FRAP AND LOCAL RULES OF THE SECOND CIRCUIT

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APPENDIX

LOCAL RULES RELATING TO THE ORGANIZATION OF THE COURT

§ 0.11. Name

The name of the court, as fixed by 28 U.S.C. § 41, 43(a), is "United States Court of Appeals for the Second Circuit."

§ 0.12. Seal

The seal of the court shall contain the words "United States" on the upper part of the outer edge; and the words "Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "Second Circuit" in two lines, in the center, with a dash beneath.

§ 0.13. Terms

One term of this court shall be held annually at the City of New York commencing on such day in August or September as the court may designate. It shall be adjourned to such times and places as the court may from time to time direct.

§ 0.14. Quorum

(a) *Two judges shall constitute a quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any judge who does attend or, in the absence of any judge, the clerk may adjourn the court for such time as may be appropriate. Any judge attending when less than a quorum is present or at any time when the court is in recess may make any necessary procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. (See Part 2, Local Rule 27(f)).*

(b) *(Interim) Unless directed otherwise, a panel of the court shall consist of three judges. If a judge of a panel of the court shall cease to continue with the consideration of any matter by reason of recusal, death, illness, resignation, incapacity, or other reason, the two remaining judges will determine the matter if they reach agreement and neither requests the designation of a third judge. If they do not reach agreement or either requests such a designation, another circuit judge will be designated by the Clerk to sit in place of the judge who has been relieved. The parties shall be advised of such designation, but no additional argument will be had or briefs received unless otherwise ordered.*

§ 0.15. Disclosure of Interested Parties

[Superceded by FRAP 26.1]

§ 0.16. Clerk

(See generally Federal Rule 45 of the Federal Rules of Appellate Procedure.)

(a) *The clerk's office shall be kept at the United States Court House, 40 Foley Square, New York City, and shall be open from 9:00 o'clock A.M. until 5:00 o'clock P.M. daily, except Saturdays, Sundays and legal holidays.*

(b) *The clerk may permit any original record or paper to be taken from the courtroom or from the office upon such statement of need as the clerk may require, and upon receipt for such record or paper.*

(c) *When it is required that the record be certified to the Supreme Court of the United States, the clerk if possessed of the original papers, exhibits, and transcript of proceedings of the district court or agency and a copy of the docket entries of that court or agency shall certify and transmit them and the original papers filed in this court.*

§ 0.17. Clerk's Fees

The clerk charges fees and costs in accordance with 28 U.S.C. § 1913, as posted on this court's website. When fees are payable to this court, the payee name is "United States Court of Appeals for the Second Circuit."

§ 0.18. Entry of Orders by the Clerk

The clerk shall prepare, sign and enter the following without submission to the court or a judge unless otherwise directed:

(1) *orders for the dismissal of an appeal under Rule 42(b) or pursuant to an order of the court or a judge;*

(2) *procedural orders on consent;*

(3) *orders on mandate from the Supreme Court of the United States;*

(4) *judgments in appeals from the United States Tax Court based on a stipulation of the parties.*

(5) *orders and judgments on decisions by the court in motions and appeals. (See Rule 36 of Federal Rules of Appellate Procedure.)*

(6) *orders scheduling the docketing of the record and filing of briefs and argument, which may include a provision that, in the event of default by the appellant in docketing the record or filing the appellant's brief, the appeal will be dismissed by the clerk;*

(7) *orders dismissing appeals in all cases where a brief for the appellant has not been filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.*

(8) *orders of dismissal as provided in Interim Local Rule § 0.29(d).*

§ 0.19. Process

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

§ 0.20. Opinions of the Court

(a) *Delivery. Opinions will be delivered at any time, whether the court is in session or not, and are delivered by handing them to the clerk to be recorded.*

(b) *Preservation of Original Opinions. The original opinions of the court shall be filed with the clerk for preservation.*

§ 0.21. Library

The library of this court shall be open to members of any court of the United States and their staffs, to law officers of the Government, and to members of the bar of this court. It shall be open during such hours as reasonable needs require and be governed by such regulations as the librarian, with the approval of the court, may prescribe. Books shall not be removed from the building.

§ 0.22. Judicial Conference of the Second Circuit

1. ***Purpose****. There shall be held annually, at such time and place as shall be designated by the chief judge of the circuit, a conference of all the circuit, district and bankruptcy judges, and magistrate judges, of the circuit for the purpose of considering the state of business of the courts and ways and means of improving the administration of justice within the circuit. It shall be the duty of each circuit and district judge in the circuit, in active service, and each bankruptcy judge serving for a term pursuant to 28 U.S.C. § 152, to attend the conference unless excused by the chief judge. The circuit justice shall be invited to attend.*

2. ***Sessions***. *A portion of the conference, to be known as the "executive session" shall be for the judges alone and shall be devoted to a discussion of matters affecting the state of the dockets and the administration of justice throughout the circuit. At other sessions of the conference, members of the bar, to be chosen as set forth in the succeeding paragraph, shall be members of the conference and shall participate in its discussions and deliberations.*

3. ***Members of the Bar***. *Members of the conference from the bar shall be selected to reflect a cross-section of lawyers who currently practice before federal courts in this circuit; members should be willing and able to contribute actively to conference purposes. In order to assure that fresh views are represented, no judge may invite the same individual more than two years out of any five. The membership shall be composed of the following:*

(a) *The presidents of the state bar associations of the three states of the circuit and a member from each of such associations to be designated by their respective presidents with a view to giving appropriate representation to various areas of the state.*

(b) *Each United States Attorney of the circuit or an Assistant United States Attorney designated by the United States Attorney.*

(c) *The Public Defender (or an assistant designated by the Public Defender) for any district within the circuit, and a representative of a community defender organization, authorized to act generally in any district, designated by the president of such organization.*

(d) *Such number of invitees by the circuit justice, and the active and senior circuit and district judges, as the judicial council may determine for each conference.*

(e) *Such additional number of lawyers as shall be selected jointly by the chief judge and the conference chairperson in light of their competence and interest in the subject or subjects to be considered at the conference. These conference members also shall be selected to reflect a cross-section of lawyers who currently practice before federal courts in this circuit, and may include:*

(i) *Members of county and local bar associations in the circuit, selected in consultation with their respective presidents, reflecting the geography and the relative size and activity in federal litigation of those associations;*

(ii) The dean, or other representative of the faculty of law schools within the circuit;

(iii) Members of State/Federal Judicial Councils within the circuit (including especially state court chief judges or chief justices);

(iv) Members of the United States Senate and House of Representatives with a particular interest in the work of the federal courts;

(v) Former presidents of the American Bar Association residing or practicing in the Second Circuit; the current member of the Board of Governors of the American Bar Association from the Second Circuit; the current member of the Standing Committee on the Federal Judiciary of the American Bar Association from the circuit; the chairperson of such committee if residing or practicing in the circuit; and the president, former presidents, and the executive director of the American Law Institute if residing or practicing in the circuit;

(vi) Members of the staff of federal courts within the circuit not enumerated elsewhere in this rule.

(f) Any retired Justice of the Supreme Court of the United States residing within the circuit, any present or former Attorney General of the United States residing or practicing within the circuit, and any circuit or district judge of the circuit who has resigned such office.

(g) The Director (or, if the Director is unable to attend, the Director's designee) of the Administrative Office of the United States Courts, and the Director (or designee) of the Federal Judicial Center.

(h) The circuit and district court executives and clerks of the courts within the circuit.

(i) Members of the committee provided for in paragraph 4 of this Rule, and past chairpersons and executive secretaries of such committee.

4. Committee. *To assist in the conduct of the conference (other than the executive session), the chief judge shall appoint annually, subject to the approval of the judicial council, members of a committee to be known as the Planning and Program Committee. The committee, whose members shall be appointed to staggered three-year terms, shall include the presidents of the state bar associations of the three states of the circuit and such number of judges and members of the bar of the circuit*

as the chief judge may determine.

5. Chairperson. *The chief judge may also appoint a conference chairperson to be selected from among the active judges of the circuit.*

6. Representative to the Judicial Conference of the United States.

(a) Three months before the date of the Judicial Conference of the Second Circuit at which the district judge member of the Judicial Conference of the United States from the Second Circuit is to be chosen, the chief judges of the district courts of the circuit, acting together as a nominating committee, shall nominate no more than three active district judges of the circuit (not excluding one of their own number) as candidates for the office of district judge member from the Second Circuit. The names of the nominees will be mailed to all the judges of the circuit and to the clerk of the court of appeals, who is the secretary of the conference, at least thirty days before the date of the executive session of the Circuit Judicial Conference.

(b) Additional active district judges may be put in nomination (I) from the floor at the executive session in replacement of any nominee of the chief judges who is disabled or declines to stand, and (ii) from the floor at the executive session by written nomination signed by at least one-fourth of the judges of the circuit. The one-fourth requirement shall not include vacant judgeships or judgeships for which commissions have been signed but the nominees have not been sworn and have not taken office at the time the nominating petition is signed. No judge may sign more than one such nomination and such nomination may not include more than one judge.

(c) The judge receiving a plurality of the votes of the active judges of the circuit will be the circuit's choice. Voting will be by secret, written ballot. Any judge who expects to be absent from the meeting may send in a judge's ballot unsigned and enclosed in an inner, sealed envelope, to the secretary of the conference provided that the ballot reaches the secretary before the executive meeting is convened.

(d) No judge may succeed himself or herself to a second successive term by election and no judge of any district court may succeed a judge from the same district unless at least three years have elapsed since the expiration of such earlier judge's term; however, in the case of a judge who is a member of the Executive Committee of the Judicial Conference of the United States, such judge may be elected to a second successive term in order to continue eligibility to serve on the Executive Committee.

(e) In the event that it is not convenient to conduct at a Judicial Conference the election referred to herein, such election may be conducted by mail ballot following action by the nominating committee, according to such procedures as that body may establish.

§ 0.23. Dispositions in Open Court or by Summary Order

[Superceded by Second Circuit Local Rule 32.1]

§ 0.24. Complaints With Respect to Conduct of Judges

[Superceded July 1, 1987 by the Rules of Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §372(c). See Court's website, Forms Page.]

§ 0.25. Equal Access to Justice Act Fees

Applications authorized by 28 U.S.C. §2412(d)(1)(B) shall be filed within 30 days of this court's judgment, and petitions for review authorized by 5 U.S.C. §504(c)(2) shall be filed within 30 days of the agency's fee determination. Applications and petitions shall be filed with the clerk of this court (original and four copies), served on all parties, and submitted on form AO 291. (A T1080 Motion Information Statement is also required.)

§ 0.26. Permissive Review After Appeal of a Magistrate's Judgment to the District Court

Petitions for leave to appeal authorized by 28 U.S.C. §636(c)(5) shall be filed with the clerk of this court (original and four copies) within 30 days of the District Court's judgment and shall be served on all parties.

§ 0.27. Certification of Questions of State Law

Where authorized by state law, this Court may certify to the highest court of a state an unsettled and significant question of state law that will control the outcome of a case pending before this Court. Such certification may be made by this Court sua sponte or on motion of a party filed with the clerk of this Court. Certification will be in accordance with the procedures provided by the state's legislature or highest state court rules, e.g. Conn. Public Act No. 85-111; New York Court of Appeals Rule 500.7. Certification may stay the proceedings in this Court pending the state court's decision whether to accept the certification and its decision of the certified question.

§ 0.28. Death Penalty Cases.

This rule describes the administration of capital cases in this Court. Capital case, as used in this rule, means any application in this Court, to which the person under sentence is a party, that

challenges, defends, or otherwise relates to the validity or execution of a death sentence that has been imposed. Capital cases ordinarily will be heard by panels composed in the manner described herein. The Court, however, may deviate from these procedures; their publication does not give any litigant a right to require that they be followed.

(1) *Certificate of Death Penalty Case. Upon the filing of any proceeding in a district court of this circuit or in this Court challenging a sentence of death imposed pursuant to a federal or state court judgment, each party in such proceeding must file a Certificate of Death Penalty Case with the Clerk of the Court of Appeals. A Certificate of Death Penalty Case must also be filed by the U.S. Attorney upon the return of a verdict recommending a sentence of death in a district court of this circuit.*

The Certificate must be in the form provided as annexed to these rules, or in substantially similar form, and must set forth the names, telephone numbers and addresses of the parties and counsel; the proposed date of execution of the sentence, if set; and the emergency nature of the proceedings, if applicable.

A special tracking docket is maintained by the Clerk of this Court for all cases in which a district court of this circuit has imposed a sentence of death, and for all proceedings in a district court of this circuit or in this Court challenging a sentence of death imposed pursuant to a federal or state court judgment.

(2) *Preparation and Transmittal of the Record. Upon the filing of a notice of appeal from an order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1) in a death penalty case in the district court, the Clerk of the district court and appellant's counsel must immediately prepare the record for the appeal. The record must be transmitted to this Court within five days of the filing of the notice of appeal unless such order is entered within twenty-one (21) days of the date of a scheduled execution, in which case the record must be transmitted immediately by an expedited means of delivery.*

(3) *Monitoring of Cases and Lodging of Relevant Documents. The Clerk of the Court of Appeals is authorized to monitor the status of scheduled executions and pending litigation in connection with any case within the geographical boundaries of this circuit wherein a warrant or order setting an execution date has been entered, and to establish communications with all parties and relevant state and/or federal courts. The Clerk may direct parties to lodge with this Court five copies of (1) all relevant portions of previous state and/or federal court records, or the entire record, and (2) all pleadings, briefs, and transcripts of any ongoing proceedings. The Clerk may docket such materials in advance of this Court's jurisdiction, under a miscellaneous docket, pending receipt of a notice of appeal or application in such case. This*

miscellaneous docket case is closed upon the opening of a regularly docketed case in this Court, or upon other final disposition of the case without its reaching this Court (for example, a reversal of the sentence or conviction which is not appealed, or a carrying out of the execution).

(4) *Capital Case Pool and Panels.*

(a) *Capital Case Pool. The capital case pool of judges consists of all active judges of the Court and those senior judges who have filed with the Clerk a statement of willingness to serve on capital case panels.*

(b) *Capital Case Panel. Upon receipt of a notice of appeal from the district court, an application for a certificate of appealability, or other application to this Court for relief in a capital case, the Clerk dockets the case and assigns it to a capital case panel (except as provided in paragraph 5 of this rule). A capital case panel consists of three judges, of whom at least one is an active judge of the Court.*

(c) *Selection. Judges are assigned to capital case panels by random drawing from the capital case pool. If a judge is unable to serve, that judge's name is returned to the pool after a replacement has been drawn. In the event a random drawing results in the names of three senior judges having been selected, the name of the third such senior judge is set aside and the selection process continues until an active judge's name is drawn; after the active judge's name has been drawn, the third senior judge's name is returned to the pool.*

(d) *Rotation. A judge drawn from the capital case pool to serve on a capital case panel is not returned to the pool until the pool is exhausted. When the pool has been exhausted, the Clerk prepares a new capital case pool and selects capital case panels from the pool in like manner.*

(e) *Replacement. If any judge serving on a capital case panel is unable to continue to serve, a replacement is drawn from the capital case pool, and the judge ceasing to serve on the panel is returned to the pool.*

(f) *Duties of Capital Case Panel. A capital case panel assigned to a particular capital case handles all matters pertaining to that case, including but not limited to the merits of a direct appeal and of all petitions for collateral review, motions for stay of execution, motions to vacate a stay of execution, applications for a certificate of appealability, motions for an order authorizing the district court to consider a second or successive application*

for habeas corpus, appeals from subsequent petitions, and remands from the United States Supreme Court.
When practical, a capital case panel hearing a direct appeal from a death sentence imposed in federal court hears together with it the direct appeals of co-defendants, at least to the extent they involve issues in common with the appeal of the person sentenced to death. Non-common issues in the appeals of co-defendants may be severed and assigned to an ordinary panel.

(g) *Applications for Certificate of Appealability. Applications for a certificate of appealability are referred initially to a single judge of the capital case panel, who has authority to grant the certificate. If the single judge does not grant the certificate, the application is referred to the full panel for disposition by majority vote.*

(5) *Original Petitions. All original applications for habeas corpus relief filed in the Clerk's office in a capital case are referred to a judge on the capital case panel in accordance with the approved operating procedures of this Court. Such an application ordinarily is transferred to the appropriate district court.*

(6) *Ruling on Certificate of Appealability. This Court may rule on a certificate of appealability whether or not a formal request is made of this Court, either as a preliminary matter or as part of a merits review of the case.*

(7) *Stays of Execution and Motions to Vacate Orders Granting Stay of a Federal or State Court Judgment.*

(a) *Limits on Stays of Execution. Notwithstanding any provision of this paragraph 7, stays of execution are not granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph 7 for a stay are ineffective in any case in which such stay would be inconsistent with the limitations of 28 U.S.C. § 2262, or any other governing statute.*

(b) *Emergency Motions. Emergency motions or applications are filed with the Clerk of the Court of Appeals. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by telefacsimile. Counsel are encouraged to communicate with the Clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court. The motion or application must contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in such prior actions.*

(c) *Documents Required for Motions for Stay or to Vacate Stay. The party*

moving for a stay of execution of a sentence of death or to vacate a stay must file the original and four (4) copies (a total of five) of the motion and serve all parties. A copy of the documents listed below must be attached to the original and to each copy of the motion. If time does not permit, the motion may be filed without attachments, but the movant must file the necessary copies as soon as possible. (If the respondent (the State or the U.S. Attorney) has indicated to the petitioner that it does not seek to oppose the stay immediately and the petitioner states this fact in the petition, these documents need not be filed with the application but must be filed within ten (10) days after the application is filed.)

(i) The indictment or other accusatory instrument;

(ii) The judgment of conviction containing the sentence of death;

(iii) The petition or complaint filed in the district court;

(iv) The opinion of the district court setting forth the reasons for granting or denying relief;

(v) The district court judgment granting or denying relief;

(vi) The district court order granting or denying a stay, and the statement of reasons for its action;

(vii) The certificate of appealability or order denying a certificate of appealability;

(viii) A copy of each state or federal court opinion or judgment bearing on the issues presented in the motion in cases in which appellant was a party;

(ix) A copy of the docket entries of the district court; and

(x) A copy of the notice of appeal.

(d) *Automatic Stays. In any case in which a sentence of death has been imposed by a district court of this circuit, or by a state court within the circuit, execution of the sentence of death is automatically stayed upon the filing of a notice of appeal from the judgment of conviction or a notice of appeal from the denial of the first application in federal court seeking relief from the sentence of death. The clerk must promptly enter an order implementing the stay. Unless vacated or modified, the stay provided by this subparagraph*

remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of conviction or of the denial of such first application. The stay may be modified or vacated by the assigned panel at any time.

(e) *Other Stays. A stay of any duration up to that specified in subparagraph 7(f)(i) may be ordered in any case by the assigned capital case panel, upon the affirmative vote of any judge of that panel.*

(f) *Duration of Stays: Terminology. Use of the following terminology to specify the duration of a stay denotes the durations specified below:*

(i) *If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the standard duration" under this rule, this signifies that, unless vacated or modified, the stay remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of the district court, or of the Court of Appeals in the case of an original petition filed there.*

(ii) *If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the duration of the appeal," this signifies that, unless vacated or modified, the stay remains in effect until the Court's mandate issues. Absent an order to the contrary preceded by timely notice to counsel, the mandate does not issue until the time for filing a petition for rehearing has expired, or, if such a petition has been filed, until the petition and any petition for rehearing in banc have been determined.*

(g) *Stays in Relation to Petitions for Rehearing.*

(i) *Petitions for rehearing accompanied by petitions for rehearing in banc are circulated to all judges of the capital case pool simultaneously with the circulation of the petition for rehearing to the assigned capital case panel. Judges participating in the petition for rehearing in banc may vote on a stay of execution of a sentence of death immediately, without waiting for the action of the assigned panel as to the petition for rehearing.*

(ii) *A stay of execution of a sentence of death pending disposition of the*

petition for rehearing and the petition for rehearing in banc is granted upon the affirmative vote of any two judges eligible to participate in a rehearing in banc.

(h) *All stay applications must be filed with the Clerk of the Court. In each case in which the Court orders a stay of execution, the Clerk of the Court issues a written order in the name of the Court specifying the duration of the stay.*

(i) *During non-business hours, emergency stay applications must be directed to an assigned representative of the Clerk (the duty clerk), whose telephone number is left with the courthouse security officers. The duty clerk must immediately advise the members of the assigned panel of the filing of an emergency stay application.*

(j) *In the event the members of the assigned panel cannot be reached by the duty clerk, the duty clerk advises the judge of the court assigned at that time to hear emergency applications of the filing of an off-hours emergency stay application. Notwithstanding the provisions of subparagraphs 7(e) and 7(g)(ii), the applications judge may stay an execution until such time as the application can be placed before the assigned panel or the Court in banc.*

UNITED STATES COURT OF APPEALS for the SECOND CIRCUIT
CERTIFICATE OF DEATH PENALTY CASE

_____ DISTRICT COURT **U.S.D.C. DOCKET NUMBER**	**LOCATION (CITY)**
_____ **DATE PETITION FILED**	
---------- **[CASE CAPTION],** **Petitioner,**	**_____** **Fee Status**
-v.- **Respondent.** **----------**	**Paid _____ IFP _____** **IFP Pending _____**
COUNSEL FOR PETITIONER **(Name, Address & Telephone Number)**	**COUNSEL FOR RESPONDENT** **(Name, Address & Telephone Number)**
PETITIONER'S NAME, PRISONER I.D. #, INSTITUTION OF INCARCERATION, ADDRESS &TELEPHONE NUMBER	
THIS CASES ARISES FROM: State Court Judgment _____.	**Federal Court Judgment _____.**
Complete each of the following statements applicable to this case:	
1. EXECUTION HAS BEEN SCHEDULED FOR_____. **(Date)** **2. A verdict recommending a sentence of death was rendered on _____.** **(Date)**	
EXPLANATION OF EMERGENCY NATURE OF PROCEEDINGS (attach pages, as necessary).	
HAS PETITIONER PREVIOUSLY FILED CASES IN FEDERAL COURT? _____ YES _____ NO **(If yes, give the Court, caption, docket number, filing date, disposition, and disposition date).**	
DOES PETITIONER HAVE CASES PENDING IN OTHER COURTS? _____ YES _____ NO **(If yes, give the Court, caption, docket number, filing date, and status..)** **I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**	
_____ **Signature** **_____** **Type or Print Name**	
NOTE: THE COURT OF APPEALS PERIODICALLY WILL REQUEST CASE STATUS REPORTS. PARTIES ARE UNDER A CONTINUING AFFIRMATIVE OBLIGATION TO IMMEDIATELY NOTIFY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT OF ANY CHANGES OR ADDITIONS TO THE INFORMATION CONTAINED ON THIS FORM.	

Interim § 0.29. Non-Argument Calendar

(a) *The following appeals or petitions for review, and any motions filed thereon, will be initially placed on the Non-Argument Calendar:*

An appeal or petition for review, in which a party seeks review of the denial of -

1. *A claim for asylum under the Immigration and Nationality Act ("INA");*

2. *A claim for withholding of removal under the INA;*

3. *A claim for withholding or deferral of removal under the Convention Against Torture ("CAT"); or*

4. *A motion to reopen or reconsider an order involving one of the claims listed above.*

Proceedings on the Non-Argument Calendar will be disposed of by a three-judge panel without oral argument unless the Court transfers the proceeding to the Regular Argument Calendar.

(b) *To the extent practicable, the Clerk's Office will promptly identify proceedings to be placed on the Non-Argument Calendar and issue scheduling orders for them upon the receipt of the certified record. The scheduling order will inform the parties that the proceeding has been placed on the Non-Argument Calendar. Any party to a proceeding on the Non-Argument Calendar may request to have the proceeding transferred to the Regular Argument Calendar. Such a request shall not be made by motion but must be included in the party's brief, identified by a separate heading, and will be adjudicated in conformity with Federal Rule of Appellate Procedure 34(a)(2) and Local Rule 34(d)(1). In its discretion, the Court may at any time transfer a proceeding from the Non-Argument Calendar to the Regular Argument Calendar. Upon the transfer of a case from the Non-Argument Calendar to the Regular Argument Calendar, no briefs may be filed, other than those specified in the scheduling order, unless leave of Court is obtained. The Court may at any time sua sponte, with notice to the parties, tentatively transfer a proceeding mistakenly placed on the Regular Argument Calendar to the Non-Argument Calendar.*

(c) *The Civil Appeals Management Plan shall not apply mandatorily to proceedings on the Non-Argument Calendar. However, any party to a proceeding on the Non-Argument Calendar may request a conference under the Civil Appeals Management Plan, which will be promptly provided. A request for a conference will not alter a scheduling order.*

(d) *An appeal or petition for review on the Non-Argument Calendar may be dismissed by the Clerk if, 15 days after the due date, the party seeking a review has failed to file its brief. The filing of a motion for an extension of time to file a brief does not stay*

or alter an existing deadline. If the respondent or appellee fails to file its brief by the due date, the Clerk may calendar the proceedings for decision as early as 15 days following the due date.

FEDERAL RULES OF APPELLATE PROCEDURE AND LOCAL RULES SUPPLEMENTING FEDERAL RULES OF APPELLATE PROCEDURE

TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Title

(a) Scope of Rules.

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

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

(b) [Abrogated]

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

Rule 2. Suspension of Rules

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

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

Rule 3. Appeal as of Right — How Taken

(a) Filing the Notice of Appeal.

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

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

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

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

(b) Joint or Consolidated Appeals.

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

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

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

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

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

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

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

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

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

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

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant,

either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

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

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

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

Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case
[Abrogated]

Local Rule 3(d). Mailing of Notice of Appeal by Clerks of District Courts to Clerk of Court of Appeals

The clerks of the district courts shall mail to the clerk of the court of appeals copies of notices of appeal in all cases and not simply in those described in FRAP 3(d).

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.

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

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

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

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

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

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

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

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

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

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

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

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

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

(5) **Motion for Extension of Time.**

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

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed

after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

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

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

(A) the 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 7 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 judgment or order is entered for purposes of this Rule 4(a):

(A) if Federal Rule of Civil Procedure 58(a)(1) 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

(B) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

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

(b) Appeal in a Criminal Case.

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

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

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

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

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

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

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

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

(i) for judgment of acquittal under Rule 29;

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

(iii) for arrest of judgment under Rule 34.

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

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

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

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

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

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

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

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

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

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

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

Local Rule 4(b)*. *Duties of all Retained Attorneys in Criminal Cases and all Criminal Justice Act-appointed Attorneys; Motions for Leave to Withdraw as Counsel on Appeal Where Retained in a Criminal Case or Appointed under Criminal Justice Act, Duties of Appellate Counsel in the Event of Affirmance.

(a) *When a defendant convicted following trial wishes to appeal, trial counsel, whether retained or appointed by the district court, is responsible for representing the defendant until relieved by the Court of Appeals.*

(b) *If trial counsel was appointed under the Criminal Justice Act, 18 U.S.C. §3006A, and intends to prosecute the appeal, this court may accept the District Court's finding that the defendant is financially unable to employ counsel and no further proof of the defendant's indigency need be submitted unless specifically required.*

(c) *Any counsel wishing to be relieved on appeal shall, before moving to that end, advise the defendant that the defendant must promptly obtain other counsel unless the defendant desires to proceed pro se and that if the defendant is financially unable to obtain counsel, a lawyer may be appointed by this court under the Criminal Justice Act. If the defendant wishes to have a lawyer so appointed on appeal, counsel must see to it that the defendant receives and fills out the appropriate application forms, which are available from the office of the Clerk of this court. If the defendant desires to proceed pro se, counsel must advise the defendant of the requirements concerning the time within which the record must be docketed and the brief filed.*

(d) *A motion to withdraw as counsel on appeal where the attorney is retained in a criminal case or appointed under the Criminal Justice Act must state the reasons for such relief and must be accompanied by one of the following:*

1. A showing that new counsel has been retained or appointed to represent defendant; or

2. The defendant's completed application for appointment of counsel under the Criminal Justice Act or a showing that such application has already been filed in the Court of Appeals; or

3. An affidavit or signed statement from the defendant showing that the defendant has been advised that the defendant may retain new counsel or apply for appointment of counsel and expressly stating that the defendant does not wish to be represented by counsel but elects to appear pro se; or

4. An affidavit or signed statement from the defendant showing that the defendant has been advised of the defendant's rights with regard to the appeal and expressly stating that the defendant elects to withdraw the defendant's appeal; or

5. A showing that exceptional circumstances prevent counsel from meeting any of the requirements stated in subdivisions (1) to (4) above. Such a motion must be accompanied by proof of service on the defendant and the Government and will be determined, without oral argument, by a single judge. See Local Rule 27.

(e) *This Local Rule is supplementary to the Amended Plan to Supplement the Plans Adopted by the Several District Courts Within the Circuit, as required by the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended.*

Rule 5. Appeal by Permission

(a) Petition for Permission to Appeal.

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

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

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

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

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

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

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

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(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 local rule or by order in a particular case.

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

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

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

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

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

Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5) [Abrogated December 1, 1998]

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

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

(B) **The record on appeal.**

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

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

(iii) The record on appeal consists of:

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

(C) **Forwarding the record.**

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

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

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

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.

(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.

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).

Local Rule 9. Release in Criminal Cases

An application pursuant to Rule 9(b) shall contain in the following order:

1. *the name of appellant; the District Court docket number of the case; the offense of which appellant was convicted; the date and terms of sentence; and the place where appellant has been ordered confined;*

2. *the facts with respect to whether application for bail has been made and denied, and the reasons given for the denial, if known; and the facts and reasons why the action by the District Court on the application does not afford the relief to which the applicant considers himself entitled;*

3. *a concise statement of the questions involved on the appeal, with sufficient facts to give the essential background and a showing that the questions on appeal are not frivolous;*

4. *such other matters as may be deemed pertinent;*

5. *a certificate by counsel, or by applicant if acting pro se, that the appeal is not taken for delay.*

Rule 10. The Record on Appeal

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

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

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

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

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

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

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

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

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

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

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

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

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

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

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

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

(e) Correction or Modification of the Record.

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

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

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

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

Rule 11. Forwarding the Record

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

(b) Duties of Reporter and District Clerk.

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

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

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

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

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

(2) **District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the

district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

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

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

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

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

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

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

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

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

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

Local Rule 11. Exhibits

(a) *The district court may, by rule or order, direct that any or all exhibits need not be filed with the clerk upon their offer or receipt in evidence but may be retained in the custody of the attorney (or of a party not represented by an attorney) who produced them, unless an appeal is taken, in which event the following provisions of this rule shall apply.*

(b) *The parties are encouraged to agree with respect to which exhibits are "necessary for the determination of the appeal." See Rule 11(a). In the absence of agreement, the appellant shall, not later than 15 days after the filing of the notice of appeal, serve on the appellee a designation of the exhibits the appellant considers to be necessary. If the appellee considers other exhibits to be necessary, the appellee shall serve a cross-designation upon the appellant within 10 days after service of appellant's designation.*

(c) *Except as provided in paragraph (d), it shall be the duty of any attorney or party having possession of an exhibit designated pursuant to paragraph (b) of this rule, promptly to make such exhibit or a true copy thereof available at the office of the clerk of the district court. The clerk of the district court shall transmit all such exhibits to the clerk of the court of appeals as part of the record pursuant to Rule 11(b). Exhibits which have not been designated shall be retained by the clerk of the district court or, if the district court has authorized their retention by an attorney or party pursuant to paragraph (a) of this rule, by such attorney or party, but shall be transmitted to the clerk of the court of appeals on the request of that court acting on the motion of any judge thereof or on the motion of a party showing good cause for failure to include any such exhibit in the attorney's designation.*

(d) *Documents of unusual bulk or weight and physical exhibits other than documents shall remain in the custody of the attorney or party who produced them. The attorney or party retaining custody of the documents shall permit inspection of them by any other party and shall be responsible for having them available at the argument in the court of appeals if they have been designated, and for their later production if subsequently requested by the court of appeals as provided in the last sentence of paragraph (c) of this rule.*

(e) *This rule does not relieve the parties of their obligation under Rule 30 to reproduce in an appendix to their briefs or in a separate volume, see Rule 30(e), exhibits (other than those described in paragraph (d) of this rule) to which they "wish to direct the particular attention of the court."*

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

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

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

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

Interim Local Rule 12.1. Acknowledgment and Notice of Appearance in All Appeals

(a) *Upon completion of the appeal docketing requirements, the clerk sends all parties to the appeal a docketing notice assigning a docket number and enclosing a copy of the appellate docket sheet. Within 14 calendar days after receiving the docketing letter, all parties must complete and return to the clerk the Acknowledgment and Notice of Appearance form, available on the court's website. Counsel of record listed on the form must be admitted in this court. This form satisfies the requirements of FRAP 12(b).*

(b) *An attorney who appears in a case on behalf of a party or an amicus curiae must file a notice of appearance at the time the attorney enters the case in the form available on the court's website.*

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

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.

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.

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

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

(a) Petition for Review; Joint Petition.

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

(2) The petition must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Local Rule 15. Application by National Labor Relations Board For Enforcement of Order

In an application for enforcement by the National Labor Relations Board under Rule 15(b), Federal Rules of Appellate Procedure, the respondent(s) shall be considered the petitioner(s), and the National Labor Relations Board considered the respondent, for the purposes of briefing and oral argument, unless the court orders otherwise.

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

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

Rule 16. The Record on Review or Enforcement

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

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

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

Rule 17. Filing the Record

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

(b) Filing — What Constitutes.

(1) The agency must file:

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

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

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

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes

and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

Rule 18. Stay Pending Review

(a) Motion for a Stay.

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

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

(A) The motion must:

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

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

(B) The motion must also include:

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

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

(iii) relevant parts of the record.

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

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

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

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

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

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.

TITLE V. EXTRAORDINARY WRITS

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

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

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

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

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

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

(iv) the reasons why the writ should issue.

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

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

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

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

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

(3) Two or more respondents may answer jointly.

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

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

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

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

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

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

Local Rule 21. Petitions for Writs of Mandamus and Prohibition

(a) Caption. *A petition for writ of mandamus or writ of prohibition pursuant to Rule 21 shall not bear the name of the district judge, but shall be entitled simply, "In re _____, Petitioner." To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge.*

(b) Number of Copies. *Four copies shall be filed with the original.*

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22. Habeas Corpus and Section 2255 Proceedings

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

(b) Certificate of Appealability.

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

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

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

Local Rule 22. Certificate of Appealability

(a) Prompt Application and Contents of Motion. *In cases governed by 28 U.S.C. § 2253 and FRAP Rule 22(b), where an appeal has been taken but no certificate of appealability ("COA") has been issued by the district judge or by this court or a judge thereof, the appellant shall promptly move in this court for such a certificate. Such motion shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing a denial of a constitutional right. When an appeal is filed for which a COA is required and a motion that complies with this rule has not been filed within 30 days after filing the notice of appeal, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that the required motion for a COA must be filed with the court within 21 days and that failure to file the motion may result in denial of a COA. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein. Such an appeal may not proceed unless and until a certificate is granted.*

(b) Time for Filing Appellant's Brief. *In cases governed by 28 U.S.C. § 2253 and FRAP Rule 22(b), the period of time for the filing of appellant's brief and appendix shall not begin to run until a certificate of appealability has issued or, when counsel has been assigned, the date of such assignment, whichever is later.*

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

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

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

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

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

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

Rule 24. Proceeding In Forma Pauperis

(a) Leave to Proceed In Forma Pauperis.

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

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

(B) claims an entitlement to redress; and

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

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

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

(A) the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise

entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

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

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

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

(b) Leave to Proceed In Forma Pauperis on Appeal 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.

TITLE VII. GENERAL PROVISIONS

Rule 25. Filing and Service

(a) Filing.

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

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

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

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

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

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

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

(D) **Electronic filing.** A court of appeals may by local rule permit or require 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 local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

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

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

(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 29.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

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

(c) Manner of Service.

(1) 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 calendar days; or

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

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

(3) When reasonable considering such factors as the immediacy of the 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

(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.

Interim Local Rule 25.1. Filing and Service

(a) Documents in Digital Format.

*1. **Document Defined.** For the purposes of this rule, document includes every paper submitted to the court, including forms, letters, motions, petitions and briefs but not appendices (which are governed by the requirement set forth in Local Rule 25.2).*

2. ***Submission Requirement.*** *Every document filed by a party represented by counsel must be submitted in a Portable Document Format (PDF), in addition to the required number of paper copies, unless counsel certifies that submission of the paper as a PDF document would constitute extreme hardship. A party not represented by counsel is encouraged, but not required, to submit a PDF version of every document, in addition to filing the required number of paper copies.*

3. ***Submission of Documents.***

(A). The PDF version of a document must be submitted as an email attachment to electronic mailboxes designated according to case type. Case type is determined by the two-letter code found at the end of the docket number assigned to a case. The code, and respective mailboxes, are:

(i) ag, bk, op - <agencycases@ca2.uscourts.gov>. Cases involving an administrative agency, board, commission or office; tax court; bankruptcy; original proceedings; and, cases in which the United States is a party;

(ii) cr - <criminalcases@ca2.uscourts.gov>. Criminal cases; and

(iii) cv - <civilcases@ca2.uscourts.gov>. Counseled civil cases.

(B). Documents in a case that is not yet assigned a docket number must be submitted to <newcases@ca2.uscourts.gov>.

(C). A party who is pro se and a party with counsel in a pro se case may submit documents to an electronic mail box designated exclusively for pro se filers: <prosecases@ca2.uscourts,gov>.

(D). The email in which the document is attached must set forth the following identifying information in the "Subject" or "Re" header box: the docket number; the name of the party on whose behalf the document is filed; that party's designation in the case, i.e., appellant, petitioner; and, the type of document, i.e., form, letter; and the date the document is submitted to the Court. If the document pertains to a case not yet assigned a docket number in this court, the district court docket or agency number should be included in the header box. An example of a subject line: # 01-2345 -cv, ABC Corp, Appellant, Letter.

4. ***Content.*** *The PDF document must contain the entire paper, including exhibits and any supplemental material that is bound with the paper copy filed with the court. The exhibits or supplemental material may be attached to the email as a separate, clearly identified, document. A manual signature need not be included on the PDF copy.*

5. ***Time for Filing.*** *The PDF version of a document submitted pursuant to this rule must be emailed no later than the time for filing the required copies of the paper with the clerk.*

6. ***Virus Protection.*** *Each party submitting a PDF document must provide a signed certificate which certifies that the PDF document has been scanned for viruses and that no virus has been detected. The signed certificate must be filed along with the paper copies of the document with the clerk. A PDF version of the certificate, which need not include a manual signature, must be attached to the email that includes the PDF document.*

7. ***Corrections.*** *If a document is corrected, a new email attachment with the corrected version must be submitted, and the identifying information in the header box shall identify the document as corrected and include the date the corrected version of the document is submitted to the clerk.*

8. ***Email Service.*** *The PDF version of a document must be emailed to all parties represented by counsel and to those parties not represented by counsel who elected to submit PDF paper.*

(b). Documents in Other Formats.

1. ***Filing Requirement.*** *Any party, whether represented by counsel or not, who does not provide a document in PDF format, must file one unbound copy (papers not stapled or otherwise attached) of each multi-page document with the clerk. The use of paper clips or rubber bands is permitted. When only the original document is filed, the paper that comprises the document must be unbound.*

Interim Local Rule 25.2. Appendix on CD-ROM

A party represented by counsel must submit every appendix on a CD-ROM, and serve a CD-ROM version on all opposing counsel, in addition to filing the required number of paper copies, unless counsel certifies that submitting a CD-ROM version of the appendix would constitute extreme hardship. A party not represented by counsel is encouraged, but not required, to submit and serve a CD-ROM version of the appendix, in addition to filing the required number of paper copies.

Rule 26. Computing and Extending Time

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

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

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

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

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

court that rendered the challenged judgment or order, or the circuit clerk's principal office.

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

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

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

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

Rule 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

(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. 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.

Rule 27. Motions

(a) In General.

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

(2) **Contents of a Motion.**

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

(B) **Accompanying documents.**

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

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

(C) **Documents barred or not required.**

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) **Response.**

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

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

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

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

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court

of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

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

(1) **Format.**

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

(B) **Cover.** A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. 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 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) **Typeface and Type Styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) **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.

Local Rule 27. Motions

(a) Form of Motion and Supporting Papers for Motion and Opposition Statement.

(1) ***Form of Motion.*** *A motion must be in writing, unless the court otherwise directs, and must conform to the following requirements:*

A. The front page of the motion must follow the form of the Motion Information Statement approved by the Court (T-1080) and contain all information required by the form.

B. The Motion Information Statement must be followed by a memorandum which must (i) indicate the relief sought, (ii) set forth the information and legal argument supporting the motion, and (iii) if emergency relief is sought, explain the reasons for the emergency.

C. Formal requirements of Motion and Opposition Statement.

(i) 8½ by 11 inch paper;

(ii) Text double spaced, except for quotations, headings and footnotes;

(iii) Margins of one inch on all sides;

(iv) Pages sequentially numbered (page numbers may be placed in the margins);

(v) Bound or stapled in a secure manner that does not obscure text;

(vi) Length: no more than 20 pages, not including attachments and the Motion Information Statement;

(vii) Number of copies: original plus four copies;

(viii) Required attachments to motion:

a. An affidavit (containing only statements of fact, not legal argument);

b. If the motion seeks substantive relief, a copy of lower court opinion or agency decision;

c. Any exhibits necessary to determine the motion;

d. Proof of service.

*2. **Non-Compliance Sanctions.** If the moving party has not complied with this rule, the motion may be dismissed by the clerk without prejudice to renew upon proper papers. If application is promptly made, the action of the clerk may be reviewed by a single judge. The court may impose costs and an appropriate fine against either party for failure to comply with this rule.*

***(b) Motions to Be Heard at Regular Sessions of the Court.** Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the court. These include, without limitation, motions seeking bail pending appeal (see Rule 9(b)); dismissal or summary affirmance, including summary enforcement of an agency order; stay or injunction pending appeal or review (see Rules 8 and 18); certificates of appealability (see Rule 22); leave to proceed in forma pauperis (see Rule 24) except when a certificate of appealability has been granted by the district court or counsel has been assigned under 18 U.S.C. § 3006A; and assignment of counsel in cases not within subsection (e). Except as provided in subdivision*

(c) of this Rule, such motions will normally be noticed for a Tuesday when the court is in session, and the court will hear oral argument from any party desiring this. Motions to dismiss appeals of incarcerated prisoners not represented by counsel for untimeliness or lack of timely prosecution shall not be noticed for a date earlier than fifteen days after the date when prison officials shall certify the motion was received by the prisoner. Any party requesting an expedited hearing must set forth in writing the facts which justify the urgency. Upon appropriate showing of urgency, the clerk may set any motion for a hearing on any day the court is in session. When the clerk thus sets a hearing for a time not later than 24 hours after application to the clerk during the period Monday to Thursday, or for Tuesday morning during the period after Thursday, the clerk may endorse on the motion papers a direction that the parties will be expected to maintain the status quo and such direction shall have the effect of a stay, unless a judge on application shall otherwise direct.

Except as otherwise provided in these rules or by order of the court, all motions noticed for a Tuesday, with supporting papers, must be filed not later than the Monday of the preceding week, with notice by the movant to the adverse party to be served not later than the Thursday preceding the last date for filing, if served in person, and not later than the Monday preceding the last date for filing, if served by mail; any papers in response must be served and filed not later than seven days after service of a motion served in person, or ten days after service of a motion served by mail, but in no event later than 12 noon on the Thursday preceding the Tuesday for which the motion is noticed.

(c) Motions to Be Heard by a Panel Which Has Rendered a Decision. *Motions addressed to a previous decision or order of the court or for the stay, recall or modification of any mandate or decision of the court or to withdraw or dismiss an appeal argued but not decided shall be referred by the clerk to the judges who heard the appeal, normally without oral argument.*

(d) Pro Se Motions by Incarcerated Prisoners Under 28 U.S.C. §§ 2253 and 2255. *Pro se motions by incarcerated prisoners under 28 U.S.C. §§ 2253 and 2255 for certificates of appealability, leave to proceed in forma pauperis, or assignment of counsel shall be made on seven days' notice to the state or the United States, and will be taken on submission, without being calendared, at such time as the material necessary for the court's consideration shall have been assembled by the deputy clerk designated for the purpose.*

(e) Motions for Leave to Appeal. *Motions for leave to appeal under 28 U.S.C. § 1292(b) or under § 24 of the Bankruptcy Act, 11 U.S.C. § 47 (see Rules 5 and 6), shall be submitted without oral argument.*

(f) Motions to Be Determined by a Single Judge. *(See Rule 27(b) and (c).) Motions for procedural relief will normally be determined by a single judge without oral argument. Notwithstanding the provision of §27(a) in regard to dismissals, a single judge may include in an order granting an appellant an extension of time a provision for dismissal of the appeal by the clerk in the event of a default. These include, without limitation, motions for extension of time to file records, briefs, appendices or other papers, or for permission to make late filing in the absence of stipulation; to dispense with printing; for assignment of counsel or transcription of the record at the expense of the United States in cases governed by 18 U.S.C. § 3006A (which action shall be deemed to constitute the grant of leave to proceed in forma pauperis); for allowance of compensation and expenses under 18 U.S.C. § 3006A; for assignment of counsel when a certificate of appealability (see Rule 22) has been granted by*

the district court and for leave to proceed in forma pauperis in such cases; for leave to file a brief as amicus curiae (see Rule 29); for substitutions (see Rule 43); for consolidation; to intervene or to add or drop parties; for a preference; or for postponement of the argument of an appeal. When the court is not in session, certain of the motions normally returnable before a panel as provided in subdivision (a) may be heard and decided by a single judge. Arrangements for such a hearing shall be made through the clerk.

(g) Motions for Permission to File Briefs Exceeding Size Provided by Rule 28(g).

1. A motion for permission to file a brief exceeding the size provided by Rule 28(g) shall be accompanied by a statement of reasons therefor and a copy of the page proofs, and will be disposed of by the clerk or referred by the clerk to a judge as standing directions of the court provide.

2. Such a motion shall be made not later than seven days before the brief is due in criminal cases and not later than two weeks before the brief is due in all other cases.

(h) Other Motions. *Any motion not provided for in this rule or in other rules of this court shall be submitted to the clerk, who will assign it for disposition in accordance with standing directions of the court or, if these are inapplicable, as directed by the judge presiding over the panel of the court in session or assigned for the hearing of motions when the court is not in session. The clerk will notify counsel if and when appearance before the court or a judge is required.*

(i) Suggestions for In Banc Consideration of a Motion. *A suggestion by a party for in banc consideration in the first instance of a motion shall not be accepted for filing by the clerk unless the motion sought to be considered in banc has previously been ruled on by a panel of this court.*

(j) Motions by Pro Se Appellant in Civil Appeals (including Habeas Corpus). *In any civil appeal, including an appeal in a habeas corpus proceeding or other collateral attack on a criminal conviction, a motion filed by a pro se appellant (including, but not limited to, a motion for a certificate of appealability ("COA") from the denial of a writ of habeas corpus, a motion for leave to appeal in forma pauperis, for appointment of counsel, or for a transcript at public expense) shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing that the issue has likely merit. When a motion filed by a pro se appellant does not comply with this rule, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that (1) the required identification of issues and supporting facts and reasons must be filed with the court within 21 days, and (2) if the appellant fails to file the required statement, or if the court determines, on considering the appellant's statement that the appeal is frivolous, the court may dismiss the appeal. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein.*

Rule 28. Briefs

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

(1) a corporate disclosure statement if required by Rule 26.1;

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

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

(4) a jurisdictional statement, including:

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

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

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

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

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

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

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

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

(9) the argument, which must contain:

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

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

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

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

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

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

(c) **Reply Brief.** The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.

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

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

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

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

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

(g) **[Reserved]**

(h) **[Deleted]**

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

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

Local Rule 28. Briefs

1. Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this rule may be disregarded and stricken by the court.

2. Appellant's brief shall include, as a preliminary statement, the name of the judge or agency member who rendered the decision appealed from and, if the judge's decision or supporting opinion is reported, the citation thereof.

Rule 28.1 Cross-Appeals

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

(b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

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

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

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case 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; 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 3 days before argument unless the court, for good cause, allows a later filing.

Rule 29. Brief of an Amicus Curiae

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

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

(1) the movant's interest; and

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

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

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

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

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

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

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

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

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

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

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

Interim Local Rule 29. Brief of an Amicus Curiae

The court ordinarily will deny leave to file brief for an amicus curiae where, by reason of a relationship between a judge who would hear the proceeding and the amicus or counsel for the amicus, the filing of the brief would cause the recusal of the judge.

Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

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

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

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

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

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

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

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

served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

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

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

(c) Deferred Appendix.

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

(2) **References to the Record.**

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

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

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

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

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

Local Rule 30. Appendix

(a) Deferred Appendix. *A deferred appendix as provided in Rule 30(c) may be filed in any case where the parties so stipulate or where, on application, a judge of this court so directs.*

(b) Original Record. *The procedure described in Rule 30(f) for hearing appeals on the original record without the necessity of an appendix (other than a copy of an opinion rendered by the district court) is authorized in all appeals conducted under the Criminal Justice Act, 18 U.S.C. § 3006A, in all other proceedings conducted in forma pauperis, and in all appeals involving a social security decision of the Secretary of Health and Human Services. In such cases the appellant shall file along with the appellant's brief five clearly legible copies of the reporter's transcript or of so much thereof as the appellant desires the court to read (or in the case of social security decisions, of the administrative records), and both parties in their briefs shall direct the court's attention to the portions of the transcript or administrative record deemed relevant to each point. If five copies are not available without incurring undue expense, application for leave to proceed with a smaller number of copies may be made.*

(c) Index for Exhibits. *The index for exhibits required by FRAP 30(e) shall include a description of the exhibit sufficient to inform the court of its nature; designation merely by exhibit number or letter is not a suitable index.*

(d) Notice of Appeal. *The notice of appeal shall be included in the appendix.*

Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

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

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

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on 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 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.

Local Rule 31. Number of Copies of Brief to be Filed with Clerk

(b) *Notwithstanding FRAP Rule 31(b), the number of copies of each brief that must be filed with the clerk is ten.*

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

(a) Form of a Brief.

(1) **Reproduction.**

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

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

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

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

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

(B) the name of the court;

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

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

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

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

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

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

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

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

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

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

(7) **Length.**

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

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of 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 ½ 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 rehearing and a petition for 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.

Local Rule 32. Briefs and Appendix

(a) Form of Brief

1. ***Briefs in Digital Format****. The digital format of a brief is governed by Interim Local Rule 25.*

2. ***Briefs in Paper Format.*** *Paper Briefs must conform to FRAP Rule 32(a), with a proviso that, if a litigant prefers to file a printed brief in pamphlet format, it must conform to the following specifications:*

Size of pages:	*6 1/8 by 9 1/4 inches*
Sides used:	*Both.*
Margins:	*At least one inch on all sides.*
Font size:	*12-point type or larger, for text and footnotes*
Spacing:	*2-points or more leading between lines. 6-points or more between paragraphs.*
Other specifications:	*Must conform to FRAP Rule 32(a).*

(b) Form of Appendix. *Appendices must conform to FRAP 32(b).*

(1) All appendices must contain:

(A) Sequentially numbered pages beginning with A-1.

(B) A detailed index referring to the sequential page numbers.

(2) Appendices may:

(A) Be printed on both sides of the page.

(B) Employ tabs to identify documents. (Use of tabs does not eliminate the requirements to number pages sequentially.)

(C) Employ the Manuscript form of transcripts.

(c) Covers. *The docket number of the case must be printed in type at least one inch high on the cover of each brief and appendix.*

(d) Special Appendix.

(1) ***Contents of the Special Appendix.*** *If the application or interpretation of any rule of law, including any constitutional provision, treaty, statute, ordinance, regulation, rule, or sentencing guideline, is significant to the resolution of any issue on appeal, or if the Appendix, exclusive of the orders, opinions, and judgments being appealed, would exceed 300 pages, the parties must provide the court with a Special Appendix, including*

(A) the verbatim text, with appropriate citation, of any such rule of law, and

(B) such orders, opinions and judgments being appealed.

The inclusion of such materials in a Special Appendix satisfies the obligations established by FRAP Rules 28(f) and 30(a)(1).

(2) ***Form of the Special Appendix.*** *The Special Appendix may be presented either as an addendum at the end of a brief, or as a separately bound volume (in which case it must be designated "Special Appendix" on its cover). The Special Appendix must conform to the requirements of Local Rule 32(b) relating to the Form of Appendix, with the exception that its pages must be sequentially numbered beginning with SPA-1.*

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.

Local Rule 32.1. Dispositions by Summary Order

(a) Use of Summary Orders. *The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.*

(b) Precedential Effect of Summary Orders. *Rulings by summary order do not have precedential effect.*

(c) Citation of Summary Orders.

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Service of Summary Orders on Pro Se Parties: A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend. *Summary orders filed after January 1, 2007, shall bear the following legend:*

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

Rule 33. Appeal Conferences

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

Rule 34. Oral Argument

(a) In General.

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

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

(A) the appeal is frivolous;

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

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

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

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

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

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

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

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

Interim Local Rule 34. Oral Argument and Submission on Briefs

(a) ***Party's Statement and Submission on Briefs***

(1) ***Request for Oral Argument.*** *An opportunity for oral argument will be provided only upon request made pursuant to this subsection (a). This subsection (a) does not apply to appeals placed on the Non-Argument Calendar pursuant to Interim Local Rule 0.29.*

(2) ***Counseled Appeals.*** *For an appeal in which all parties are represented by counsel: counsel for all parties must confer (by any convenient means) and must file, within 14 days after the due date of the last brief, a joint statement indicating whether the parties–specifying which, if fewer than all–seek oral argument, or whether the parties agree to submit the case for decision on the briefs. Unless the Court directs otherwise, failure to timely file the joint statement will result in submission of the case for decision on the briefs.*

(3) ***Pro Se Appeals.*** *For an appeal in which at least one party appears pro se: after the due date of the last brief, the Clerk of Court will mail to each party a questionnaire asking whether the party would like to have the case decided on the briefs, or whether the party seeks oral argument. All parties must return the questionnaire within 14 days of its date. Failure by a party to timely return the questionnaire will be deemed to mean that the party does not seek oral argument.*

(b) ***Determination by Court Not to Hear Oral Argument.*** *If the court, acting sua sponte, contemplates deciding an appeal without hearing oral argument, each of the parties will be given an opportunity to file a statement setting forth reasons for hearing oral argument. Subject to subsection (a), oral argument will be allowed in all cases except those in which*

a panel of three judges, after examination of the briefs and record, shall be of the unanimous view that oral argument is not needed for one of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) 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.

(c) Number of Counsel. *Only one counsel will be heard for each party on the argument of a case, except by leave of the court.*

(d) Time Allotments. *The judge scheduled to preside over the panel will set the time allowed for argument by each party after considering the appellant's brief and each party's request for argument time. Normally, ten or fifteen minutes will be allotted to each side. Parties on the same side of an appeal may be obliged to divide the time allotted to their side. Arguments in pro se appeals are normally five minutes per side. The clerk will notify counsel and pro se parties of all such time allotments.*

(e) Postponement of Argument. *Except in the event of an emergency, such as unforeseen illness of counsel, an application to postpone the date for oral argument will ordinarily not be favorably entertained. Engagement of counsel in courts (other than the Supreme Court of the United States) or administrative hearings will not be considered good cause for postponement. The date for oral argument may not be postponed by stipulation.*

Rule 35. En Banc Determination

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

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

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

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

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

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

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

Interim Local Rule 35. En Banc Procedure

(a) Copy of Opinion or Summary Order Required. *Each petition for rehearing en banc shall include a copy of the opinion or summary order to which the petition relates, unless the opinion or summary order is included in a petition for panel rehearing that has been combined with the petition for rehearing en banc.*

(b) ***Judges Eligible to Request an En Banc Poll.*** *Any Judge of the Court in regular active service and any senior judge who is a member of the panel is eligible to request a poll of the judges in regular active service to determine whether a hearing or rehearing en banc should be ordered (see 28 U.S.C. § 46(c)).*

(c) ***Determination of Majority for Ordering En Banc Consideration.*** *Neither vacancies nor disqualified judges shall be counted in determining the base on which "a majority of the circuit judges of the circuit who are in regular active service" shall be calculated, pursuant to 28 U.S.C. § 46(c), for purposes of ordering a hearing or rehearing en banc.*

(d) ***Procedure After Amendment of Court Ruling.*** *If a panel opinion or summary order is amended, a petition for rehearing en banc, or an amended petition, may be filed within the time specified by F.R.A.P. Rule 35(c), counted from the date of the entry of the amendment. A petition for rehearing en banc filed prior to amendment of the court's ruling will continue to be effective and need not be amended.*

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 mail to all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

Rule 37. Interest on Judgment

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

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

Rule 38. Frivolous Appeal — Damages and Costs

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

Local Rule 38. Other Sanctions for Delay

In the event of failure by a party to file the record, a brief, or the appendix within the time limited by the Federal Rules of Appellate Procedure, or a rule or order of this court, the court, on motion of a party or on its own motion, may impose other sanctions, including amounts to reimburse an opposing party for the expense of making motions, upon the defaulting party or the defaulting party's attorney.

Rule 39. Costs

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

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

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

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

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

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

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

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

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

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

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

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

(1) the preparation and transmission of the record;

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

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

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

Local Rule 39. Costs

The cost of reproducing the necessary copies of appendices or record excerpts shall be taxed at a rate not to exceed $0.20 per page (which figure may be increased from time to time by the clerk of the court to reflect prevailing rates of economical duplicating or copying processes), or at actual cost, whichever shall be less.

Rule 40. Petition for Panel Rehearing

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

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

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

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

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

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

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

(C) issue any other appropriate order.

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

Interim Local Rule 40. Panel Rehearing Procedure

(a) Copy of Opinion or Summary Order Required. *Each petition for rehearing shall include a copy of the opinion or summary order to which the petition relates.*

(b) Procedure After Amendment of Court Ruling. *If a panel opinion or summary order is amended, a petition for panel rehearing, or an amended petition, may be filed within the times specified by F.R.A.P. Rule 40(a)(1), counted from the date of the entry of the amendment. A petition for panel rehearing filed prior to amendment of the court's ruling will continue to be effective and need not be amended.*

(c) Sanctions. *If a petition for rehearing is found to be wholly without merit, vexatious, and for delay, the court may tax a sum not exceeding $250 against petitioner in favor of the petitioner's adversary, to be collected with the costs in the case.*

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

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

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

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

(d) Staying the Mandate.

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

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

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

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

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

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

Local Rule 41. Issuance of Mandate

Unless otherwise ordered by the court, the mandate shall issue forthwith in all cases in which (1) an appeal from an order or judgment of a district court or a petition to review or enforce an order of an agency is decided in open court, (2) a petition for a writ of mandamus or other extraordinary writ is adjudicated, or (3) the clerk enters an order dismissing an appeal or a petition to review or enforce an order of an agency for a default in filings, as directed by an order of the court or a judge.

Rule 42. Voluntary Dismissal

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

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

Rule 43. Substitution of Parties

(a) Death of a Party.

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

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

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

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

(c) Public Officer: Identification; Substitution.

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

(2) **Automatic Substitution of Officeholder.** When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise

ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

Rule 44. Case Involving a Constitutional Question When the United States 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 the 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, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

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

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

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

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

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

Rule 46. Attorneys

(a) Admission to the Bar.

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

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

> "I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly

and according to law; and that I will support the Constitution of the United States."

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

(b) Suspension or Disbarment.

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

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

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

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

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

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

Interim Local Rule 46.1. Attorney Admission and Discipline

(a) Admission Requirements; Procedures. *Except as otherwise provided in these rules, counsel of record for all parties and any attorney appearing on behalf of a party or amicus curiae must be admitted to practice before this court, and must certify their admission on the Acknowledgment and Notice of Appearance form filed in accordance with Local Rule 12.1.*

(1) Applying for Admission. *To request admission to this court, an attorney must complete an application in the form available on this court's website, comprised of:*

(A) applicant's admission form;

(B) applicant's statement and certification that the applicant has read and is familiar with the Federal Rules of Appellate Procedure (FRAP) and the local rules of this court; and,

(C) sponsor's affidavit and motion.

(2) Renewal of Admission. *An attorney is admitted for a period of five years, and must renew admission every five years for an additional five-year period. Renewal requires submission of an attorney admission renewal application in the form available on this court's website.*

(A) Failure to Renew; Inactive Status. *An attorney who fails to renew admission within one month of the expiration of the five-year period is placed in inactive status. An attorney in inactive status must complete the renewal process to practice before the court. After 12 months in inactive status, an attorney is removed from the court's admission roll and must reapply for admission in accordance with paragraph (a)(1).*

(B) Admission Renewal Schedule. *An attorney already admitted to practice in this court must initially renew admission in accordance with the timetable below, and must thereafter renew admission every five years based on this initial renewal date.*

(i) Admission on or after July 1, 2004. An attorney admitted to this court on or after July 1, 2004, must initially renew admission no later than five years from the original date of admission.

(ii) Admission before July 1, 2004. An attorney admitted to this court before July 1, 2004, must renew admission no later than the anniversary date of the original admission as it occurs during the period July 2009 through June 2010.

(b) Change in Contact Information. *An attorney admitted to practice in this court must promptly notify the clerk of a change in any of the contact information required on the attorney admission data form.*

(c) Fees. *An attorney applying for admission or renewal of admission must pay to the clerk a fee set by the court and posted on the Court's website.*

(d) Pro Hac Vice Admission. *An attorney may be admitted pro hac vice to represent a party or amicus curiae in a particular proceeding without formally applying for admission or paying the admission fee. Pro hac vice admission is granted upon the submission of a written motion to the court before filing a notice of appearance. To qualify, the attorney must be:*

(1) *a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken under 18 U.S.C. §3006A;*

(2) *acting for a party who is proceeding in forma pauperis; or*

(3) *able to demonstrate exceptional circumstances justifying admission for the particular proceeding.*

(e) Appearance and Argument by Eligible Law Students.

2. An eligible law student acting under a supervising attorney may appear in this Court on behalf of any indigent person, the United States, or a governmental agency, provided the party on whose behalf the student appears has consented thereto in writing.

2. The supervising attorney shall be a member of the bar of this Court and, with respect to the law student's proposed appearance upon an appeal or other matter before this Court, shall:

(i) file with this Court the attorney's written consent to supervise the student;

(ii) assume personal professional responsibility for the student's work;

(iii) assist the student to the extent necessary;

(iv) appear with the student in all proceedings before this Court and be prepared to supplement any written or oral statement made by the student to this Court or opposing counsel.

3. In order to be eligible to appear, the student shall:

(i) be enrolled in a law school approved by the American Bar Association. The student shall be deemed to continue to meet this requirement as long as, following graduation, the student is preparing to take the first state bar examination, of the state of the student's choice within this circuit, for which the student is eligible or, having taken that examination, the student is awaiting publication of the results or admission to the bar after passing that examination;

(ii) have completed legal studies amounting to at least four semesters, or the equivalent;

(iii) be certified, by either the dean or a faculty member of the student's law school designated by the dean, as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by mailing a notice of withdrawal to the clerk of this court or it may be terminated, by vote of a majority of the panel sitting on a case in which the student is appearing, at any time without notice or hearing and without any showing of cause. The loss of certification by action of this court shall not be considered a reflection on the character or ability of the student. The dean or a faculty member designated by the student may recertify such a student for appearances before other panels;

(iv) be introduced to this court by an attorney admitted to practice before this court;

(v) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the party on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;

(vi) certify in writing that the student is familiar and will comply with the Code of Professional Responsibility of the American Bar Association;

(vii) certify in writing that the student is familiar with the Federal Rules of Appellate Procedure, the Rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

4. Upon filing with the clerk of this court the written consents and certifications required by this rule, an eligible law student supervised in accordance with this rule, may with respect to any appeal or other proceeding for which the student had met the requirements of this rule:

(i) engage in the drafting or preparation of briefs, appendices, motions, or other documents;

(ii) appear before this court and participate in oral argument.

(f) Suspension or Disbarment. *Suspension or disbarment shall be governed by Rule 46, Federal Rules of Appellate Procedure.*

1. In all cases in which an order disbarring an attorney or suspending the attorney from practice (whether or not on consent) has been entered in any other court of record, federal or state, and a certified copy thereof has been filed in this court, the

clerk shall enter an order for the court, to become effective twenty-four days after the date of service upon the attorney unless sooner modified or stayed, disbarring the attorney or suspending the attorney from practice in this court upon terms and conditions comparable to those set forth by the other court of record. A reasonable effort shall be made to locate the attorney's current address, and, if that effort is unsuccessful, mailing a copy of the order to the last-known address shall be deemed proper service. A copy of the order shall also be mailed to the Committee on Admissions and Grievances of the Court of Appeals to be established under subsection (h) hereof (hereafter "Committee").

2. *Within twenty days from the date of service of this court's order, a motion may be filed in this court either by such attorney or the Committee for a modification or revocation of the order of this court. Any such motion shall set forth specifically the facts and principles relied on by applicant as showing cause why a different disposition should be ordered by this court. The timely filing of such a motion will stay the effectiveness of this court's order until further order of this court.*

3. *A motion to modify or revoke an order that has become effective under (1) will not be entertained unless good cause is shown for failure to file a motion timely under (2).*

4. *The court in any matter disputed under (2) or (3) may refer the matter to a special master to be appointed by the court for hearing and report.*

5. *The foregoing paragraphs of this subsection shall apply to any attorney who resigns from the bar of any other court of record, federal or state, while under investigation into allegations of misconduct on the attorney's part. Upon resigning under such conditions the attorney shall promptly inform the clerk of this court of such resignation.*

(g) Attorneys Convicted of Crime.

1. *Upon the filing with the court of a certificate, duly signed by the clerk of the court in which the conviction has occurred, demonstrating that an attorney has been convicted of a serious crime as hereinafter defined, the clerk of this court shall immediately enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere, judgment after trial, or otherwise, and regardless of the pendency of an appeal from the conviction, unless the court orders otherwise. A copy of such order shall be served upon the attorney by mail at the attorney's last known address. Such suspension shall remain in effect pending disposition of a disciplinary proceeding to be commenced upon the filing of the certificate of conviction, unless the court orders otherwise.*

2. The term "serious crime" shall include any felony, federal or state, and 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 has occurred, is (a) interference with the administration of justice; (b) false swearing; (c) misrepresentation; (d) fraud; (e) willful failure to file income tax returns; (f) deceit; (g) bribery; (h) extortion; (i) misappropriation; (j) theft; or (k) an attempt, or conspiracy, or solicitation of another to commit a serious crime.

3. A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime by such attorney in any disciplinary proceeding instituted against the attorney based upon the conviction.

4. Upon receipt of a certificate of conviction of an attorney for a serious crime and if no order has been entered under subparagraph (f) above, the court may, in addition to suspending the attorney in accordance with the provisions of (1), supra, also direct the institution of a formal presentment against the attorney, without any probable cause hearing, before the Committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. A proceeding under this subparagraph (g)(4) may be terminated if an order is entered under subparagraph (f) above. A disciplinary proceeding so instituted shall not, however, be brought to hearing until all appeals from the conviction are concluded or the time to take such appeal has expired.

5. Upon receipt of a certificate of conviction of an attorney for a crime not constituting a serious crime, other than a traffic offense, the court shall refer the matter to the said Committee for whatever action the Committee may deem warranted. The court may, however, in its discretion, make no such reference with respect to convictions for minor offenses.

6. An attorney suspended under the provisions of (1), shall be reinstated forthwith upon the filing of a clerk's certificate demonstrating that the underlying conviction for a serious crime has been reversed, but the reinstatement will not terminate any proceeding then pending against the attorney, the disposition of which shall be determined by the court or the Committee on the basis of the available evidence.

(h) Committee on Admissions and Grievances.

1. Appointment, members. The court shall appoint a standing committee of members of the bar to be known as the Committee on Attorney Admissions and Grievances. Three of those first appointed shall serve for the term of one year; three for two years; and the remainder and all thereafter appointed shall serve for the term of three years. Each member shall serve until a member's successor has been appointed. If a member shall hold over after the expiration of the term for which a member was appointed, the period of the member's hold-over shall be treated as

part of the term of the member's successor. The court may vacate any such appointment at any time. In the case of any vacancy caused by death, resignation, or otherwise, any successor appointed shall serve the unexpired term of the successor's predecessor. The court shall designate one of the members to serve as chairman whenever it may for any reason be necessary. The court shall appoint a member of the bar as secretary of the Committee, who shall not be entitled to vote on its proceedings.

2. *Reference on matters of misconduct. The court may refer to the Committee any accusation or evidence of misconduct in respect to any professional matter before this court that allegedly violates the rules of professional conduct or responsibility in effect in the state or other jurisdiction where the attorney maintains his or her principal office for such investigation, hearing and report as the court deems advisable. Such matters thus referred may include not only acts of affirmative misconduct but negligent conduct of counsel. The Committee may, in its discretion, refer such matters to an appropriate bar association for preliminary investigation.*

3. *Committee action. In any matter referred to the Committee under the provisions of these Rules it shall provide the attorney with a statement in writing of the charges against him and it shall hold a hearing, on at least ten days' notice to the attorney, making a record of its proceedings; in the event the attorney does not appear, the Committee may take summary action and shall report its recommendation forthwith to the court; in the event that the attorney does appear, the attorney shall be entitled to be represented by counsel, to present witnesses and other evidence on the attorney's behalf, and to confront and cross-examine under oath any witnesses against the attorney. Except as otherwise ordered by the court the Committee shall in its discretion make and be governed by its own rules of procedure.*

4. *Committee recommendation. The Committee shall file the record of its proceedings, its recommendation and a brief statement of the reasons therefor with the Clerk who shall retain them <u>in</u> <u>camera</u> after furnishing the court with copies thereof, and the Clerk shall mail a copy of the Committee's recommendation and statement of its reasons to the affected attorney and make the record of the Committee's proceedings available to the attorney. Within twenty days after filing of the record, report and recommendation the attorney may file with the Clerk a statement, not to exceed ten typewritten pages in length, in opposition to or mitigation of the Committee's recommendation. The court, consisting of the active judges thereof, shall act within a reasonable time thereafter by majority vote.*

5. *Committee expense. The Committee may be reimbursed for its reasonable expenses in the discretion of the court from such sources as may be available to the court for such purposes.*

Rule 47. Local Rules by Courts of Appeals

(a) Local Rules.

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

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

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

Rule 48. Masters

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

(1) regulating all aspects of a hearing;

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

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

(4) administering oaths and examining witnesses and parties.

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

APPENDIX

PART A

AMENDED PLAN TO SUPPLEMENT THE PLANS ADOPTED BY THE SEVERAL DISTRICT COURTS WITHIN THE CIRCUIT, AS REQUIRED BY THE CRIMINAL JUSTICE ACT OF 1964, 18 U.S.C. § 3006A, AS AMENDED

PREAMBLE

The Judicial Council, in promulgating the amended plan set forth below, recognizes that while the Criminal Justice Act provides for limited compensation, attorneys chosen pursuant to the plans to represent defendants are rendering a public and social service of the greatest importance. The Bar has traditionally represented with high dedication defendants unable to pay any compensation for such representation. Services performed for defendants qualifying under the plan will continue to be rendered by members of the Bar, essentially in their capacity as officers of the Courts and in keeping with the high traditions of the legal profession and its vital role in society. We also recognize that despite the nominal compensation provided by the Act, such services will be performed with devotion and vigor so that the lofty ideal - equality before the law for all persons - will be achieved. With this recognition of the importance of representation for the accused, we are confident that all segments of the Bar will accept as part of their professional obligations the need to render the most competent services to defendants in each and every phase of criminal proceedings and that the organized Bar will be stimulated into increased activity with respect to the administration of criminal justice.

Therefore, pursuant to Section 2(a) of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended (hereinafter, "the Act"), 21 U.S.C. § 848(q), and the Guidelines for the Administration of the Criminal Justice Act, Vol. VII, Guide to Judiciary Policies and Procedures, the Judicial Council of the Second Circuit does, for the purpose of supplementing the several plans approved by the United States District Courts within the Circuit in compliance with the Act, hereby adopts the following amended plan to secure adequate representation on appeal for defendants who are financially unable to employ counsel in the cases and situations defined in 18 U.S.C. § 3006A, as amended.

I.

PREPARATION OF PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision of the Chief Judge or the Chief Judge's designee, shall maintain a panel of practicing attorneys who are competent to provide adequate representation on appeal for defendants in criminal cases qualifying under the Act, to supplement the services of the Legal Aid Society and the Federal Public Defenders within this circuit. The list of panel members shall include the name of each attorney, the attorney's address and telephone number, and brief data as to the attorney's experience.

2. Appointments to the panel shall be made by the Court upon appropriate recommendation of a screening committee appointed by the Chief Judge. Attorneys so appointed may receive compensation for their services and reimbursement for their expenses to the maximum amount provided by 18 U.S.C. § 3006(d)(2).

3. All private attorneys seeking to be included on the panel must submit to the Clerk of Court an application (available from the Clerk's Office), a resume, and a writing sample. These will be reviewed in accordance with paragraph 2 of this section. Applicants must be members in good standing at the bar of this Court, must maintain an office within the Circuit, and have demonstrated experience in, and knowledge of, the Federal Rules of Appellate Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the United States Sentencing Guidelines.

4. Attorneys for the panel shall be selected without regard to race, color, creed, gender or membership in any organized bar association.

5. A member of the CJA panel may be removed from the panel whenever the Court determines that the member has failed to satisfactorily fulfill the obligations of panel membership or has engaged in other conduct which renders it inappropriate that he or she be continued as a panel member.

   An attorney may be removed from the panel by the Clerk for twice refusing to accept an appointment.

II.

DETERMINATION OF NEED FOR APPOINTED COUNSEL

1. In every criminal case appealed in forma pauperis by order of the District Court or this Court and in the cases and situations defined in 18 U.S.C. § 3006A, as amended, the Clerk shall forthwith notify the appellant that the appellant has the right to be represented and that counsel may be appointed for the appellant. The foregoing notice shall also be given in all such appeals taken by the United States. If counsel has been appointed under the Act by the District Court, counsel shall continue to represent the appellant unless or until counsel has been notified by the Court of Appeals that other counsel has been appointed and that counsel's services are no longer required.

2. In cases where a request for the appointment of an attorney under the Act is made for the first time on appeal the Chief Judge or the Chief Judge's designee, before making the appointment, shall inquire into and make a finding as to whether appellant is financially able to employ counsel. In making the determination, such forms as may be prepared and furnished by the Administrative Office of the United States Courts shall be utilized for the purpose of eliciting pertinent information.

3. In cases where the defendant was found by the District Court to be financially unable to employ counsel, the Court of Appeals may accept this finding and appoint or continue an attorney without further proof.

4. The Court may, at any time after appointment of counsel, reexamine the financial status of the defendant. If it is found that the appellant is financially able to obtain counsel or make partial payment for the appellant's representation, the appointment may be terminated or partial payment required to be made. If there should come to the knowledge of appointed counsel any information indicating that the defendant or someone on the defendant's behalf can make payment in whole or in part for legal services, it shall be the appointed counsel's duty to report such information promptly to the Court, so that appropriate action may be taken hereunder.

III.

APPOINTMENT OF COUNSEL

1. In all criminal cases on appeal in which the appointment of an attorney by the Court of Appeals under the Act is required, and in cases listed in 18 U.S.C. § 3006A(a), where the Court has determined that appointment of counsel is required in the interests of justice, the appointment shall be made by the Court from the panel in such manner as deemed advisable. Appointments of private attorneys shall be made in a substantial proportion of the cases, insofar as practical. Appointed counsel representing the defendant in the District Court will be designated by the Court of Appeals to continue on appeal. Retained counsel, whether or not a member of the panel, may seek to be appointed under the Act. Such application must be supported by financial documentation as specified in Section II, paragraph 2 of this Plan. The appointment of counsel on appeal shall be made within a reasonable time after the appeal is docketed.

2. In appeals involving more than one defendant, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant, such as conflicting interests of respective appellants, separate counsel may be appointed as necessary.

3. The Court may, at any point in the appellate proceedings, substitute one appointed counsel for another, but in no event shall the total compensation to all counsel exceed the maximum permitted by the Act. Appointed counsel replaced by such substitution, shall await the final disposition of the appeal before submitting a claim for compensation as prescribed in Article V.

4. The selection of counsel shall be the sole and exclusive responsibility of the Court, and any defendant entitled to representation under the Act shall not be permitted to make the selection of an attorney to represent the defendant from the panel or otherwise.

5. When the Court determines that the appointment of an attorney who is not a member of the CJA panel is appropriate in the interest of justice, judicial economy, or some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the appellant.

IV.

DUTIES OF APPOINTED COUNSEL

1. In the event of affirmance or other decision adverse to the defendant, counsel shall promptly transmit a copy of the Court's decision, advise the defendant in writing of the right to file a petition for writ of certiorari with the Supreme Court, inform defendant of counsel's opinion as to the merit and likelihood of success in obtaining such a writ, and, if requested to do so, petition the Supreme Court for certiorari. Upon proper motion filed within seven days after the entry of judgment indicating that such petition for certiorari would be wholly frivolous, counsel may be relieved of the obligation to file the petition by the Court. If counsel is relieved, counsel shall within seven days after such motion is granted so advise the appellant in writing and inform the appellant concerning the procedures for filing a petition for a writ of certiorari pro se.

   If the United States seeks a writ of certiorari to review a judgment of this Court, counsel shall take all necessary steps to oppose the United States' petition.

2. Counsel shall continue to represent defendant after remand by the Court of Appeals to the District Court. An attorney appointed by the Court of Appeals who is unable to continue at the trial level should move in the District Court for withdrawal and appointment of trial counsel.

3. An appointed attorney shall not delegate any substantive tasks in connection with representation of a defendant to any person other than a partner, associate, or regular employee of the law firm of which the appointed attorney is a partner or associate, without the written consent of the defendant and the Court.

V.

PAYMENT

1. An attorney appointed pursuant to this plan shall be compensated upon the submission of the attorney's voucher in accordance with the rules, regulations and forms promulgated by the Administrative Office of the United States Courts, and supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in the Court of Appeals, unless another means of compensation is specifically provided for herein. Unless good cause is shown, claims for attorney's fees, expenses and services shall be submitted no later than 45 days after this Court has finally disposed of the appeal. The Court in each instance in which a claim must be filed in accordance with the above shall

fix the compensation and reimbursement to be paid to the attorney in accordance with the provisions of the Act.

The appellate staff of any defender organization organized pursuant to subparagraph (g)(2)(A) or (B) of the Act shall be supported by grants as provided under the Act and shall not be compensated upon statements submitted in accordance with the foregoing provisions for the work on any cases in which assignment has been made.

2. Except as authorized or directed by the Court, no appointed attorney and no person or organization authorized by the Court to furnish representation under the Act, shall request or accept any payment or promise of payment from an appellant or on the appellant's behalf for the attorney's representation of said appellant or for reimbursement of any expenses incurred.

3. The Clerk of the Court of Appeals shall forthwith forward all approved statements to the Administrative Office of the United States Courts for payment.

VI.

FORMS

The forms prepared and furnished by the Administrative Office shall be used, where applicable, in all proceedings under this plan. Any revisions of said forms or any additional forms that may be prescribed by the Administrative Office under the authority of the Judicial Conference of the United States or of the Committee of that Conference to Implement the Criminal Justice Act of 1964, as amended, shall likewise be used, where applicable, in all proceedings under this plan.

VII.

RULES AND REPORTS

The Court shall submit a report on the appointment of counsel under the Act to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference may specify. This plan shall be subject to such rules and regulations of the Judicial Conference of the United States governing the operation of plans under the Act as may be issued from time to time.

VIII.

EFFECTIVE DATE

This amended plan shall become effective March 27, 1996.

PART B

REVISED SECOND CIRCUIT PLAN TO EXPEDITE THE PROCESSING OF CRIMINAL APPEALS

The United States Court of Appeals for the Second Circuit has adopted the following revision of its plan to expedite the processing of criminal appeals, said revision to supersede the plan promulgated December 7, 1971 and to have the force and effect of a local rule adopted pursuant to Rule 47 of the Federal Rules of Appellate Procedure.

1. At the time of the sentencing hearing of any defendant found guilty after trial, the courtroom deputy shall provide attorneys with appropriate forms and instruction sheets regarding the rules of the Court of Appeals for processing appeals. The district judge shall:

   (a) advise the defendant of the defendant's right to appeal and other rights in that connection as set forth in and required by Rule 32(a)(2), F.R.Crim.P.;

   (b) complete and transmit to the Clerk of the District Court a form (in the form attached hereto as Form A, with such changes as the Chief Judge of this Court may from time to time direct) listing information needed for the prompt disposition of an appeal;

   (c) make a finding to be shown in the appropriate place on Form A:

      1. whether defendant is eligible for appointment of counsel on appeal pursuant to the Criminal Justice Act, and

      2. whether there is any reason trial counsel should not be continued on appeal;

   (d) make a finding, to be shown in the appropriate place on Form A, whether the minutes of the trial and of any proceedings preliminary thereto or such portions thereof as may be needed for the proper disposition of the appeal should be transcribed at the expense of the United States pursuant to the Criminal Justice Act, and if so, enter an appropriate order to that effect. In any case where a full transcript is not already available, the district judge shall encourage counsel to agree to dispense with the transcription of material not necessary for proper disposition of an appeal.

2. The Clerk of the District Court shall transmit forthwith the notice of appeal, together with the required forms, to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of this Court.

The Clerk of the District Court shall appoint an appeals clerk to coordinate appeals matters in the district court and serve as the contact between the Clerks of the District Courts and the Court of Appeals.

3. At the time of filing the notice of appeal, counsel for appellant shall complete and transmit to the Clerk of the District Court a form (in the form attached hereto as Form B, with such changes as the Chief Judge of the Court may from time to time direct) certifying that, if trial minutes are necessary, they have been ordered and that satisfactory arrangements for payment of the cost of the transcript have been made with the court reporter.

   If the district judge directs the Clerk to file the notice of appeal, the district judge shall order counsel for the appellant to file Form B with the Clerk of the Court of Appeals within 7 days after sentencing.

   If retained counsel is to be substituted on appeal by other retained counsel, Form B shall be transmitted within seven days after filing the notice of appeal, together with the substitution of counsel notice.

4. Whenever transcription of the minutes (or a portion thereof) has been ordered in a criminal case, the court reporter shall immediately notify the Clerk of the Court of Appeals on the appropriate form of the estimated length of the transcript and the estimated completion date. The number of days shall not exceed thirty (30) days from the order date except under unusual circumstances which first must be approved by the Court of Appeals upon a showing of need.

5. As soon as practicable after the filing of a notice of appeal in a criminal case, a judge of this Court or a judge's delegate shall issue an order (scheduling order) setting forth as hereafter described, the dates on or before which the record on appeal shall be filed, the brief and appendix of the appellant shall be filed, and the brief of the United States shall be filed, designating the week during which argument of the appeal shall be heard, and making such other provisions as justice may require.

   (a) **Docketing of the Record.** The scheduling order shall provide that the record on appeal be docketed within twenty days after filing of the notice of appeal. If, at that time, the transcript is still incomplete a partial record shall be docketed which shall be supplemented when the transcript is complete. This Court will not ordinarily grant motions to extend time to docket the record.

   (b) **Appellant's Brief and Appendix.** The scheduling order shall provide that the brief and appendix of appellant be filed not later than thirty days after the

date on which the transcription of the trial minutes is scheduled to be completed unless for good cause shown it appears a longer or shorter period should be set. This provision does not affect appellant's right to file a deferred appendix as provided by FRAP 30(c) and § 30(1) of the Rules of this Court.

(c) **Appellee's Brief.** The scheduling order shall provide that the appellee's brief shall be filed not later than 30 days after the date on which appellant's brief and appendix is to be filed, unless for good cause shown it appears a longer or shorter period should be set.

6. At the time a scheduling order is entered, or at any other time the judge or the judge's delegate who signed such order or, if the judge or the judge's delegate is unavailable, any other judge of this Court may enter any other orders desirable to assure the prompt disposition of the appeal. Such orders may include, but are not limited to, orders appointing counsel on appeal pursuant to the Criminal Justice Act, setting deadlines for filing the transcription of the trial minutes, requiring attorneys for co-appellants to share a copy of the transcript, and instructing the Clerk to permit counsel to remove and examine the official copy of the record for such periods as are necessary.

7. Under Rule 4(b)(a) of this Court, when a defendant convicted following trial wishes to appeal, trial counsel, whether retained or appointed by the district court or during the course of the appeal, is responsible for representing the defendant until relieved by the Court of Appeals. Furthermore, it is the policy of this Circuit that, in the absence of good cause shown, counsel appointed under the Criminal Justice Act for the trial shall be continued on appeal.

8. When new counsel is retained on appeal, whether trial counsel was retained or appointed in the district court or during the course of the appeal, new counsel must promptly file a substitution of counsel form endorsed by the defendant and the previous counsel of record. The substitution form must include a statement affirming that the trial minutes have been ordered.

   In all cases when trial counsel, whether retained or appointed, wishes to be relieved as counsel on appeal, trial counsel must move pursuant to Rule 4(b) to be relieved. A motion to be relieved as counsel must be made within seven days after filing of a notice of appeal unless exceptional circumstances excusing a delay are shown.

   In the event that it is impossible or impractical to obtain the signature of previous counsel of record, counsel on appeal may file the substitution of counsel form signed by the defendant, accompanied by counsel's signed affidavit detailing efforts made to obtain the previous counsel's signature.

9. Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, shall be accompanied by an affidavit or other statement and shall be made not less than seven days before the brief is due, or the argument is scheduled, unless exceptional circumstances exist. Motions not conforming to this requirement will be denied. Motions to postpone the dates set for filing briefs or for argument are not viewed with favor and will be granted only under extraordinary circumstances.

10. In the event the district court grants an extension for filing a notice of appeal pursuant to FRAP 4(a)(b) the Clerk of the District Court shall promptly transmit a copy of the order to the Clerk of the Court of Appeals.

11. The Clerk shall, without further notice, dismiss an appeal for failure by the appellant to docket the record or file an appellant's brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraph 9, within the time so extended; or in the event of default in any action required by these rules or any order resulting from these rules.

12. In cases where the Chief Judge may deem this desirable the Chief Judge or a person designated by the Chief Judge may direct attorneys to attend a pre-argument conference to be held as soon as practicable before the Chief Judge or a person designated by the Chief Judge, to establish a schedule for the filing of briefs and to consider such other matters as may aid in the prompt disposition of the appeal. At the conclusion of the conference an order shall issue which shall control the subsequent course of the proceeding.

13. When an appeal from a criminal conviction is affirmed in open court, the mandate shall issue forthwith unless the Court shall otherwise direct. In all other criminal appeals, the panel shall consider the desirability of providing for issuance of the mandate at a date earlier than provided by FRAP 41(a).

14. The foregoing Revised Plan to Expedite the Processing of Criminal Appeals shall be applicable to all criminal appeals in which notice of appeal is filed on or after November 18, 1974.

PART C

CIVIL APPEALS MANAGEMENT PLAN

1. Notice of Appeal, Transmission of Copy and Entry by Court of Appeals.

Upon the filing of a notice of appeal in a civil case, the Clerk of the District Court shall forthwith transmit a copy of the notice of appeal to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of the Court of Appeals.

2. Appointment of Counsel for Indigent, Advice by District Court Judge.

If the appeal is in an action in which the appellant may be entitled to the discretionary appointment of counsel under 18 U.S.C. § 3006A(g) but has not had such counsel in the district court and there has been an indication that the appellant may be indigent, the judge who heard the case shall advise the Clerk of the Court of Appeals whether in the judge's judgment such appointment would be in the interests of justice.

3. Docketing the Appeal; Filing Pre-Argument Statement; Ordering Transcript.

Within ten calendar days (see FRAP 26(a)) after filing the notice of appeal, the appellant shall cause the appeal to be docketed by taking the following actions:

(a) filing with the Clerk of the Court of Appeals an original and one copy of, and serving on other parties a pre-argument statement (in the form attached hereto as Form C or Form C-A, in the case of a petition for review or enforcement of an agency decision, with such changes as the Chief Judge of this Court may from time to time direct) detailing information needed for the prompt disposition of an appeal;

(b) ordering from the court reporter on a form to be provided by the Clerk of the Court of Appeals (Form D), a transcript of the proceedings pursuant to FRAP 10(b). If desirable the transcript production schedule and the portions of the proceedings to be transcribed shall be subject to determination at the pre-argument conference, if one should be held, unless the appellant directs the court reporter to begin transcribing the proceedings immediately;

(c) certifying that satisfactory arrangements have been or will be made with the court reporter for payment of the cost of the transcript;

(d) paying the docket fee fixed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913 (except when the appellant is authorized to prosecute the appeal without payment of fees).

(e) at the time of filing Form C or Form C-A in the case of a petition for review or enforcement of an agency decision and Form D, the appellant shall also file:

(i) a copy of each of the judgments, orders and/or decisions of the U.S. District Court or agency from which review is sought,

(ii) a copy of each written or transcribed oral opinion rendered in the proceeding from which the review is sought addressing the issues raised on appeal,

(iii) in those cases where a decision is initially reviewed in the U.S. District Court, e.g., bankruptcy, social security, etc., a copy of all judgments, decisions, orders and opinions reviewed by the U.S. District Court which address the issues raised on appeal.

4. Scheduling Order; Contents.

(a) In all civil appeals the staff counsel of the Court of Appeals shall issue a scheduling order as soon as practicable after the pre-argument statement has been filed unless a pre-argument conference has been directed in which event the scheduling order may be deferred until the time of the conference in which case the scheduling order may be entered as part of the pre-argument conference order.

(b) The scheduling order shall set forth the dates on or before which the record on appeal, the brief and appendix of the appellant, and the brief of the appellee shall be filed and also shall designate the week during which argument of the appeal shall be ready to be heard.

5. Pre-Argument Conference; Pre-Argument Conference Order.

(a) In cases where staff counsel may deem this desirable, the staff counsel may direct the attorneys to attend a pre-argument conference to be held as soon as practicable before staff counsel or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues, and any other matters which the staff counsel determines may aid in the handling or the disposition of the proceeding.

(b) At the conclusion of the conference the staff counsel shall enter a pre-argument conference order which shall control the subsequent course of the proceeding.

6. Non-Compliance Sanctions.

(a) If the appellant has not taken each of the actions set forth in paragraphs 3(a), (b), (c), and (d) of this Plan within the time therein specified, the appeal may be dismissed by the Clerk without further notice.

(b) With respect to docketed appeals in which a scheduling order has been entered, the Clerk shall dismiss the appeal upon default of the appellant regarding any provision of the schedule calling for action on the appellant's part, unless extended by the Court. An appellee who fails to file an appellee's brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraphs 6 or 8, within the time as so extended, will be subjected to such sanctions as the Court may deem appropriate, including those provided in FRAP 31(c) or FRAP 39(a) or Rule 38 of the Local Rules of this Court supplementing FRAP or the imposition of a fine.

(c) In the event of default in any action required by a pre-argument conference order not the subject of the scheduling order, the Clerk shall issue a notice to the appellant that the appeal will be dismissed unless, within ten days thereafter, the appellant shall file an affidavit showing good cause for the default and indicating when the required action will be taken. The staff counsel shall thereupon prepare a recommendation on the basis of which the Chief Judge or any other judge of this Court designated by the Chief Judge shall take appropriate action.

7. Motions

Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, shall be accompanied by an affidavit or other statement and shall be made not later than two weeks before the brief is due or the argument is scheduled unless exceptional circumstances exist. Motions not conforming to this requirement will be denied. Motions to alter the date of arguments placed on the calendar are not viewed with favor and will be granted only under extraordinary circumstances.

8. Submission on Briefs; Assignment to Panel.

When the parties agree to submit the appeal on briefs, they shall promptly notify the Clerk, who will cause the appeal to be assigned to the first panel available after the time fixed for the filing of all briefs.

9. Other Proceedings.

(a) Review of Administrative Agency Orders; Applications for Enforcement.

In a review of an order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency,

(i) The Staff Counsel of the Court of Appeals shall issue a scheduling order as soon as practicable setting forth the dates on or before which the record or authorized substitute, the petitioner's brief and the appendix and the brief of the respondent shall be filed and also shall designate the week during which argument of the proceeding shall be ready to be heard;

(ii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences, and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

(b) Appeals from the Tax Court.

In a review of a decision of the Tax Court,

(i) Paragraphs 3(a) and 3(d) of this Plan, pertaining to filing pre-argument statements and payment of the docket fee, shall be applicable to this subparagraph. If the appellant has not taken each of the actions set forth in those paragraphs within the time specified in Paragraph 3, the appeal from the tax court may be dismissed by the Clerk of the Court without further notice.

(ii) Paragraph 4 of this Plan, pertaining to scheduling orders, shall also be applicable hereto.

(iii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

PART D

GUIDELINES FOR CONDUCT OF PRE-ARGUMENT CONFERENCE UNDER THE CIVIL APPEALS MANAGEMENT PLAN

The conference is held by Staff Counsel with attorneys for the parties under Rule 5 of the Civil Appeals Management Plan, Rules of the Second Circuit Court of Appeals, Appendix, Part C.

1. Purposes

The purposes are to consider the possibility of settlement, simplification of the issues, and any other matters which may aid in the processing and disposition of the appeal. Experience shows that preliminary review of the issues by the parties with Staff Counsel often leads to a realistic and less partisan view of the chances of success, resulting in settlement or withdrawal of some appeals or particular issues.

With a view to enabling the parties to resolve issues, Staff Counsel, after hearing counsel, is ordinarily expected to give them the benefit of Staff Counsel's views of the merits or other aspects of the appeal.

2. Authority, Preparation and Attitude of Parties

The success of the conference depends on the attorneys treating it as a serious and non-perfunctory procedure which can often save time and expense for the parties. All sides should be thoroughly prepared to discuss in depth the alleged errors and the reasons for their positions. Attorneys with primary responsibility for the litigation shall attend the conference, and such counsel shall have full authority from their clients to make such commitments as may reasonably be anticipated. If feasible, the clients should be available for consultation by phone during the conference.

3. Good Faith and Non-Coerciveness

The parties are obligated to participate in good faith with a view to resolving differences as to the merits and issues. This process requires each attorney, no matter how strong the attorney's views, to exercise a degree of objectivity, patience and cooperation that will permit the attorney to make a decision based on reason. In this process the Staff Counsel, who provides objective expertise in a forum for appraisal of the merits and expedition of each appeal, is entitled to their respect and the Staff Counsel's views should be carefully considered. The Staff Counsel's views, however, are Staff Counsel's own and not those of the court, with which Staff Counsel does not communicate about a case. If, after this procedure, attorneys believe in good conscience that they cannot reach an agreement, they are not under any compulsion to do so.

4. Confidentiality

All matters discussed at a conference, including the views of Staff Counsel as to the merits, are confidential and not communicated to any member of the court. Likewise parties are prohibited from advising members of the court or any unauthorized third parties of discussions or action taken at the conference. In re Lake Utopia Paper Limited, 608 F.2d 928 (2d Cir. 1979). Thus the court never knows what transpired at a conference.

5. Presence of Clients

Ordinarily attorneys are expected to attend the conference without their clients. However, with the permission of Staff Counsel, clients may attend with their attorneys. In the limited number of cases where Staff Counsel reasonably believes that the presence of a client might be helpful Staff Counsel may request -- or, in exceptional circumstances, require -- an attorney to have the client attend the conference with the attorney. Staff Counsel does not talk with clients outside of the presence of their attorneys.

6. Conferences by Telephone or at Distant Locations

Where considerable distances or other substantial reasons warrant, Staff Counsel may in appropriate cases conduct prearranged telephonic conferences. Where a sufficient number of cases can be accumulated and judicial efficiency and economy permit, Staff Counsel may also hold conferences within the Circuit, at locations other than Foley Square, New York City.

These provisions are designed to accommodate parties whose attorneys would otherwise be seriously inconvenienced by being forced to travel long distances or for other reasons.

7. Scheduling Orders

In the interest of obtaining prompt resolution of appeals, most scheduling orders in the Second Circuit are somewhat tighter than the schedules provided for in the Federal Rules of Appellate Procedure. See FRAP 31(a).

8. Grievances

Any grievances as to the handling of any case under the CAMP program should be addressed to the Circuit Executive, George Lange III, 40 Foley Square, Room 2904, New York, New York 10007.

(Rev. September 27, 1996)

PART E

RULES OF THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT GOVERNING COMPLAINTS AGAINST JUDICIAL OFFICERS UNDER 28 U.S.C. § 372(c)

Preface to the Rules

Section 372(c) of Title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see Rule 18(e).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under § 372(c). The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in any of these ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief judge and six other judges of the court of appeals and the chief judge of each of the district courts within the Second Circuit.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) The Purpose of the Procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrate judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

(b) What May be Complained About. The law authorizes complaints about judges or magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" does not include making wrong decisions -- even very wrong decisions -- in the course of hearings, trials, or appeals. It does not include conduct engaged in by a judicial officer prior to appointment to the bench. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling."

"Mental or physical disability" may include temporary conditions as well as permanent disability.

(c) Who May be Complained About. The complaint procedure applies to judges of the United States courts of appeals, judges of the United States district courts, judges of United States bankruptcy courts, and United States magistrate judges. These rules apply, in particular, only to judges of the Court of Appeals for the Second Circuit and to district judges, bankruptcy judges, and magistrate judges of federal courts within the circuit. The circuit includes Connecticut, New York and Vermont.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive, whose address is United States Courthouse, Foley Square, New York, New York 10007, is sometimes able to provide assistance in resolving such complaints. All complaints must be submitted in writing.

(d) Time for Filing. Complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.

(e) Limitations on Use of the Procedure. The complaint procedure is not intended to provide a means of obtaining review of a judge's or magistrate judge's decision or ruling in a case. The judicial council of the circuit, the body that takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that.

The complaint procedure may not be used to have a judge or magistrate judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge or magistrate judge too long. A petition for mandamus can sometimes be used for that purpose.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints in the Second Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, New York 10007 (telephone (212) 857-8530). Forms may be picked up in person at the office of the clerk of the court of appeals or any district court or bankruptcy court within the circuit.

(b) Statement of Facts. A statement should be attached to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. The statement should not be longer than five pages (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include --

(1) A statement of what occurred;
(2) The time and place of the occurrence or occurrences;
(3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

(c) Legibility. Complaints should be typewritten if possible. If not typewritten, they must be legible.

(d) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

(e) Number of Copies. If the complaint is about a judge of the court of appeals, an original plus three copies of the complaint form and the statement of facts must be filed; if it is about a district judge or magistrate judge, an original plus four copies must be filed; if it is about a bankruptcy judge, an original plus five copies must be filed. One copy of any supporting transcripts, exhibits, or other documents is sufficient. A separate complaint, with the required number of copies, must be filed with respect to each judge or magistrate judge complained about.

(f) Signature and Oath. The form must be signed by the complainant and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.

(g) Where to File. Complaints should be sent to

Clerk, United States Court of Appeals
United States Courthouse
Foley Square
New York, New York 10007

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability."

(h) No Fee Required. There is no filing fee for complaints of misconduct or disability.

RULE 3. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A COMPLAINT

(a) Receipt of Complaint in Proper Form.

(1) Upon receipt of a complaint against a judge or magistrate judge filed in proper form under these rules, the clerk of the court will open a file, assign a docket number, and acknowledge receipt of the complaint. The clerk will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act as chief judge under rule 18(e)) and to the judge or magistrate judge whose conduct is the subject of the complaint. The original of the complaint will be retained by the clerk.

(2) If a district judge or magistrate judge is complained about, the clerk will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate judge holds appointment. If a bankruptcy judge is complained about, the clerk will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of a district court or bankruptcy court is a subject of the complaint, the chief judge's copy will be sent to the judge eligible to become the next chief judge of such court.

(b) Receipt of Complaint About Official Other Than a Judge or Magistrate Judge of the Second Circuit. If the clerk receives a complaint about an official other than a judge or magistrate judge of the Second Circuit, the clerk will not accept the complaint for filing, and will so advise the complainant.

(c) Receipt of Complaint Not in Proper Form. If the clerk receives a complaint against a judge or magistrate judge of this circuit that uses a complaint form but does not comply with the requirements of Rule 2, the clerk will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures.

If a complaint against a judge or magistrate judge is received in letter form, the clerk will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a copy of these rules and the accompanying forms.

Chapter II: Review of a Complaint By the Chief Judge

RULE 4. REVIEW BY THE CHIEF JUDGE

(a) Purpose of Chief Judge's Review. When a complaint in proper form is sent to the chief judge by the clerk's office, the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has been taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee.

(b) Inquiry by Chief Judge. In determining what action to take, the chief judge, with such assistance as may be appropriate, may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge or magistrate judge whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge or magistrate judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge will not undertake to make findings of fact about any material matter that is reasonably in dispute.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes --

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported or have been ruled on in previous complaints by the same complainant; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Corrective Action. The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint or that action on the complaint is no longer necessary because of intervening events.

(e) Appointment of Special Committee. If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in Rule 9, to investigate the complaint and make recommendations to the judicial council. However, ordinarily a special committee will not be appointed until the judge or magistrate judge complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee.

(f) Notice of Chief Judge's Action.

(1) If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken or because intervening events have made action on the complaint unnecessary, the chief judge will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained of. The order and the supporting memorandum, which may be incorporated in one document, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the judicial council for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge or magistrate judge whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) Report to Judicial Council. The chief judge will from time to time report to the judicial council of the circuit on actions taken under this rule.

CHAPTER III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken or that intervening events have made action unnecessary, a petition for review may be addressed to the judicial council of the circuit. The judicial council may deny the petition for review, or grant the petition and either return the matter to the chief judge for further action or, in exceptional cases, take other appropriate action.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

(b) Form. A petition should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order. . ." There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten if possible. If not typewritten, they must be legible.

(d) Number of Copies. Only an original is required.

(e) Statement of Grounds for Petition. The letter should set forth a brief statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition.

(f) Signature. The letter must be signed by the complainant.

(g) Where to File. Petition letters should be sent to

Clerk, United States Court of Appeals
United States Courthouse
40 Foley Square
New York, New York 10007

The envelope should be marked "Misconduct Petition" or "Disability Petition."

(h) No Fee Required. There is no fee for filing a petition under this procedure.

RULE 7. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A PETITION FOR REVIEW

(a) Receipt of Timely Petition in Proper Form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court of appeals will acknowledge receipt of the petition. The clerk will promptly cause to be sent to each member of the judicial council, except for any member disqualified under rule 18, copies of (1) the complaint form and statement of facts, (2) any response filed by the judge or magistrate judge, (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint, (4) the chief judge's order disposing of the complaint, (5) any memorandum in support of the chief judge's order, (6) the petition for review, (7) any other documents in the files of the clerk that appear to the circuit executive to be relevant and material to the petition or a list of such documents, (8) a list of any documents in the clerk's files that are not being sent because they are not considered by the circuit executive relevant and material, (9) a ballot that conforms with Rule 8(a). The clerk will also send the same materials, except for the ballot, to the circuit executive and the judge or magistrate judge whose conduct is at issue, except that materials previously sent to a person may be omitted.

(b) Receipt of Untimely Petition. The clerk will not accept for filing a petition that is received after the deadline set forth in Rule 6(a), and will so advise the complainant.

(c) Receipt of Timely Petition Not in Proper Form. Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the clerk will reject the petition, and will so advise the complainant.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

(a) Review Panel. The Chief Judge shall designate four members of the judicial council (other than the chief judge) to serve as a review panel. A review panel shall be composed of two circuit judges and two district judges. Membership on the review panel shall be changed after four months so that all members of the council shall serve on a review panel once each year. A review panel shall act for the judicial council on all petitions for review of a chief judge's dismissal order, except those petitions referred to the full membership of the council pursuant to Rule 8(b).

(b) Mail Ballot. Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) deny the petition for review, or (2) refer the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council member voting to place the petition on the agenda of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be placed on the agenda of a council meeting upon the votes of at least two members of the council; otherwise, the petition for review will be denied.

Upon referral of a petition to the full membership of the judicial council, the clerk shall send to each member of the council not then serving on the review panel the materials specified in Rule 7(a).

(c) Availability of Documents. Upon request, the clerk will make available to any member of the judicial council or to the judge or magistrate judge complained about any document from the files that was not sent to the council members pursuant to Rule 7(a).

(d) Quorum and Voting. If a petition is placed on the agenda of a meeting of the judicial council, a majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action.

(e) Rights of Judge or Magistrate Judge Complained About.

(1) At any time after the filing of a petition for review by a complainant, the judge or magistrate judge complained about may file, and before the judicial council makes any decision unfavorable to the judge or magistrate judge will be invited to file, a written response with the clerk of the court of appeals. The clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified and to the complainant. The judge or magistrate judge may not communicate with council members individually about the matter, either orally or in writing.

(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

(f) Notice of Council Decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

(2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review of the decision.

(3) A memorandum supporting a council order will not include the name of the complainant or the judge or magistrate judge whose conduct was complained of. If the order of the council denies a petition for review of the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

Chapter IV: Investigation and Recommendation By Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

(a) Membership. A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, the district judge members of the committee will be from districts other than the district of the judge or magistrate judge complained about.

(b) Presiding officer. At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge) as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the clerk of the court of appeals to issue subpoenas related to proceedings of the committee.

(c) Bankruptcy Judge or Magistrate Judge as Adviser. If the judicial officer complained about is a bankruptcy judge or magistrate judge, the chief judge may designate a bankruptcy judge or magistrate judge, as the case may be, to serve as an adviser to the committee. The chief judge will designate such an adviser if, within ten days of notification of the appointment of the committee, the bankruptcy judge or magistrate judge complained about requests that an adviser be designated. The adviser will be from a district other than the district of the judge or magistrate judge

complained about. The adviser will not vote but will have the other privileges of a member of the committee.

(d) Provision of Documents. The chief judge will send to each other member of the committee and to the adviser, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint (or to that portion of the complaint referred to the special committee).

(e) Continuing Qualification of Committee Members. A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, circuit judge, or district judge, as the case may be, but only if the member continues to hold office under article III, section 1, of the Constitution of the United States.

(f) Inability of Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge of the circuit will determine whether to appoint a replacement member, either a circuit or district judge as the case may be. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

RULE 10. CONDUCT OF AN INVESTIGATION

(a) Extent and Methods to be Determined by Committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge or magistrate judge may be engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge or magistrate judge, expand the scope of the investigation to encompass such misconduct.

(b) Criminal Matters. If the complaint alleges criminal conduct on the part of a judge or magistrate judge, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 372(c)(14) in an effort to avoid compromising any criminal investigation. However, the committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) Staff. The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.

(d) Delegation. The committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an adviser designated under Rule 9(c). The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with such subpoena, the judicial council or special committee may institute a contempt proceeding consistent with 28 U.S.C. § 332(d).

(e) Report. The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for council action. Any findings adverse to the judge or magistrate judge will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held pursuant to rule 11.

(f) Voting. All actions of the committee will be by vote of a majority of all of the members of the committee.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

(a) Purpose of Hearings. The committee may hold hearings to take testimony and receive other evidence, to hear arguments, or both. If the committee is investigating allegations against more than one judge or magistrate judge it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to Judge or Magistrate Judge Complained About. The judge or magistrate judge complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge or magistrate judge may at any time suggest additional witnesses to the committee.

(c) Committee Witnesses. All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge or magistrate judge complained about. The witnesses will be questioned by committee members, staff, or both. The judge or magistrate judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) Witnesses Called by the Judge or Magistrate Judge. The judge or magistrate judge complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.

(e) Witness Fees. Witness fees will be paid as provided in 28 U.S.C. § 1821.

(f) Rules of Evidence; Oath. The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or affirmation.

(g) Record and Transcript. A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE OR MAGISTRATE JUDGE IN INVESTIGATION

(a) Notice. The judge or magistrate judge complained about is entitled to written notice of the investigation (rule 4(f)(2)), to written notice of expansion of the scope of an investigation (rule 10(a)), and to thirty days written notice of any hearing (rule 11(b)).

(b) Presentation of Evidence. The judge or magistrate judge is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge or magistrate judge, the chief judge or a designee will direct the clerk of the court of appeals to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1).

(c) Presentation of Argument. The judge or magistrate judge may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) Attendance at Hearings. The judge or magistrate judge will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.

(e) Receipt of Committee's Report. The judge or magistrate judge will have the right to receive the report of the special committee at the time it is filed with the judicial council.

(f) Representation by Counsel. The judge or magistrate judge may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in rule 14(h).

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

(a) Notice. The complainant is entitled to written notice of the investigation as provided in rule 4(f)(2). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been filed and is before the council for decision. The Judicial Council may, in its discretion release the special committee's report to the complainant.

(b) Opportunity to Provide Evidence. The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(c) Presentation of Argument. The complainant may submit written argument to the special committee. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

Chapter V: Judicial Council Consideration of Recommendations of Special Committee

RULE 14. ACTION BY JUDICIAL COUNCIL

(a) Purpose of Judicial Council Consideration. After receipt of a report of a special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or that intervening events make action unnecessary, refer the complaint to the Judicial Conference of the United States, or order corrective action.

(b) Basis of Council Action. Subject to the rights of the judge or magistrate judge to submit argument to the council as provided in rule 15(a), the council may take action on the basis of the report of the special committee and the record of any hearings held. If the council finds that the report and record provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.

(c) Dismissal. The council will dismiss a complaint if it concludes --

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the Proceeding on the Basis of Corrective Action Taken. The council will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events make such action unnecessary.

(e) Referral to Judicial Conference of the United States. The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the council's recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the council determines that a circuit judge or district judge may have engaged in conduct --

(1) that might constitute grounds for impeachment; or

(2) that, in the interest of justice, is not amenable to resolution by the judicial council.

(f) Order of Corrective Action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take such other action as is authorized by law to assure the effective and expeditious administration of the business of the courts.

(g) Combination of Actions. Referral of a complaint to the Judicial Conference of the United States under paragraph (e) or to a district court under paragraph (f) of this rule will not preclude the council from simultaneously taking such other action under paragraph (f) as is within its power.

(h) Recommendation About Fees. If the complaint has been finally dismissed, the judicial council, upon request of the judicial officer, shall consider whether to recommend that the Director of the Administrative Office reimburse the judicial officer for attorney's fees and expenses.

(i) Notice of Action of Judicial Council. Council action will be by written order. Unless the council finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum, which may be incorporated into one document, setting forth the factual determinations on which it is based and the reasons for the council action. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained about. The order and the supporting memorandum will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to

paragraph (e) of this rule and the council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge or magistrate judge will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedure for filing a petition for review.

(j) Public Availability of Council Action. Materials related to the council's action will be made public at the time and in the manner set forth in rule 17.

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL CONSIDERATION OF A SPECIAL COMMITTEE'S REPORT

(a) Rights of Judge or Magistrate Judge Complained About. Within ten days after the filing of the report of a special committee, the judge or magistrate judge complained about may address a written response to all of the members of the judicial council. The judge or magistrate judge will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge or magistrate judge may not communicate with council members individually about the matter, either orally or in writing, except as the judicial council has authorized one or more of its members to engage in such communications on its behalf.

(b) Conduct of Additional Investigation by the Council. If the judicial council decides to conduct additional investigation, the judge or magistrate judge complained about will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) Quorum and Voting. A majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action, except that, in accordance with 28 U.S.C. § 152(e), a decision to remove a bankruptcy judge from office requires a majority of all the members of the council.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

(a) General Rule. Consideration of a complaint by the chief judge, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge, magistrate judge, or employee

of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) Files. All files related to complaints of misconduct or disability, whether maintained by the clerk, the chief judge, members of a special committee, members of the judicial council, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) Disclosure of Memoranda of Reasons. Memoranda supporting orders of the chief judge or the judicial council, and dissenting opinions or separate statements of members of the council, may contain such information and exhibits as the authors deem appropriate.

(d) Availability to Judicial Conference. If a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 372(c)(10) for review of a council order, the clerk will furnish any other records related to the investigation.

(e) Availability to District Court. If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 14(f)(3), the clerk will provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.

(f) Impeachment Proceedings. The judicial council may release to the legislative branch any materials that are believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment.

(g) Consent of Judge or Magistrate Judge Complained About. Any materials from the files may be disclosed to any person upon the written consent of both the judge or magistrate judge complained about and the chief judge of the circuit. The chief judge may require that the identity of the complainant be shielded in any materials disclosed.

(h) Disclosure by Judicial Council in Special Circumstances. The judicial council may authorize disclosure of information about the consideration of a complaint,

including the papers, documents, and transcripts relating to the investigation, to the extent that the council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 372(c)(14).

(i) Disclosure of Identity by Judge or Magistrate Judge Complained About. Nothing in this rule will preclude the judge or magistrate judge complained about from acknowledging that such judge is the judge or magistrate judge referred to in documents made public pursuant to rule 17.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General Rule. A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.

(5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) Manner of Making Public. The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) Decisions of Judicial Conference Standing Committee. To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) Special Rule for Decisions of Judicial Council. When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) Complaints Referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

(a) Complainant. If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 372(c)(1), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

(b) Judge Complained About. A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge or magistrate judge who is complained about. This subsection shall not apply where a complainant files complaints against a majority of the members of the judicial council, in which event, the council members, including those complained against, may refer the complaints, with or without a recommendation for appropriate action, to the Judicial Conference

of the United States or to the judicial council of another circuit, or may take other appropriate action, including disposition of the complaints on their merits.

(c) Member of Special Committee Not Disqualified. A member of the judicial council who is appointed to a special committee will not be disqualified from participating in council consideration of the committee's report.

(d) Judge or Magistrate Judge Under Investigation. Upon appointment of a special committee, the judge or magistrate judge complained about will automatically be disqualified from serving on (1) any special committee appointed under Rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review. The proceedings will be deemed terminated thirty days after the final action of the judicial council if no petition for review has at that time been filed with the Judicial Conference.

(e) Substitute for Chief Judge. If the chief judge of the circuit is disqualified or otherwise unable to participate in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge eligible to become the next chief judge of the circuit.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint Pending Before Chief Judge. A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

(b) Complaint Pending Before Special Committee or Judicial Council. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge or magistrate judge complained about and (2) the special committee (before its report has been filed) or the judicial council.

(c) Petition for Review of Chief Judge's Disposition. A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

RULE 19A. ABUSE OF THE COMPLAINT PROCEDURE

If a complainant files vexatious, harassing, or scurrilous complaints, or otherwise abuses the complaint procedure, the council, after affording the complainant an opportunity to respond in writing, may restrict or impose conditions upon the complainant's use of the

complaint procedure. Any restrictions or conditions imposed upon a complainant shall be reconsidered by the council periodically.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 372(c) will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge or magistrate judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the clerk of the court of appeals, United States Courthouse, Foley Square, New York, New York 10007, and in each office of the clerk of a district court or bankruptcy court within this circuit.

RULE 21A. NO IMPLICATION OF CONSTITUTIONALITY

The adoption of these rules shall not be construed as indicating any views with respect to the constitutionality of 28 U.S.C. § 372(c) or any action taken hereunder.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after April 1, 1994. The handling of complaint filed before that date will be governed by the rules previously in effect.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court of Appeals for the Second Circuit for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. § 2077(b), and shall make any appropriate recommendations to the circuit judicial council concerning these rules.

PART F

SECOND CIRCUIT GUIDELINES CONCERNING CAMERAS IN THE COURTROOM

Pursuant to a resolution of the Judicial Conference of the United States adopted on March 12, 1996, authorizing each court of appeals to "decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt," the Court hereby adopts the following Guidelines:

1. **Exercise of local option.** From the date of these Guidelines until further order of this Court, proceedings of the Court conducted in open court may be covered by the media using a television camera, sound recording equipment, and a still camera (hereafter referred to a "camera coverage"), subject to these Guidelines.

2. **Applicable guidelines.** Camera coverage must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference, and these Guidelines of the Second Circuit Court of Appeals.

3. **Eligible proceedings.** Camera coverage is allowed for all proceedings conducted in open court, except for criminal matters. See Fed. R. Crim. P. 53, 54(a). For purposes of these Guidelines, "criminal matters" include not only direct appeals of criminal convictions but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as a habeas corpus petition). Camera coverage is not permitted for pro se matters, whether criminal or civil. On any day when camera coverage is to occur, the Clerk's Office will endeavor to schedule civil and non-pro se matters ahead of criminal and pro se matters. Camera coverage operators will remain seated, away from their equipment, and their equipment will be turned off, during criminal and pro se proceedings.

4. **News media pooling.** Camera coverage will be permitted by any person or entity regularly engaged in the gathering and dissemination of news (hereinafter "news media"). If coverage is sought by more than one person or entity, a pool system must be used (one for still photography and one for radio and television). It will be the responsibility of the news media to resolve any disputes among them as to which personnel will operate equipment in the courtroom. In the absence of an agreement, camera coverage will not be permitted for that day's proceedings. The television

pictures, audio signals, and still photographs of court proceedings made by pool personnel must be made available to any news media requesting them upon payment of a reasonable fee to the employer of the pool personnel to share the costs of the pool personnel.

5. **Educational institutions.** The Court may also authorize the coverage of court proceedings and access to pooled coverage by educational institutions.

6. **Prior notification requirement.** News media interested in camera coverage of any court proceeding must notify the Court's calendar clerk no later than noon two days preceding the day of the proceeding to be covered (i.e., notification must be made by noon on Tuesday to cover a proceeding on Thursday, or by noon Friday for the following Monday). A calendar of the following week's cases is made public by the Court each Thursday. For good cause shown, relief from this notification requirement may be granted by the presiding judge of a panel.

7. **Discretion of Panel.** The panel assigned to hear oral argument will retain the authority, in its sole discretion, to prohibit camera coverage of any proceeding, and will normally exercise this authority upon the request of any member of the panel.

8. **Technical restrictions.** Only two television cameras and one still camera will be permitted in the courtroom. The television cameras and the still camera must each be mounted on a tripod and remain at a fixed location along a side wall of the courtroom throughout the proceeding. The still camera must either be capable of silent operation (shutter and film advance) or be enclosed in a sound-muffling device (so-called "blimp"). No artificial lighting is permitted. An unobtrusive microphone may be mounted at the attorney's lectern and in front of each judge. A sound technician may be present in the courtroom with unobtrusive sound-mixing equipment. The Clerk's Office will designate a location for a device outside the courtroom to enable news media to obtain "feeds" of video and audio signals. All camera coverage equipment must be set up prior to the opening of a day's proceedings and may not be removed until after the conclusion of the day's proceedings. If done unobtrusively, film used by the still camera operator and film or tape used by the video camera operator may be removed from the courtroom at the conclusion of the oral argument of a particular case. Operators of camera coverage equipment in the courtroom will wear business attire.

When operational, the Court's videoconferencing equipment may be used for purposes of camera coverage.

9. **Authority of presiding judge.** The presiding judge of the panel may direct the cessation of camera coverage or the removal of camera coverage personnel from the courtroom in the event of noncompliance with these Guidelines.

10. **Personnel to contact.** The calendar clerk is Chandella Armstrong (or an alternate designated in her absence). She can be reached at (212)857-8590.

Adopted March 27, 1996