit Form 19. Parties are reminded that some software programs do not automatically include footnotes. When certain text is marked for word count or line count purposes, a party may need to separately mark text in footnotes and include those words or lines in the certified count. It is the responsibility of the filing party to ensure that its certificate of compliance is accurate.

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:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) **Copies Required.** If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

Rule 32.1. Citing Judicial Dispositions

(a) Disposition of Appeal, Motion, or Petition. Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36. A nonprecedential disposition shall bear a legend designating it as nonprecedential. A precedential disposition shall bear no legend.

(b) Nonprecedential Opinion or Order. An opinion or order which is designated as nonprecedential is one determined by the panel issuing it as not adding significantly to the body of law.

(c) Parties' Citation of Nonprecedential Dispositions. Parties are not prohibited or restricted from citing nonprecedential dispositions issued after January 1, 2007. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, and the like

based on a nonprecedential disposition issued before that date.

(d) **Court's Consideration of Nonprecedential Dispositions.** The court may refer to a nonprecedential disposition in an opinion or order and may look to a nonprecedential disposition for guidance or persuasive reasoning, but will not give one of its own nonprecedential dispositions the effect of binding precedent. The court will not consider nonprecedential dispositions of another court as binding precedent of that court unless the rules of that court so provide.

(e) **Request to Make an Opinion or Order Precedential; Time for Filing.** Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential. An original and 6 copies of the request must be filed with the court. The request will be considered by the panel that rendered the disposition. The requester must notify the court and the parties of any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases who have a stake in the outcome of a decision to make precedential must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.

(f) **Public Records.** All dispositions by the court in any form will be in writing and are public records.

Practice Notes

FILING AN OPINION. An opinion is issued when ready. No particular day of the week is considered a "down day." An opinion is not issued on a holiday, as defined in Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26. The judgment is entered on the day the opinion is filed with the clerk and mailed to the parties.

AVAILABILITY OF AN OPINION. The court's precedential and nonprecedential opinions are available in a variety of commercially available print and electronic media.

SUBSCRIPTIONS. Subscriptions to opinions are not available from the court, but are available from several commercial sources.

INFORMATION ABOUT AN OPINION. A disposition sheet containing information about decisions rendered, opinions issued, and actions taken on petitions for rehearing is posted daily in the Clerk's Office. The information about opinions is also available after 11:00 a.m. daily on a telephone recording; call 202-275-8030. On Fridays, the opinions for the entire week are included on the recording.

The court's opinions, rules, and other information are also available on the Federal Circuit web site: www.cafc.uscourts.gov

Copies of the court's opinions also may be purchased from the administrative services office of the court for $2.

REQUEST TO MAKE AN OPINION OR ORDER PRECEDENTIAL. It is improper to refer in a brief to a request to make an opinion or order precedential before the request has been acted on. The opinion or order that is subject to the request remains nonprecedential unless and until the court grants the request.

Federal Rules of Appellate Procedure

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.

Federal Circuit Rules

Rule 33. Appeal Conferences

(a) Settlement Discussion; Joint Statement of Compliance or Agreement to Dismiss.

(1) When all the parties are represented by counsel, within 7 days after the first two briefs in an appeal or the first three briefs in a cross appeal are served and filed, the parties through counsel must discuss settlement in appeals under 28 U.S.C. §§ 1292(c)(1)-(2); 1295(a)(1); 1295(a)(4)(A) [with respect to patent interferences only]; 1295(a)(4)(B) [with respect to inter partes proceedings only]; 1295(a)(4)(C) [with respect to civil actions under 35 U.S.C. § 146 only]; and 1295(a)(6).

(2) No later than the time for filing a separate appendix under Federal Circuit Rule 30(a)(4), the parties must file one copy of either of the following (select only one):

(A) a joint statement of compliance with this rule indicating that settlement discussions have been conducted; or

(B) an agreement that the proceeding be dismissed under Federal Rule of Appellate Procedure 42(b).

(b) Other Settlement Discussions. This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times, including after oral argument but before decision.

Rule 34. Oral Argument

(a) Reply Brief Instead of Oral Argument. If an appeal is not called for oral argument and the appellant declined to file a reply brief in anticipation of replying during oral argument, the appellant may file a reply brief within 14 days after the notice that the appeal will be submitted on the briefs.

(b) Time Allowed. The time allowed each side for oral argument will be determined by the court. The clerk will advise counsel of the time allotted. A party is not obliged to use all the time allowed. The court may terminate the argument if it deems further argument unnecessary.

(c) Visual Aids.

(1) **Visual Aids Used at a Trial or Administrative Hearing; Notice.** If counsel intends to use at oral argument a visual aid used at a trial or administrative hearing, counsel must advise the clerk by letter in an original and 3 copies and served no later than 14 days before argument of the proposed visual aid.

Federal Rules of Appellate Procedure

(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.

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

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

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

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(2) **Visual Aids Not Used at a Trial or Administrative Hearing; Notice.** If counsel intends to use at oral argument a visual aid that was not used at a trial or administrative hearing, counsel must give written notice to opposing counsel no later than 21 days before the oral argument.

(3) **Objection to the Use of Visual Aids.** An objection to the proposed use of a visual aid at oral argument must be in writing, served on all parties, and filed no later than 7 days before the oral argument. If a party objects, the parties' written submissions will be treated as a motion and response and will be referred to the panel.

(4) **Scope.** This rule does not preclude use of a chalkboard or equivalent during oral argument.

(5) **Disposition.** The clerk may dispose of visual aids not removed by the parties.

Practice Notes

COURT SESSIONS; HEARING DATE. Sessions of the court will be held as announced by the court. Sessions are held regularly in Washington, DC, but the court may sit elsewhere. Appeals are usually calendared for oral argument or submission without argument within 2 months after the briefs and joint appendix are filed. Counsel are advised of the firm date of hearing approximately 30 days before the session. Once scheduled, a case will not be postponed except on motion showing **compelling reasons.** Counsel should advise the clerk in writing within 30 days once briefing is completed of potential scheduling conflicts or as soon as they are known and should not wait until an actual conflict arises. Counsel requiring a courtroom accessible to the disabled, if oral argument is scheduled, should notify the clerk of this requirement when counsel files the entry of appearance. Counsel may elect to submit on the briefs to avoid delay in disposition or for any other reason.

ORAL ARGUMENT. Counsel must report to the clerk's office at least 30 minutes before the scheduled session and before proceeding to the courtroom. The members of the panel will have read the briefs before oral argument. Counsel should, therefore, emphasize the dispositive issue or issues. Time allotted for oral argument is ordinarily 15 minutes, although the court may vary this depending on the nature of the case. The court may extend the allotted time during the argument, or it may terminate the argument, if it deems it appropriate.

JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY. Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

PAMPHLET. When counsel are advised of the firm date of oral argument, they will be sent a pamphlet, Notice to Counsel on Oral Argument, which contains detailed instructions about the conduct of oral argument.

COPIES OF RECORDINGS AVAILABLE. Oral arguments are recorded for the convenience of the court. Copies of a recording may be purchased from the administrative services office of the court. Recordings are also available on the court's website www.cafc.uscourts.gov free of charge.

OPEN TO PUBLIC. Unless held in camera, oral arguments are open to the public. Those in attendance whose attire or behavior reflects adversely on the dignity of the proceedings will be asked to leave.

ORAL ARGUMENT ON MOTIONS. Oral argument is ordinarily not granted on motions. *See* Federal Rule of Appellate Procedure 27(e).

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

Rule 35. En Banc Determination

(a) General.

(1) **Arguing to a Panel to Overrule a Precedent.** Although only the court en banc may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing en banc. The panel will decide whether to ask the regular active judges to consider hearing the case en banc.

(2) **Frivolous Petition.** A petition for hearing or rehearing en banc that does not meet the standards of Federal Rule of Appellate Procedure 35(a) may be deemed frivolous and subject to sanctions.

(b) Statement of Counsel.

(1) **Petition for Hearing En Banc.** A petition that an appeal be initially heard en banc must contain the following statement of counsel at the beginning:

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

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

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

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

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

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

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

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

Federal Circuit Rules

/s/_____

ATTORNEY OF RECORD FOR _____

(2) **Petition for Rehearing En Banc.** A petition that an appeal be reheard en banc must contain one or both of the following statements of counsel at the beginning:

Based on my professional judgment, I believe the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedent(s) of this court: (cite specific decisions).

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

/s/_____

ATTORNEY OF RECORD FOR _____

(c) Petition for Hearing or Rehearing En Banc; Response.

(1) **Certificate of Interest.** A certificate of interest (*see* Federal Circuit Rule 47.4) must be included in a petition for a hearing or rehearing en banc or a response to such a petition. The certificate must appear immediately following the cover.

(2) **Items Excluded from Page Limitation.** The following items do not count against the page limitation in Federal Rule of Appellate Procedure 35(b)(2):

(A) the certificate of interest;

(B) the table of contents;

(C) the table of citations; and

(D) any addendum containing statutes, rules, regulations, and similar matters.

(3) **Rehearing En Banc: Copy of Opinion or Judgment.** A petition for a rehearing must include a copy of the opinion or the judgment of affirmance without opinion. The copy must be bound with the petition as an addendum.

(4) **Number of Copies.** If only nonconfidential copies are filed, an original and eighteen copies of a petition for hearing or rehearing en banc must be filed with the court. Two copies must be served on each party separately represented. If confidential and nonconfidential copies are filed, an original and eighteen copies of the confidential petition and original and three copies of the nonconfidential petition must be filed with the court. Two copies of the confidential

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petition and one copy of the nonconfidential petition must be served on each party separately represented.

(d) Combined Petition for Panel Rehearing and Rehearing En Banc. If a party chooses to file both a petition for panel rehearing, see Federal Circuit Rule 40, and a petition for a rehearing en banc, then the two must not be filed separately, they must be combined. A combined petition for panel rehearing and rehearing en banc must comply with Federal Circuit Rule 35(c). The cover of a combined petition must indicate that it is a combined petition.

(e) Contents of Petition for Hearing En Banc, Rehearing En Banc, and Combined Petition; Response.

(1) **Petition for Hearing En Banc.** The preferred contents and organization for a petition for a hearing en banc are:

(A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(B) the certificate of interest (*see* Federal Circuit Rule 47.4);

(C) the table of contents;

(D) the table of authorities;

(E) the statement of counsel required in Federal Circuit Rule 35(b);

(F) the argument; and

(G) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(2) **Petition for Rehearing En Banc.** The preferred contents and organization for a petition for a rehearing en banc are:

(A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(B) the certificate of interest (*see* Federal Circuit Rule 47.4);

(C) the table of contents;

(D) the table of authorities;

(E) the statement of counsel required in Federal Circuit Rule 35(b);

(F) the argument;

(G) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and

(H) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(3) **Combined Petition for Panel Rehearing and Rehearing En Banc.** The preferred contents and organization for a combined petition for panel rehearing and a rehearing en banc are:

(A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(B) the certificate of interest (*see* Federal Circuit Rule 47.4);

(C) the table of contents;

(D) the table of authorities;

(E) the statement of counsel required in Federal Circuit Rule 35(b);

(F) the points of law or fact overlooked or misapprehended by the panel of the court;

(G) the argument in support of a rehearing;

(H) the argument in support of rehearing en banc;

(I) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and

(J) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(4) **Response.** If the court requests a response, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization are:

(A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(B) the certificate of interest (*see* Federal Circuit Rule 47.4);

(C) the table of contents;

(D) the table of authorities;

(E) argument against a rehearing, rehearing en banc, or both; and

(F) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(f) Additional Copies of Briefs in Cases to be Heard En Banc. Within 7 days after the order granting a rehearing en banc, counsel must file 30 sets of the briefs that were before the panel that initially heard the appeal, unless the court directs otherwise.

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(g) Amicus Curiae Brief. Except by the court's permission or direction, an amicus curiae brief submitted in connection with a petition for hearing en banc, a petition for rehearing en banc, or a combined petition for panel rehearing and rehearing en banc, must be accompanied by a motion for leave and must not exceed 10 pages. Except by the court's permission or direction, any brief amicus curiae or any motion for leave to file a brief amicus curiae must be filed within 14 days of the date of filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief or motion for leave to file the brief must be filed within 14 days of the date of filing of the petition.

Practice Notes

HEARING OR REHEARING EN BANC. The court may sua sponte order that an appeal be initially heard or be reheard en banc. The panel or a judge on the panel that is considering a case may at any time request the active judges of the court to hear or rehear the case en banc with or without further briefs or argument by counsel.

REHEARING EN BANC; SENIOR JUDGES. If a senior judge participated in the original hearing and disposition of a case for which rehearing en banc is granted, that senior judge may participate fully in the rehearing.

COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC. When a combined petition for panel rehearing and petition for rehearing en banc is filed, the petition for panel rehearing is decided first in the same manner as a petition for panel rehearing without an accompanying petition for rehearing en banc. If the panel grants the requested relief, the petition for rehearing en banc is deemed moot.

PETITION FOR REHEARING EN BANC REFERRED TO PANEL. A petition for rehearing en banc is presumed to request relief that can be granted by the panel that heard the appeal, and action on the petition for rehearing en banc will be deferred until the panel has an opportunity to grant the relief requested.

TIMELINESS. A petition for hearing or rehearing en banc is filed when the court receives it, not on mailing. The clerk will return an untimely petition for hearing or rehearing en banc.

NONPRECEDENTIAL OPINIONS. A petition for rehearing en banc is rarely appropriate if the appeal was the subject of a nonprecedential opinion by the panel of judges that heard it.

WRIT OF CERTIORARI. Filing a petition for a panel rehearing or for rehearing en banc is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.

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 36. Entry of Judgment – Judgment of Affirmance Without Opinion

The court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following conditions exist and an opinion would have no precedential value:

(a) the judgment, decision, or order of the trial court appealed from is based on findings that are not clearly erroneous;

(b) the evidence supporting the jury's verdict is sufficient;

(c) the record supports summary judgment, directed verdict, or judgment on the pleadings;

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(d) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or

(e) a judgment or decision has been entered without an error of law.

Practice Note

SEPARATE JUDGMENT NOT PREPARED IN CERTAIN INSTANCES. A separate judgment is not prepared when a case is dismissed on consent or on motion or for failure to prosecute. The order of dismissal serves as the judgment when 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.

Practice Notes

WARNING AGAINST FILING OR PROCEEDING WITH A FRIVOLOUS APPEAL OR PETITION. The court's early decision in Asberry v. United States, 692 F.2d 1378 (Fed. Cir. 1982), established the policy of enforcing this rule vigorously. Since then, many precedential opinions have included sanctions under the rule. Damages, double costs, and attorney fees, singly or in varying combinations, have been imposed on counsel, parties, and pro se petitioners for pursuing frivolous appeals.

CHALLENGING A FRIVOLOUS APPEAL. If an appellee or respondent considers an appeal or petition frivolous, the appellee or respondent must file a separate motion with that allegation. The assertion that an appeal is frivolous must be accompanied by citation to the opposing brief or the record below with clear argument as to why those citations establish that the appeal is frivolous. A party whose case has been challenged as frivolous is expected to respond or to request dismissal of the case.

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;

Rule 39. Costs

(a) Notice of Entitlement to Costs. When the clerk provides notice of judgment or order disposing of an appeal, the clerk must advise which party or parties are entitled to costs.

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(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 supersedeas bond or other bond to preserve rights pending appeal; and

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

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(b) Bill of Costs; Copies; Objection. A party must serve the bill of costs on the form prescribed by the court and must file an original and three copies with the court. An objection to a bill of costs must not exceed 5 pages and must be filed in an original and three copies and served on the other parties.

Practice Notes

COSTS WHEN THE UNITED STATES IS A PARTY; COSTS IN EX PARTE APPEALS FROM THE PATENT AND TRADEMARK OFFICE. 28 U.S.C. § 2412(a) authorizes costs to be taxed against the United States; thus, costs (as defined in 28 U.S.C. § 1920) may be awarded both for and against the United States in this court. An ex parte patent appeal under 35 U.S.C. § 141 and an ex parte trademark appeal under 15 U.S.C. § 1071 are not within the scope of 28 U.S.C. § 2412, however, and costs in these appeals are not awarded for or against the Patent and Trademark Office.

LIMIT ON PRINTING COSTS. The costs taxable under Federal Rule of Appellate Procedure 39 are limited to the costs of preparing typewritten briefs (even if a party elects to have a brief printed) and of copying briefs and appendices.

CURRENT RATES. The following rates are the current maximum allowable costs:

$6.00 per page for the table of page numbers of designated materials, the originals of briefs, and the table of contents for the appendix (whether printed, typewritten, or word processed);

$0.08 per page for copying and collating; and

$2.00 per copy for covers and binding.

ALLOWABLE COSTS. Costs may be billed for 16 copies of briefs and appendices, plus 2 copies for each additional party, plus any copies required or allowed, e.g., confidential briefs or appendices. The cost of service copies of the table or physical compilation of the designated materials may also be billed. Any other cost billed must be separately justified. The total billed for any item must be limited to the lesser of actual or allowable costs. Actual cost of briefs and appendices prepared in-house includes word processing, copying, and binding, at the amount normally billed to a client for these services. The United States may assume its actual costs are the allowable costs. The costs of correcting a nonconforming brief are not taxable. Counsel are urged to stipulate to costs.

PAYMENT OF COSTS TAXED. Pay the party or parties in whose favor costs are taxed by check sent to counsel for the party or to the party if the party appeared pro se. Do not involve the court in collection matters.

DOCKETING FEE AND COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994. No costs are taxed, and the docketing fee does not have to be paid, in a petition for review of a decision of the Merits Systems Protection Board if the underlying appeal involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)). 38 U.S.C. § 4323. The petitioner must complete form 6B to inform the court that the case involves a claim under USERRA.

Rule 40. Petition for Panel Rehearing

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

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

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

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

Rule 40. Petition for Panel Rehearing

(a) Contents of Petition for Panel Rehearing. The preferred contents and organization for a petition for panel rehearing are:

(1) white cover or first page with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(2) the certificate of interest (*see* Federal Circuit Rule 47.4);

(3) the table of contents;

(4) the points of law or fact overlooked or misapprehended by the court;

(5) the argument;

(6) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and

(7) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

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

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

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

(C) issue any other appropriate order.

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

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(b) Addendum. A copy of the opinion or judgment of affirmance without opinion sought to be reheard must be bound with the petition for panel rehearing as an addendum.

(c) Items Excluded from Page Limitation; Other Material.

(1) **Items Excluded.** The following items do not count against the page limitation in Federal Rule of Appellate Procedure 40(b):

(A) the certificate of interest;

(B) the table of contents;

(C) the table of citations;

(D) the addendum containing a copy of the opinion or judgment of affirmance without opinion; and

(E) any addendum containing statutes, rules, regulations, and similar matters.

(2) **Other Material.** Material not listed in this Federal Circuit Rule 40 may not be included in the addendum or in an appendix without leave of the court.

(d) Answer. If the court requests an answer, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization for the answer are:

(1) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);

(2) the certificate of interest (*see* Federal Circuit Rule 47.4);

(3) the table of contents;

(4) the argument; and

(5) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(e) Time. Except for a civil case in which the United States or its officer or agency is a party, a petition for panel rehearing may be filed within 30 days after entry of judgment. If the United States or its officer or agency is a party, a petition for panel rehearing may be filed within 45 days after entry of judgment. The time limits set forth in this rule also apply to a motion for panel reconsideration of a dispositive panel order.

(f) Informal Petition for Panel Rehearing; Answer.

(1) **Informal Petition.** A pro se party may file an original and 3 copies of an informal petition for panel rehearing in letter form not to exceed 15 typewritten double-spaced pages, attaching to each a copy of the opinion or judgment sought to be reheard.

(2) **Informal Answer.** If the court requests an answer to an informal petition for panel rehearing, or if the court

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requests a pro se party to answer a formal petition for panel rehearing, the answer may be informal, following the standards prescribed for informal briefs. The informal answer may not exceed 15 typewritten double-spaced pages, and must be filed in an original and 3 copies.

(g) Amicus Curiae Brief. Except by the court's permission or direction, an amicus curiae brief submitted in connection with a petition panel rehearing must be accompanied by a motion for leave to file and must not exceed 10 pages. Except by the court's permission or direction, any brief amicus curiae or any motion for leave to file a brief amicus curiae must be filed within 14 days of the date of filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief or motion for leave to file the brief must be filed within 14 days of the date of filing of the petition.

Practice Notes

PETITION FOR PANEL REHEARING NOT FILED WHEN MAILED. A petition for panel rehearing, unlike a brief, is not deemed filed when mailed; it must be received by the clerk within the time fixed for filing. The time provided in Federal Circuit Rule 40(e) runs from the date the judgment is entered (*see* Federal Rule of Appellate Procedure 36), not from the date counsel receives the opinion or order. Therefore, Federal Rule of Appellate Procedure 26(c) does not apply. The clerk may return an untimely petition for panel rehearing.

ACTION BY THE COURT. When a petition for panel rehearing is filed, the clerk will transmit copies to the panel that decided the case. The clerk will enter an order denying the petition unless a majority of the panel agrees to rehear the case. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the court directs.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

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

(b) When Issued. The court's mandate must issue 7 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.

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

(d) Staying the Mandate.

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

Rule 41. Issuance of Mandate

An order dismissing a case on consent or for failure to prosecute, or dismissing, remanding, or transferring a case on motion, will constitute the mandate. The date of the certified order is the date of the mandate. In an appeal dismissed or transferred by the court sua sponte in an opinion, the mandate will issue in regular course.

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(2) **Pending Petition for Certiorari.**

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

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

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

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

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Practice Note

RELATION OF MANDATE TO APPLICATION FOR CERTIORARI; STAY. That a mandate has issued does not affect the right to apply to the Supreme Court for a writ of certiorari. Consequently, a motion to stay the mandate should advance reasons for the stay beyond the mere intention to apply for certiorari, *e.g.*, to forestall action in the trial court or agency that would necessitate a remedial order of the Supreme Court if the writ of certiorari were granted.

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.

Practice Note

REQUEST TO WITHDRAW APPEAL OR PETITION. An appellant or petitioner may request to withdraw an appeal or petition at any time before decision, and the request will be granted in all but the most unusual circumstances. An opposing party is ordinarily expected to consent to the withdrawal on terms requiring each party to bear its own costs on appeal. A stipulation of the parties that a case is withdrawn may refer to a settlement agreement, but the stipulation should not include the terms of the settlement.

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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.

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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.

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Rule 45. Clerk's Duties

(a) Dismissal by Clerk; Reconsideration. The clerk may dismiss an appeal for a failure to follow the Federal Rules of Appellate Procedure or these Federal Circuit Rules. A party may move that the court reconsider such dismissal. A motion for reconsideration must:

(1) be filed within 14 days after issuance of the order of dismissal;

(2) be in the form prescribed by Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27; and

(3) not exceed 5 pages.

(b) Informal Motion for Reconsideration. A pro se party may file an original and 3 copies of an informal motion, which may be in the form of a letter, for reconsideration of the dismissal. The informal motion must not exceed 5 typewritten double-spaced pages. A copy of the dismissal order must be attached to the original and each copy of the informal motion.

(c) Authority to Enter Orders. The clerk may enter an order "For the Court" only when authorized by these rules or at the direction of a judge or the court.

(d) Communication with the Court. All correspondence and telephone calls about cases and motions and all press inquiries must be directed to the clerk.

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(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."

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Rule 46. Attorneys

(a) Eligibility. An attorney is eligible for admission to the bar of this court if that attorney is of good moral and professional character and is admitted to practice before and of good standing in:

(1) any of the courts listed in Federal Rule of Appellate Procedure 46(a);

(2) the United States Court of International Trade;

(3) the United States Court of Federal Claims;

(4) the United States Court of Appeals for Veterans Claims; or

(5) the District of Columbia Court of Appeals.

(b) Procedure for Admission.

(1) **Motion in Open Court.** An attorney may be admitted to the bar in open court by appearing personally with a sponsor who is a member of the bar of this court and who states the applicant's qualifications and moves the admission. Motions for admission to the bar will be entertained at the opening of each session of court.

(2) **Written Motion by Member of the Court's Bar.** An attorney may be admitted on written motion of

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(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 Administra-

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a member of the bar of the court who states the applicant's qualifications.

(3) **Written Motion by Attorney.** An attorney may be admitted on that attorney's own motion, accompanied by a certificate of good standing from a court listed in Federal Rule of Appellate Procedure 46(a) or Federal Circuit Rule 46(a). The certificate must be dated within 30 days of the motion for admission and must bear the seal of the issuing court. A written motion for admission must be submitted on a form approved by this court. The clerk will furnish the form.

(4) **Oath.** Each attorney admitted to the bar of this court must take an oath prescribed by the court.

(c) Admission Fee. The fee for admission to the bar of the court is $50, in addition to the Judicial Conference fee of $150, payable to the clerk, for which the applicant will receive a certificate of admission. For a duplicate certificate, the fee is $10, in addition to the Judicial Conference fee of $15.

(d) Government Attorney. An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney's official duties without formal admission to the bar of the court.

(e) Change of Name, Address, or Telephone Number. An attorney admitted to the bar of this court must promptly notify the clerk of a change of name, address, or telephone number.

(f) Disciplinary Action. Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

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tive Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

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

(b) **Procedure When There Is No Controlling Law.** A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

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Rule 47.1. Sessions and Places of Holding Court

(a) Sessions. Sessions of the court will be held as the court announces.

(b) Places of Holding Court. The court may hold sessions in any place named and permitted in 28 U.S.C. § 48.

Rule 47.2. Panels

(a) Panels. Cases and controversies will be heard and determined by a panel consisting of an odd number of at least three judges, two of whom may be senior judges of the court.

(b) Assignment of Cases. Assignment of cases to panels will be made so as to provide each judge with a representative cross-section of the fields of law within the jurisdiction of the court.

Rule 47.3. Appearance

(a) Party and Amicus Curiae Must Be Represented; Pro Se Party; Attorney of Record; Of Counsel. An individual (not a corporation, partnership, organization, or other legal entity) may choose to be represented by counsel or to represent himself or herself pro se, but may not be represented by a nonattorney. An individual represented by counsel, each other party in an action, each party seeking to intervene, and each amicus curiae must appear through an attorney authorized to practice before this court and must designate one attorney as the principal attorney of record. Any other attorney assisting the attorney of record must be designated as "of counsel." Every attorney named on a brief must enter an appearance, except that the filing of an entry of appearance does not apply to government officials who, by reason of their status as supervisors or heads of offices, are listed on briefs in their ex officio capacity. Documents that are sent by the court will be sent only to the principal attorney of record.

(b) Petition for Writ of Mandamus or Prohibition. The attorney whose name, address, and telephone number appears first on a petition for a writ of mandamus or a writ of prohibition will be deemed attorney of record.

(c) Appearance; Contents; Service of Papers Before Appearance; Withdrawal of Counsel.

(1) **Appearance.** Each attorney who intends to participate in an appeal must file, within 14 days of docketing, an entry of appearance on the form provided by the clerk. A pro se party must also file an entry of appearance unless all the necessary information appears on the petition for review or notice of appeal. Any attorney retained for the case later must file an entry of appearance within 14 days after being retained. An

attorney representing a party seeking or permitted to intervene, and for each amicus curiae, must file an entry of appearance with the motion for leave to intervene (if required) or with the brief amicus curiae. If an attorney's entry of appearance is first submitted within 30 days of the scheduled argument, then the attorney must file a motion for leave to file the entry of appearance. The motion for leave will be transmitted to the merits panel assigned to the case.

(2) **Contents.** The appearance must include the name of the party or parties represented and the name, address, and telephone number of the attorney or the pro se party. An attorney's appearance must show the name of the law firm or public or quasi-public legal office with which the attorney is associated. A new entry of appearance must be filed and served any time the information on record changes.

(3) **Certificate of Interest.** A certificate of interest must be filed with the first-filed entry of appearance. *See* Federal Circuit Rule 47.4. Both documents are due within 14 days of the date of docketing of the appeal or petition.

(4) **Service of Papers Before Appearance.** Until an attorney files a written entry of appearance, service of all papers must be made on the attorney of record in the proceeding below at the last known address. In a pro se case, unless an attorney files an entry of appearance, service of all papers must be made on the pro se party at the last known address.

(5) **Withdrawal of Counsel.** An attorney other than a government attorney who has been properly replaced, may not withdraw from representing a party without notice to the party, filing a motion with the court, and obtaining the court's consent.

(d) Signature. At least one copy of each brief, petition, motion, application, notice, or other paper presented for filing must contain the signature of the pro se party or the attorney who has entered an appearance. When no attorney appearing for a party is available to sign, any person having actual authority may sign on behalf of the attorney of record, attaching an affidavit of authority or an

Practice Notes

FORM FOR ENTRY OF APPEARANCE. *See* Form 8, for a form for entry of appearance.

FILINGS REQUIRING SIGNATURE AND APPEARANCE. After docketing, the clerk will accept no filing required to be signed unless it is signed by a pro se party or an attorney – who is a member of the bar, if required under Federal Circuit Rule 46 – and unless the pro se party or attorney has entered an appearance in the case.

NEW COUNSEL ON APPEAL. New counsel on appeal should provide a copy of the entry of appearance form filed in this court to the lower court or agency to expedite service of the certified list and other communications.

unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.

Rule 47.4. Certificate of Interest

(a) Purpose; Contents. To determine whether recusal by a judge is necessary or appropriate, an attorney – except an attorney for the United States – for each party, including a party seeking or permitted to intervene, and for each amicus curiae, must file a certificate of interest. The certificate of interest must be filed within 14 days of the date of docketing of the appeal or petition, except that for an intervenor or amicus curiae, the certificate of interest must be filed with the motion and with the brief. A certificate of interest must be in the form set forth in the appendix to these rules, and must contain the information below in the order listed. Negative responses, if applicable, are required as to each item on the form.

(1) The full name of every party or amicus represented in the case by the attorney.

(2) The name of the real party in interest if the party named in the caption is not the real party in interest.

(3) The corporate disclosure statement prescribed in Federal Rule of Appellate Procedure 26.1.

(4) The names of all law firms and the partners and associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

(b) Filing. The certificate must be filed with the entry of appearance. The certificate – first filed – must also be filed with each motion, petition, or response thereto, and in each principal brief and brief amicus curiae.

(c) Changes. If any of the information required in Federal Circuit Rule 47.4(a) changes after the certificate is filed and before the mandate has issued, the party must file an amended certificate within 7 days of the change.

Rule 47.5. Statement of Related Cases

Each principal brief must contain a statement of related cases indicating:

(a) whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court, stating:

(1) the title and number of that earlier appeal;

(2) the date of decision;

(3) the composition of the panel; and

(4) the citation of the opinion in the Federal Reporter; and

(b) the title and number of any case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal. If there are many related cases, they may be described generally, but the title and case number must be given for any case known to be pending in the Supreme Court, this court, or any other circuit court of appeals.

Rule 47.6. [Reserved]

Rule 47.7. Attorney Fees and Expenses Incurred in This Court

(a) Time for Filing; Response.

(1) **Generally.** The court may award attorney fees and expenses when authorized by law. An award may be made by the court on its own motion or on application of a party.

(2) **Time for Filing.** An application for an award of attorney fees and expenses must be served and filed within the time prescribed by the statute authorizing the award. If the statute does not prescribe a time, the application must be made within 30 days after entry of the judgment or order denying rehearing, whichever is later. However, if a petition for writ of certiorari is filed, the application will not be due until 30 days after all proceedings in the Supreme Court are concluded.

(3) **Response.** No response may be filed to an application for attorney fees and expenses unless directed by the court, but no application will be granted without the court giving the party an opportunity to submit a response.

(4) **Award on the Court's Motion.** A party awarded attorney fees and expenses by the court on its own motion must file and serve a bill of attorney fees and expenses containing the information required in Federal Circuit Rule 47.7(b)(2)(A)-(C) with the bill of costs authorized by Federal Rule of Appellate Procedure 39. Any objection must be filed within the time prescribed in Federal Rule of Appellate Procedure 39.

(b) Content of Application.

(1) **Application under the Equal Access to Justice Act.** An application for attorney fees and expenses under the Equal Access to Justice Act must be made on Form 20.

(2) **Other Applications.** Each other application for attorney fees and expenses must cite the authority for an award and must indicate how the prerequisites for an award, including timeliness, are met. In addition,

each application must contain a statement, under oath, specifying:

(A) the nature of each service rendered;

(B) the amount of time expended rendering each type of service; and

(C) the customary charge for each type of service rendered.

Rule 47.8. In Camera Proceedings

On motion showing that the interest of justice requires it, the court may sit in camera, seal its record, or both.

Rule 47.9. Petition for Judicial Review Under 5 U.S.C. § 7703(d)

(a) Time for Filing. A petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator pursuant to 5 U.S.C. § 7703(d) must be filed by the Director of the Office of Personnel Management within 60 days after the date the Director received notice of the final order or decision of the Board or arbitrator.

(b) Contents. The Director's petition must contain:

(1) a statement of jurisdiction (*see* Federal Rule of Appellate Procedure 28(a)(4));

(2) the Director's determination that the Board or arbitrator erred in interpreting a civil service law, rule, or regulation affecting personnel management and the reasons supporting the determination;

(3) the Director's determination that the decision or order of the Board or arbitrator will have a substantial impact on a civil service law, rule, regulation, or policy directive, and the reasons supporting the determination; and

(4) an appendix including a copy of the order or decision for which review is sought and any relevant portion of the record on review; the appendix may also include documents not part of the record on review that are relevant to the determination that the decision will have substantial impact.

(c) Length of Petition, Answer and Reply; Separate Brief. A petition or answer must not exceed 20 pages. A reply must not exceed 10 pages. A separate brief supporting a petition, answer, or reply is not permitted.

(d) Service and Filing; Number of Copies. The Director must file with the clerk an original and 3 copies of the petition with proof of service and must serve a copy of the petition on the named respondents, all other parties before the

Board or arbitrator, and the Board or arbitrator.

(e) Notice of Docketing. On receipt, the clerk will enter the petition on the miscellaneous docket and notify the Director, the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator of the docketing date.

(f) Appearance by Other Than the Named Respondent. The Board or arbitrator and any other party to the proceeding desiring to participate in the proceeding in this court must enter an appearance. Anyone entering an appearance will be deemed a respondent.

(g) Answer; Appendix; Reply. Within 21 days after service of a petition, any respondent may file an answer. The answer may include an appendix containing any relevant portion of the record on review not included in the appendix to the petition; the appendix may also include documents or affidavits not part of the record on review that are relevant to the determination that the decision will have substantial impact. Within 14 days after service of an answer, the Director may file a reply.

(h) Action by the Court. Granting a petition for review is at the discretion of the court. On receipt of an order granting review, the clerk must enter the petition for review on the general docket. The petition for review will then proceed as if filed under Federal Rule of Appellate Procedure 15.

Rule 47.10. Dismissal of a Bankruptcy Stay Case

An appeal stayed in accordance with the bankruptcy stay provisions of 11 U.S.C. § 362 may be dismissed by the clerk without prejudice to the appellant reinstating the appeal within 30 days after the stay is lifted or the bankruptcy proceeding ends.

Rule 47.11. Quorum

A quorum is a simple majority of a panel of the court or of the court en banc. In determining whether a quorum exists for en banc purposes, more than half of all circuit judges in regular active service, including recused or disqualified judges, must be eligible to participate in the en banc process. If a judge of a panel that has heard oral argument or taken under submission any appeal, petition, or motion is unable to continue with consideration of the matter because of death, illness, resignation, incapacity, or recusal, the remaining judges will determine the matter if they are in agreement and no remaining judge requests the designation of another judge. If the remaining judges are not in agreement or if any remaining judge requests the designation of another judge, the remaining judges will promptly advise the chief judge who will secure another judge to sit with the panel. The clerk will advise the

parties of the designation, but no further argument will be had or briefs received unless ordered by the court.

Rule 47.12. Action for Judicial Review Under 38 U.S.C. § 502

(a) Time for Filing. An action for judicial review under 38 U.S.C. § 502 of a rule and regulation of the Department of Veterans Affairs must be filed with the clerk within 60 days after issuance of the rule or regulation or denial of a request for amendment or waiver of the rule or regulation.

(b) Parties. Only a person or persons adversely affected by the rule or regulation or the rulemaking process may bring an action for judicial review. The Secretary of Veterans Affairs must be named the respondent.

(c) Contents. The action for judicial review must describe how the person or persons bringing the action are adversely affected and must specifically identify either:

(1) the rule, regulation, opinion, or order of the Department of Veterans Affairs separately stated and published in the Federal Register pursuant to 5 U.S.C. § 552(a)(1) on which judicial review is sought; or

(2) the notice-and-comment rulemaking process by the Department of Veterans Affairs pursuant to 5 U.S.C. § 553 on which judicial review is sought.

(d) Procedure. Except as provided in this rule, the procedures applicable to an action for judicial review under 38 U.S.C. § 502 are the same as those for a petition for review under Federal Rule of Appellate Procedure 15.

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.

Rule 49. Seal of the Court

The clerk is the keeper of the seal, which is the means of authentication of all records and certificates issued from this court.

Rule 50. Employee and Former Employee

No employee of the court may engage in the practice of law. No former employee of the court may participate or assist, by representation, consultation, or otherwise, in any case that was pending in the court during the period of employment. For purposes of this rule, a person serving at the court as an intern, whether in a judge's chambers or otherwise, is considered an employee of the court, whether such service is for pay, for law school credit, or voluntary.

Practice Note

ALL FUTURE PARTICIPATION AND ASSISTANCE PROHIBITED. A former employee of the court is prohibited from participating or assisting in any case after employment with the court if the case was before this court at any point during the person's employment. Thus, for example, a former employee is prohibited from participating or assisting in a case in a trial forum, agency, or other forum if the case was before this court during the person's employment and was remanded by this court or otherwise continued in the trial forum, agency, or other forum for any other reason. A former employee is also prohibited, for example, from participating or assisting in the case if it is subsequently before this court again or if it is before the Supreme Court of the United States.

Rule 51. Complaint of Judicial Misconduct or Disability

The procedures for processing a complaint of judicial misconduct or disability are pursuant to 28 U.S.C. § 351, *et seq.* The clerk will provide copies of these procedures on request.

Rule 52. Fees

(a) Judicial Conference Schedule of Fees.

(1) **General.** The fees charged by the clerk must be the fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913 or by this rule. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in subsections (3)(B), (D) and (E) of this rule. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

(2) **Docketing Fee.** The docketing fee will be paid to the trial court clerk on filing a notice of appeal in that court. The docketing fee will be paid to this court's clerk on filing any other proceeding, including an appeal or petition for review from the Patent and Trademark Office or the Merit Systems Protection Board, or any other agency, and including an extraordinary writ.

(3) **Judicial Conference Schedule of Fees.**

(A) For docketing a case on appeal or review, or docketing any other proceeding, $450. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(B) For every search of the records of the court and certifying the results thereof, $26. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(C) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, $9.

(D) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(E) For reproduction of recordings of proceedings, regardless of the medium, $26, including the cost of materials. This fee shall apply to services rendered on behalf of the United States if the reproduction of the recording is available electronically.

(F) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), FRAP, a flat fee of $71.

(G) For each microfiche or microfilm copy of any court record, where available, $5.

(H) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

(l) For a check paid into the court which is returned for lack of funds, $45.

(J) The court may charge and collect a fee of $200 per remote location for counsel's requested use of videoconferencing equipment in connection with each oral argument.

(K) For original admission of attorneys to practice, $150 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $15. Federal Circuit Rule 46 requires an additional local fee of $50 for admission and $10 for a duplicate certificate.

(4) **Electronic Public Access Fee Schedule.** The fees for electronic public access are set forth in the note following 28 U.S.C. § 1913.

(b) Copies of Opinions. For each copy of an opinion (including any separate or dissenting opinions), the fee is $2. No charge may be assessed for the following:

(1) a copy of the opinion furnished to each party of record in the case; and

(2) copies of opinions furnished persons and organizations whose names are on a public interest list established by order of the court.

(c) Fees To Be Paid in Advance. The clerk is not required to docket any proceeding or perform any other service until all fees due the clerk are paid unless a party has been granted leave to proceed in forma pauperis.

(d) Dismissal of Appeal or Petition for Failing To Pay Docketing Fee. If a proceeding is docketed without prepayment of the docketing fee, the appellant or petitioner must pay the fee within 14 days after docketing. If the clerk does not receive the docketing fee, a completed motion for leave to proceed in forma pauperis, or a completed Form 6B within 14 days of the date of docketing of the appeal or petition, the clerk is authorized to dismiss the appeal or petition.

(e) Checks. Checks in payment of all fees must be made payable to the Clerk of Court, United States Court of Appeals for the Federal Circuit.

Practice Notes

NO REFUND OF FEES. Fees are deposited with the Treasury Department on receipt. The clerk cannot refund any fee once it is deposited.

CHECKS AND DRAFTS. Checks and drafts are accepted subject to collection, and full credit will be given only when the check or draft is accepted by the financial institution on which it is drawn.

DOCKETING FEE AND COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994. The docketing fee does not have to be paid, and no costs are taxed, in a petition for review of a decision of the Merits Systems Protection Board if the underlying appeal involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)). 38 U.S.C. § 4323. The petitioner must complete Form 6B to inform the court that the case involves a claim under USERRA.

Rule 53. Judicial Conference

There will be held, at a time and place designated by the chief judge, a conference to consider the business of the court and to advise means of improving the administration of justice. The chief judge presides at the conference. All members of the bar of the court may be members of the conference and may participate in its discussions and deliberations. Registrants must pay a fee to be applied to the payment of expenses of the conference.

Rule 54. Library

(a) General. The library in the Howard T. Markey National Courts Building serves this court and the United States Court of Federal Claims.

(b) Authorized Users. The library's authorized users are limited to:

(1) the judges of the courts;

(2) their court staff;

(3) members of the bars of either court;

(4) pro se litigants with pending cases in either court;

(5) attorneys employed by the United States; and

(6) employees of the Administrative Office of the United States Courts and the Federal Judicial Center.

(c) Suspension; Closing. The librarian may suspend an authorized user for cause and may, when warranted, close the library to all except judges and the court staff.

(d) Books: Check Out and Removal. Only judges and the court staff may check out books from the library. Library books must not be removed from the premises of the Howard T. Markey National Courts Building without express permission from the librarian.

FEDERAL CIRCUIT ATTORNEY DISCIPLINE RULES

FEDERAL CIRCUIT ATTORNEY DISCIPLINE RULES

INTRODUCTION

The United States Court of Appeals for the Federal Circuit, in furtherance of its power and responsibility under Federal Rule of Appellate Procedure 46 and its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following Attorney Discipline Rules.

The rules contemplate that a disciplinary proceeding stemming from most misconduct that occurs before a merits or motions panel will be conducted by that panel. A proceeding stemming from more serious misconduct, based on conviction of a serious crime, or imposing reciprocal discipline will be conducted by a Standing Panel on Attorney Discipline composed of three judges. In conformance with Federal Rule of Appellate Procedure 46, a hearing, if requested, will be available in any proceeding. The record in an ongoing proceeding will be confidential unless otherwise ordered. At the conclusion of a proceeding in which discipline is imposed, the final order and the record will be made a public record. A final order issued by a panel will be reviewable in a manner analogous to review under Federal Rules of Appellate Procedure 35 and 40.

Rule 1. Definitions

(a) **Another Court.** Another court means any Court of the United States or any court of a state, the District of Columbia, a territory, or a commonwealth of the United States. For purposes of these rules, another court also includes the United States Court of Appeals for Veterans Claims and the United States Court of Federal Claims.

(b) **Agency.** Agency means any agency of the United States as defined in 5 U.S.C. § 551.

(c) **Serious Crime.** Serious crime means (1) any felony or (2) any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction occurred, is (i) interference with the administration of justice, (ii) false swearing, (iii) misrepresentation, (iv) fraud, (v) willful failure to file an income tax return, (vi) deceit, (vii) bribery, (viii) extortion, (ix) misappropriation, (x) theft, or (xi) an attempt or conspiracy or solicitation of another to commit a serious crime.

Rule 2. Grounds for Discipline

(a) **Conviction.** Conviction in another court of a serious crime may be the basis for discipline.

(b) **Disbarment or Suspension.** Reciprocal discipline may be imposed based on disbarment or suspension by another court or by an agency.

(c) **Resignation.** Disbarment may be imposed based on an attorney's disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending.

(d) **Act or Omission.** An act or omission by an attorney that violates the Federal Rules of Appellate Procedure, the Federal Circuit Rules, these rules, or orders or instructions of the court, other than an act or omission contemplated by Rule 3(d) of these rules, may be the basis for discipline. A failure to notify the court in compliance with Rule 6(a) may itself be the basis for discipline.

(e) **Conduct Unbecoming.** Any conduct before the court unbecoming a member of the bar may be the basis for discipline.

Rule 3. Types of Discipline

(a) **Discipline for Misconduct.** Discipline for attorney misconduct may consist of disbarment, suspension for a definite period, monetary sanction, public reprimand, private reprimand, or any other disciplinary action that the court deems appropriate.

(b) **Disbarment.** Disbarment is the presumed discipline for conviction of a serious crime.

(c) **Reciprocal Discipline.** The imposition of reciprocal disbarment or suspension is the presumed discipline based on the disbarment or suspension of an attorney by another court or an agency. Disbarment based on an attorney's disbarment on consent or resignation from a bar of another court or an agency while an investigation into an allegation of misconduct is pending constitutes reciprocal discipline.

(d) **Sanctions under other Provisions.** Assessment of damages, costs, expenses, or attorney fees under Federal Rule of Appellate Procedure 38, 28 U.S.C. § 1927, or similar statutory provision are not disciplinary sanctions within the meaning of these rules and are not governed by these rules.

Rule 4. Disciplinary Matters Referred to the Court

(a) **Docketing.** The Clerk shall maintain a miscellaneous attorney disciplinary matter docket and shall assign a number to each matter.

(b) **Merits or Motions Panel.** When attorney misconduct under these rules occurs within the context of a case before a merits panel or a motions panel, that panel may impose any discipline except disbarment, suspension, or a monetary sanction over $1,000. The proceeding is conducted in accordance with Rule 5. In lieu of conducting its own proceeding a majority of the panel may refer the matter to the Standing Panel on Attorney Discipline.

(c) **Standing Panel on Attorney Discipline.**

(1) The Standing Panel shall conduct proceedings in any matter in which disbarment, suspension, or a monetary sanction over $1000 may be considered, or in any matter referred by a merits or motions panel.

(2) The Standing Panel shall consist of three judges, at least two of whom shall be active judges, appointed by the Chief Judge. The Chief Judge may serve as a member of the Standing Panel. The initial appointments shall be for one, two, and three year terms, so that the members' terms are staggered. Thereafter, a member shall be appointed for a three-year term. A member who has served on the Standing Panel for three years shall not be eligible for appointment to another term until three years after termination of his or her last appointment.

(3) The chairperson of the Standing Panel shall be the senior active judge.

(4) If a member of the Standing Panel is unable or unavailable to hear a particular matter, the Chief Judge shall appoint another judge to be a member of the Standing Panel for that matter. If a member of the Standing Panel is unable to complete the remainder of his or her term for any reason, e.g., retirement, incapacity, death, the Chief Judge shall appoint another judge to serve the remainder of the term.

Rule 5. Merits/Motions Panel or Standing Panel Procedure

(a) **Representation.** An attorney may be represented by counsel in any disciplinary proceeding. Counsel must enter an appearance promptly, and in any event prior to submitting any documents or at least 14 days before appearing at a hearing, whichever is earlier. Except as provided by Federal Circuit Rule 46(d), counsel must be a member of the bar of this court.

(b) **Show Cause Order.** Any panel may issue an order describing an attorney's misconduct and ordering the attorney to show cause (1) why a specific discipline should not be imposed or (2) why a discipline to be determined later should not be imposed. Unless otherwise ordered, a response shall be due within 30 days. Any request for a hearing shall be included in a response.

(c) **Uncontested Matter.** If an attorney does not respond to a show cause order or does not object to the imposition of a specified discipline, the Clerk may then issue a final order imposing such discipline.

(d) **Contested Matter.** If an attorney contests the imposition of discipline or requests a hearing, further proceedings shall be conducted in accordance with Rule 8.

(e) **Referral to State Bar Association or Other Disciplinary Entity.** The Standing Panel or any merits or motions panel may in its discretion refer a pending disciplinary matter or a matter that has been concluded to an appropriate state bar association or other disciplinary entity.

(f) **Final Order.** At the conclusion of a proceeding, a panel shall issue a final order in the matter. The order may direct the attorney or the Clerk to send a copy of the order to all other courts and agencies before which an attorney is admitted. The Clerk may also be directed to notify the American Bar Association's National Lawyer Regulatory Data Bank of the discipline.

(g) **Review by the Panel or the Active Judges of the Court.** An attorney may file a petition for rehearing by the panel or a combined petition for rehearing by the panel and suggestion for rehearing by the active judges of the court, or a majority of the active judges may order that a disciplinary matter be heard or reheard by them. Such a hearing or rehearing is not favored and ordinarily will not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance. Any such petition shall be filed within 30 days of the date of the panel's final order. The procedures governing a petition for rehearing or a combined petition/suggestion will otherwise be in accordance with the provisions of Federal Rules of Appellate Procedure 35 and 40 and Federal Circuit Rules 35 and 40.

Rule 6. Conviction or Discipline Imposed by Another Court or an Agency

(a) **Duty of Attorney to Notify.** An attorney who is a member of the bar of this court shall notify the Clerk in writing within 14 days of the member's (1) conviction of a serious crime, (2) disbarment or suspension by another court or by an agency, or (3) disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending. Upon receipt of such information, the Clerk shall follow the procedures set forth in Rule 7.

(b) **Notification from Another Court or Agency; Sua Sponte.** Upon receipt of a copy of a judgment, order, or other document demonstrating that a member of the bar of this court has been disbarred or suspended from the practice of law by another court or an agency, or has resigned while an investigation into an allegation of misconduct is pending, the Clerk shall follow the procedures set forth in Rule 7.

Rule 7. Proceedings for Reciprocal Discipline or Conviction of Serious Crime

(a) **Show Cause Order.** On notification of an attorney's disbarment or suspension by another court or agency, the Clerk shall issue a show cause order why the court should not impose the identical discipline. On notification of an attorney's conviction of a serious crime or resignation from the bar of another court or agency while a misconduct investigation is pending, the Clerk shall issue a show cause order why disbarment should not be imposed.

(b) **Response.** Unless otherwise ordered, a response to a show cause order shall be due within 30 days. The response should be in an envelope marked "Direct to Chief Deputy Clerk" and should indicate the docket number of the matter. Any request for a hearing shall be included in a response. In any response, the attorney must (1) list all bars to which the attorney is admitted, including all bar numbers and other bar identification information and (2) list all cases pending before this court in which the attorney is involved.

(c) **Uncontested Matter.** If an attorney does not object to the imposition of reciprocal discipline or does not respond to the show cause order, the Clerk may then issue a final order imposing such reciprocal discipline.

(d) **Contested Matter.** If an attorney contests the imposition of reciprocal discipline, further proceedings shall be conducted in accordance with Rule 8.

(e) **Final Order and Further Review.** At the conclusion of a proceeding, the Standing Panel shall issue a final order in the matter. Any further review will be in accordance with Rule 5(g).

Rule 8. Contested Proceedings

(a) **No Request for a Hearing.** If an attorney does not request a hearing in response to a show cause order, then the panel shall prepare the record consisting of the show cause order, the response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney shall be given notice that he or she may inspect and copy the record at his or her expense and may file a supplemental response. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons. Any supplemental response shall be due within 14 days of the date of the notice concerning inspection and copying.

(b) **Request for Hearing.** On request by an attorney, the panel shall schedule a hearing. A hearing scheduled by a merits or motions panel will be an oral hearing. If a merits or motions panel determines that an evidentiary hearing is necessary, that panel shall refer the matter to the Standing Panel. In matters that have not been referred by a merits or motions panel, the Standing Panel shall determine whether a hearing is oral or evidentiary. An attorney shall be given at least 30 days' notice of the time, date, and place of a hearing.

(1) The record consists of the show cause order, the response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney shall be given notice that he or she may inspect and copy the record at his or her expense. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons.

(2) The Standing Panel may compel by subpoena the attendance of witnesses, including the attorney subject to the proceeding, and the production of documents.

(3) During an evidentiary hearing, an attorney shall be afforded an opportunity to cross-examine any witnesses called by the Standing Panel and to introduce evidence in defense or mitigation.

(4) A hearing shall be recorded on tape unless an attorney arranges to have a reporting service present at his or her own expense.

(c) **Reciprocal Disciplinary Matter.** Notification that an attorney has been disbarred or suspended by another court or agency shall establish that the conduct in fact occurred and that the discipline was appropriate unless an attorney shows that:

(1) the procedure was so lacking in notice or opportunity to be heard that it constituted a deprivation of due process; or

(2) there was such an infirmity of proof establishing the misconduct that it gave rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on the matter; or

(3) the imposition of the same discipline by this court would result in grave injustice; or

(4) the misconduct established is deemed by this court to warrant substantially different discipline.

(d) **Conviction of a Serious Crime.** Notification of a conviction of a serious crime shall be conclusive evidence of the commission of that crime for purposes of these disciplinary proceedings. If an attorney notifies the court that a conviction has been vacated or reversed, the Standing Panel shall promptly review the matter.

Rule 9. Reinstatement

(a) **After Reciprocal Disbarment or Suspension.** If disbarment by this court was based on a disbarment by another court or agency or a suspension was directed to run concurrently with a suspension ordered by another court or agency, then an attorney shall be eligible for reinstatement when the original discipline is lifted or expires. An attorney must submit an affidavit notifying this court of the action of the court that imposed the original discipline. The Clerk shall refer an attorney's notification affidavit to the Standing Panel. Unless otherwise ordered, the Clerk shall issue an order reinstating the attorney within 14 days after reference to the Standing Panel.

(b) **After Disbarment.** An attorney who has been disbarred as a result of misconduct before this court may not apply for reinstatement until the expiration of five years from the effective date of the disbarment.

(c) **After Suspension.**

(1) An attorney who has been suspended with automatic reinstatement as a result of misconduct before this court may file an affidavit of compliance with the suspension order after the suspension period has expired. The Clerk shall issue an order reinstating the attorney within 14 days.

(2) An attorney who has been suspended conditioned on applying for reinstatement as a result of misconduct before this court may file an application after the suspension period expires.

(d) **Application for Reinstatement.** The Clerk shall refer an application for reinstatement to the Standing Panel. Any request for a hearing shall be included in an application.

(1) The Standing Panel may issue an order granting an application or, if no hearing is requested, may issue an order denying an application.

(2) If the Standing Panel is not satisfied initially that reinstatement is appropriate and a hearing is requested, the Standing Panel shall schedule a hearing. The Standing Panel shall decide whether a hearing shall be oral or evidentiary. At a hearing the applicant has the burden of showing that he or she has the moral qualifications, competency, and learning in the law required for readmission and that the resumption of practice will not be detrimental to the integrity and standing of the bar or to the administration of justice.

(3) At the conclusion of a proceeding, the Standing Panel shall issue a final order. Further review shall be in accordance with Rule 5(g).

(e) **Successive Application.** A successive application for reinstatement may not be filed until one year has elapsed after an adverse decision on an earlier application.

Rule 10. Access to Information

(a) **Confidentiality during Proceedings.** An ongoing disciplinary proceeding shall be confidential (1) unless the attorney subject to the proceeding requests that it be made a public record or (2) except to the extent that a panel may disclose the subject matter and status of a proceeding if the proceeding is based on a conviction of a serious crime, or an allegation that has become generally known to the public, or there is a need to notify another person or entity to protect the public, the legal profession, or the administration of justice.

(b) **Confidentiality upon Issuance of a Final Order.** A final order issuing a private reprimand or imposing no discipline and the record of those proceedings shall be confidential unless the attorney subject to the proceeding requests that it be made a public record. If other discipline is imposed, a final order and the record shall be made a public record at the time of issuance of a final order. However, a panel may issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney.

Rule 11. Effective Date

These rules shall become effective June 1, 2010.