FRAP 32

FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS

(a) Form of briefs and the appendix. Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 by 11 inches and type matter not exceeding 6 by 9 inches, with double spacing between each line of text. In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) Form of other papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

FRAP 33

PREHEARING CONFERENCE

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

CIRCUIT RULE 33-1

CIVIL APPEALS DOCKETING STATEMENT; PREBRIEFING SETTLEMENT CONFERENCES PREBRIEFING CASE MANAGEMENT CONFERENCES

(a) Civil Appeals Docketing Statement. Except as provided in section (b) below, absent exigent circumstances, the appellant/ petitioner in each civil case shall complete and submit to the district court upon the filing of the notice of appeal, or to this court upon the filing of a petition for review, an original and one copy of the Civil Appeals Docketing Statement on the form provided as Form 6 in the Appendix of Forms [Note 1.] Within 7 days of service of the Civil Appeals Docketing Statement, appellee/respondent may file a response with this court. Parties shall serve copies of the Civil Appeals Docketing Statement and any response on all parties to the proceedings below. Appellant/ Petitioner shall attach to all copies of the Civil Appeals Docketing Statement a copy of the order from which the appeal is taken. Failure to comply with this rule may result in dismissal of an appeal or petition in accordance with Cir. R. 42-1.

(b) Cases in which Civil Appeals Docketing Statement Not Required

The requirement for filing a Civil Appeals Docketing Statement shall not apply to:

(1) appeals or petitions in which the appellant/petitioner is proceeding without the assistance of counsel or in which the appellant/ petitioner is incarcerated;

(2) appeals from actions filed under 28 U.S.C. 2241, 2254, and 2255;

_____

NOTE 1 Copies of the Civil Appeals Docketing

(3) appeals permitted by the court under 28 U. S. C. 1292(b);

(4) petitions for a writ under 28 U.S.C. 1651;

(5) petitions for review of Board of Immigration Appeals decisions under 8 U. S. C. 1105(a); and

(6)petitions for review and applications for enforcement of National Labor Relations Board decisions under 29 U. S. C. 160 (e).

Cross Reference: Form 6, Appendix of Forms.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 33-1

(a) Prebriefing Settlement Conferences. The court has established a prebriefing conference program for the purpose of conducting settlement conferences in civil cases in which the parties are represented by counsel. The prebriefing conference program is staffed with experienced settlement attorneys and is an independent unit in the court.

In any civil case in which a civil appeals docketing statement must be filed, the court may direct that a settlement conference be held, in-person or over the telephone, with counsel, or with counsel and the parties or key personnel, including insurance representatives. The Court may direct that the conference be conducted by a judge, magistrate judge or mediator designated as a prebriefing conference attorney.

If a case is selected for a settlement conference, counsel shall be notified, by order entered within 35 days of the docketing of the appeal or petition, of the date and time of the conference, and whether the conference will be in person or by telephone. The initial conference normally shall be held within 56 days of the docketing of the appeal. A case is presumed released from the Conference Program if an order scheduling a settlement conference has not been entered within 56 days of the docketing of the appeal or petition. Requests by counsel for a settlement conference will be accommodated whenever possible.

The briefing schedule established by the Clerk's Office at the time the appeal is docketed remains in effect unless adjusted by a conference attorney to facilitate settlement, or by the Clerk's office pursuant to Cir.R. 31-2.3.

Prior to a conference scheduled under this rule, counsel should discuss settlement with their principals and attend the conference with authority to settle. The statements and comments made during a settlement conference held pursuant to this rule are confidential and shall not be disclosed by the court official who conducted the settlement conference nor by counsel in briefs or argument. A judge who conducts a settlement conference pursuant to this rule will not participate in the decision on any aspect of the case, except that he or she may vote on whether to take a case en banc.

Statement form are available in the Clerk's Office of each district court and can be obtained by request from the Ninth Circuit.

(b) Prebriefing Case Management Conference. In any civil case in which a civil appeals docketing statement must be filed, the court may direct that a telephone case management conference be held before a senior staff member in the Clerk's office, or, at the request of the Clerk's office, before a conference attorney. The purpose of a case management conference is to develop the most efficient briefing plan for complex appeals. If a case is selected for a case management conference, counsel shall be notified by order of the date and time of the conference.

FRAP 34

ORAL ARGUMENT

(a) In general; local rule. Oral argument shall be allowed in all cases unless pursuant to local rule a panel of 3 judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(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.

(b) Notice of argument; postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day the plaintiff in the proceeding below, shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-appearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec.1, 1991.)

CIRCUIT RULE 34-1

PLACE OF HEARING

Appeals, applications for original writs, and petitions to review or enforce orders or decisions of administrative agencies may be heard at any session of the court in the circuit, as designated by the Court. Cases are generally heard in the administrative units where they arise. Petitions to enforce or review orders or decision of boards, commissions or other administrative bodies shall be heard in the administrative unit in which the person affected by the order or decision is a resident, unless another place of hearing is ordered by the Court.

CIRCUIT RULE 34-2

CHANGE OF TIME OR PLACE OF HEARING

No change of the day or place assigned for hearing will be made except by order of the Court for good cause. Only under

exceptional circumstances will the Court grant a request to vacate a setting within 14 days of the date set.

CIRCUIT RULE 34-3

PRIORITY CASES

Any party who believes the case before the Court is entitled to priority in hearing date by virtue of any statute or rule, shall so inform the clerk in writing no later than the filing of the first brief.

Criminal appeals shall have first priority in hearing or submission date. Civil appeals in the following categories will receive hearing or submission priority:

(1) Recalcitrant witness appeals brought under 28 U.S.C. 1826;

(2) Habeas corpus petitions brought under Chapter 153 of Title 28;

(3) Applications for temporary or permanent injunctions;

(4) Appeals alleging deprivation of medical care to the incarcerated or other cruel or unusual punishment;

(5) Appeals entitled to priority on the basis of good cause under 28 U.S.C. 1657.

Any party who believes the case is entitled to priority in scheduling the date of hearing or submission solely on the basis of good cause under 28 U.S.C. 1657 shall file a motion for expedition with the clerk at the earliest opportunity.

CIRCUIT RULE 34-4

CLASSES OF CASES TO BE SUBMITTED WITHOUT ORAL ARGUMENT

Pursuant to FRAP 34(a), there is hereby established a class of cases to be submitted without oral argument. There may be placed in this class any appeal, petition for original writ, or petition for review or enforcement of an administrative order in which a 3-judge panel of this court is of the unanimous opinion that:

(a) the appeal is frivolous; or

(b) the dispositive issue or set of issues has been recently 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. Oral argument will be allowed in each case absent a specific finding pursuant to this rule that oral argument is not needed. When a case has been classified by the court for submission without oral argument, the

Clerk shall give the parties notice in writing of such action. The parties shall have 10 days from the date of the Clerk's letter in which to file a statement setting forth the reasons why, in the opinion of the parties, oral argument should be heard.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 34-1 TO 34-4

(1) Appeals Raising the Same Issues. When other pending cases raise the same legal issues, the court may advance or defer the hearing of an appeal so that related issues can be heard at the same time. Cases involving the same legal issue are identified through the use of standardized issue codes during the court's inventory process. The first panel to whom the issue is submitted has priority. Normally, other panels will enter orders vacating submission and advise counsel of the other pending case when it appears that the first panel's decision is likely to be dispositive of the issue.

Panels may also enter orders vacating submission when awaiting the decision of a related case before another court or administrative agency.

(2) Oral Argument. Any party to a case may request, or all parties may agree to request, a case be submitted without oral argument. This request or stipulation requires the approval of the panel. Oral argument will not be vacated if any judge on the panel desires that a case be heard. See FRAP 34(f).The Court thoroughly reviews the briefs before oral argument. Counsel therefore should not unnecessarily repeat information and arguments already sufficiently covered in their briefs. Counsel should be completely familiar with the factual record, so as to be prepared to answer relevant questions.

(3) Disposition. One judge prepares a draft disposition. The draft is sent to the other two judges for the purpose of obtaining their comments, concurrences, or dissents. Upon adoption of a majority disposition, the author sends it to the Clerk along with any separate concurring or dissenting opinions.

(4) Mandate. The mandate of the Court shall issue to the lower tribunal 21 days after the entry of judgment unless the time is shortened or enlarged by order. (See FRAP 41.) This allows time for filing a petition for rehearing, suggestion for rehearing en banc, and motion for stay of mandate pending application for writ of certiorari.

FRAP 35

DETERMINATION OF CAUSES BY THE COURT IN BANC

(a) When hearing or rehearing in banc will be ordered. A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is

not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) Suggestion of a party for hearing or rehearing in banc. A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) Time for suggestion of a party for hearing or rehearing in banc; suggestion does not stay mandate. If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

CIRCUIT RULE 35-1

SUGGESTION OF APPROPRIATENESS OF REHEARING EN BANC

Where a suggestion of the appropriateness of a rehearing en banc is made pursuant to FRAP 35(b) as part of a petition for rehearing, a reference to such suggestion, as well as to the petition for rehearing, shall appear on the cover of the combined petition and suggestion. When the opinion of a panel directly conflicts with an existing opinion by another Court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity, the existence of such conflict is an appropriate ground for suggesting a rehearing en banc.

CIRCUIT RULE 35-2

OPPORTUNITY TO RESPOND

Where a party makes a suggestion of the appropriateness of a hearing or rehearing en banc, the Court will not order a hearing or rehearing without giving the other parties an opportunity to express their views whether hearing or rehearing en banc is appropriate. Where no suggestion of appropriateness is filed,

the Court will not ordinarily order a hearing or rehearing en banc without giving counsel an opportunity to respond on the appropriateness of such a hearing.

CIRCUIT RULE 35-3

LIMITED EN BANC COURT

The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges of the Court. In the absence of the Chief Judge, an 11th active judge shall be drawn by lot, and the most senior active judge on the panel shall preside.

The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one active judge and shall take place on the first working day following the date of the order taking the case or group of related cases en banc.

If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to draw a replacement judge by lot.

Notwithstanding the provision herein for random drawing of names by lot, if a judge is not drawn on any of three successive en banc courts, that judge's name shall be placed automatically on the next en banc court.

In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.

Cross Reference: FRAP 40, Petition for Rehearing.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 35-1 TO 35-3

(1) Time for Filing. A party desiring to file a petition for rehearing or suggestion for rehearing en banc must file it within 14 days after the filing of the original disposition. Counsel should not request extensions of time except for the most compelling reasons. The filing of a petition for rehearing is NOT a prerequisite to the filing of a petition for writ of certiorari to the United States Supreme Court.

(2) Number of Copies. If a petition for rehearing does not include a suggestion for a rehearing en banc, an original and 3 copies shall be filed. If a petition for rehearing does include a suggestion for a rehearing en banc, an original and 40 copies shall be filed.

(3) Initial Hearing En Banc. While a party may suggest an initial en banc hearing pursuant to FRAP 35(b), such requests are

virtually never granted. When a suggestion is submitted, the Clerk notifies the parties that the case will be heard in due course by a panel unless the court votes to hear it en banc.

(4) Suggestions for Rehearing En Banc. When the clerk receives a timely petition for rehearing which also suggests rehearing en banc, copies are sent to all active judges. If the panel grants a rehearing it so advises the other members of the Court, and the suggestion for rehearing en banc is deemed rejected without prejudice to its renewal after the panel completes action on the rehearing. Cases are rarely reheard en banc.

If no suggestion for rehearing en banc has been submitted and the panel votes to deny rehearing, an order to that effect will be prepared and filed. If a suggestion for rehearing en banc has been made, the panel will first make known to the other members of the Court its decision to deny rehearing and its recommendation with regard to the en banc suggestion. Upon receiving such notice, any judge in active service may request en banc consideration whereupon a vote will be taken. If no judge requests or gives notice of an intention to request en banc consideration within 21 days of the panel's recommendation, the panel will enter an order denying rehearing and rejecting the suggestion for rehearing en banc.

Any judge who is not recused or disqualified and who entered upon active service before the call for a vote is eligible to vote. A judge who takes senior status after a call for a vote may not participate in the en banc rehearing or be eligible to vote on subsequent questions relating to the case. This rule is subject to two exceptions: (1) a judge who takes senior status during the pendancy of an en banc case for which the judge has already been chosen as a member of the panel may continue to serve on that panel until the case is finally disposed of; and (2) a senior judge may elect to be eligible, in the same manner as an active judge, to be selected as a member of the en banc court when it reviews a decision of a panel of which the judge was a member.

The En Banc Coordinator notifies the judges when voting is sufficiently complete to determine the result. If the recommendation or request fails of a majority, the En Banc Coordinator notifies the judges and the panel resumes control of the case. The panel then enters an appropriate order denying en banc consideration. The order will not specify the vote tally. However, if the recommendation or request fails by an evenly divided court, the order will so state. In addition, any judge may direct that the judge's dissent be incorporated in the order.

(5) Grant of Rehearing En Banc. When the court votes to rehear a matter en banc, the Chief Judge will enter an order so indicating. The vote tally is not communicated to the parties. The opinion of the three-judge panel remains in effect pending decision on the rehearing en banc unless the order in addition provides that the opinion is withdrawn. Where an order specifies

that the opinion of the panel has been withdrawn, that opinion shall not be regarded as precedent and shall not be cited in either briefs or oral argument to the Ninth Circuit or any district court in the Ninth Circuit. Where an order does not so specify, any citation to the opinion of the panel shall indicate that a rehearing en banc has been granted.

After the en banc court is chosen, the judges on the panel decide whether there will be oral argument or additional briefing. If there is to be oral argument, the Chief Judge (or the next senior active judge as the case may be) will enter an order designating the date, time and place of argument. If no oral argument is to be heard, the Chief Judge will designate a date, time, and place for a conference of the en banc court. That date will ordinarily be the submission date of the case. If any issues have been isolated for specific attention, the order may also set forth those issues. Upon the submission of a case to the en banc court, the judge senior in service among those voting with the majority assigns the writing of the majority disposition.

FRAP 36

ENTRY OF JUDGMENT

The notation of a judgment on the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

CIRCUIT RULE 36-1

OPINIONS, MEMORANDA, ORDERS; PUBLICATION

Each written disposition of a matter before this Court shall bear under the number in the caption the designation OPINION, or MEMORANDUM, or ORDER. A written, reasoned disposition of a case or motion which is designated as an opinion under Circuit Rule 36-2 is an OPINION of the Court. It may be an authored opinion or a per curiam opinion. A written, reasoned disposition of a case or a motion which is not intended for publication under Circuit Rule 36-2 is a MEMORANDUM. Any other disposition of a matter before the Court is an ORDER. A memorandum or order shall not identify its author, nor shall it be designated "Per Curiam. "

All opinions are published; no memoranda are published; orders are not published except by order of the court. As used in this

rule, the term PUBLICATION means to make a disposition available to legal publishing companies to be reported and cited.

CIRCUIT RULE 36-2

CRITERIA FOR PUBLICATION

A written, reasoned disposition shall be designated as an OPINION only if it:

(a) Establishes, alters, modifies or clarifies a rule of law, or

(b) Calls attention to a rule of law which appears to have been generally overlooked, or

(c) Criticizes existing law, or

(d) Involves a legal or factual issue of Updated January unique interest or substantial public importance, or

(e) Is a disposition of a case in which there is a published opinion by a lower court or administrative agency, unless the panel determines that publication is unnecessary for clarifying the panel's disposition of the case, or

(f) Is a disposition of a case following a reversal or remand by the United States Supreme Court, or

(g) Is accompanied by a separate concurring or dissenting expression, and the author of such separate expression requests publication of the disposition of the Court and the separate expression.

CIRCUIT RULE 36-3

OTHER DISPOSITIONS

Any disposition that is not an opinion or an order designated for publication under Circuit Rule 36-5 shall not be regarded as precedent and shall not be cited to or by this Court or any district court of the Ninth Circuit, either in briefs, oral argument, opinions, memoranda, or orders, except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

CIRCUIT RULE 36-4

REQUEST FOR PUBLICATION

Publication of any unpublished disposition may be requested by letter addressed to the Clerk, stating concisely the reasons for publication. Such a request will not be entertained unless received within 60 days of the issuance of this Court's disposition. A copy of the request for publication must be served on the parties to the case. The parties will have 10 days

from the date of service to notify the Court of any objections they may have to the publication of the disposition. If such a request is granted, the unpublished disposition will be redesignated an opinion.

CIRCUIT RULE 36-5

ORDERS FOR PUBLICATION

An order may be specially designated for publication by a majority of the judges acting and when so published may be used for any purpose for which an opinion may be used. Such a designation should be indicated when filed with the Clerk by the addition of the words "FOR PUBLICATION" on a separate line.

CIRCUIT RULE 36-6

PERIODIC NOTICE TO PUBLISHING COMPANIES

A list of all cases that have been decided by written unpublished disposition will be made available periodically to legal publishing companies for notation in its reports. The list shall set forth concluding disposition in each case, such as, "Affirmed," "Reversed," "Dismissed," or "Enforced."

CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 36-1 TO 36-6

The clerk's office is not given advance notice as to when a disposition will be delivered by the judges for filing and, therefore, cannot supply such information to counsel. When a disposition is filed, the Clerk mails notice of entry of judgment and a copy of the disposition to counsel and the district judge from whom the appeal was taken. All dispositions are public. Once a disposition is filed with the Clerk, anyone may obtain copies of printed decisions by making a written request to the clerk's office, accompanied by a $2.00 fee and self-addressed envelope. Opinions are also available on the day of filing on the Court's electronic bulletin board service. For information on how to access the system, contact the Public Information Unit at (415) 744-9800. One may also receive copies of the Court's slip opinions, as they are printed, upon the payment of an annual subscription fee. Printed slip opinions are subject to typographical and printing error. The cooperation of the Bar in calling apparent errors to the attention of the clerk's office is solicited.

Upon disposition of an appeal arising out of a bankruptcy court the Clerk of this Court shall furnish a copy of such disposition to the bankruptcy judge who initially ruled on the matter.

FRAP 37

INTEREST ON JUDGMENTS

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

FRAP 38

DAMAGES FOR DELAY

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

FRAP 39

COSTS

(a) To whom allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) Costs for and against the United States. In cases involving the United States or an agency or officer thereof, if an award of costs against the United State is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the United States.

(c) Costs of briefs, appendices, and copies of records. By local rule the court of appeals shall fix the maximum rate at which the cost of printing or otherwise producing necessary copies of briefs, appendices, and copies of records authorized by Rule 30(f) shall be taxable. Such rate shall not be higher than that generally charged for such work in the area where the clerk's office is located and shall encourage the use of economical methods of printing and copying.

(d) Bill of costs; objections; costs to be inserted in mandate or added later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which the party shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the court of appeals for insertion in

the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the court of appeals to the clerk of the district court.

(e) Costs on appeal taxable in the district courts. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986.)

CIRCUIT RULE 39-1

COSTS AND ATTORNEYS FEES ON APPEAL

39-1.1 Support for Bill of Costs

The itemized and verified bill of costs required by FRAP 39(d) shall be submitted on the standard form provided by this court. It shall include the following information:

(1) The number of copies of the briefs or other documents reproduced; and

(2) The actual cost per page for each document.

39-1.2 Number of Briefs and Excerpts

Costs will be allowed for 18 copies of each brief plus 2 copies for each party to be served, unless the Court shall direct a greater number of briefs to be filed than required under Circuit Rule 31-1.

Costs will be allowed for six (6) copies of the excerpts of record plus 1 copy for each party required to be served, unless the Court shall direct a greater number of excerpts to be filed than required under Circuit Rule 31 -1.

39-1.3 Cost of Reproduction

In taxing costs for printing or photocopying documents, the clerk shall tax costs at a rate not to exceed twenty (20) cents per page, or at actual cost, whichever shall be less.

39-1.4 Filing Date

A cost bill shall be served and filed within 14 days after the entry of a judgment. Untimely cost bills will be denied unless a motion showing good cause is filed with the bill.

39-1.5 Objection to Bill of Costs

An objection to a cost bill shall be served and filed within 10 days after filing of the cost bill. If an objection is filed, the cost bill shall be treated as a motion under FRAP 27, and the objection shall be treated as a response thereto.

The Clerk or a deputy clerk may prepare, sign, and enter an order disposing of a cost bill, subject to reconsideration by the court if exception is filed within 10 days after the entry of the order.

39-1.6 Request for Attorneys Fees

A request for attorneys' fees, including a request for attorneys fees and expenses in administrative agency adjudication under 28 U.S.C. 2412(d)(3), shall be filed with the Clerk, with proof of service, within 30 days after the entry of the court's decision, unless a timely petition for rehearing or a suggestion for rehearing en banc has been filed, in which case a request for attorneys fees shall be filed within 14 days after the Court's disposition of such petition or suggestion. The request must be filed separately from any cost bill.

A party who intends to request attorneys fees on appeal shall include in its opening brief a short statement of the authority pursuant to which the request will be made.

39-1.7 Opposition to Request for Attorneys Fee

Any party from whom attorneys fees are requested may file an objection to the request. The objection shall be filed with the Clerk, with proof of service, within 14 days after service of the request.

39-1.8 Request for Transfer

Any party who is or may be eligible for attorneys fees on appeal to this Court may, within the time permitted in Circuit Rule 39-1.6, file a motion to transfer consideration of attorneys fees on appeal to the district court or administrative agency from which the appeal was taken.

CIRCUIT ADVISORY COMMITTEE
NOTE TO RULE 39-1.6

A form for requesting attorneys fees is available from the Clerk's Office.

CIRCUIT RULE 39-2

ATTORNEYS FEES AND EXPENSES
UNDER THE EQUAL ACCESS TO JUSTICE ACT

39-2.1 Applications for Fees

An application to this Court for an award of fees and expenses pursuant to 28 U.S.C. 2412(d)(1)(B) shall identify the applicant and the proceeding for which an award is sought. The application shall show the nature and extent of services rendered in this appeal, that the applicant has prevailed, and shall identify the position of the United States Government or an agency thereof in the proceeding that the applicant alleges was not substantially justified. The party applying shall submit the required information on Form A.O. 291, available from the Clerk of the Court.

39-2.2 Petitions by Permission

(1) A petition for leave to appeal pursuant to 5 U.S.C. 504(c)(2) shall comply with FRAP 5, except that the petitioner shall have 60 days from entry of the agency's order in which to file the petition. An answer may be filed within 14 days after service of the petition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(2) The petition shall contain a copy of the order to be reviewed and any findings of fact, conclusions of law and opinion relating thereto, a statement of facts necessary to an understanding of the petition and a memorandum why the petition to appeal should be granted.

(3) Within 14 days after the entry of an order granting permission to appeal, the applicant shall pay the Clerk of the Court of Appeals the docket fee prescribed by the Judicial Conference of the United States. Upon receipt of the payment, the Clerk shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with FRAP 17. A notice of appeal need not be filed.

Cross reference: Cir. Rule, 31-1, Number of Briefs.

CIRCUIT ADVISORY COMMITTEE
NOTE TO RULES 39-1 AND 39-2

Any person appointed under the Criminal Justice Act, 18 U.S.C. 3006A, must submit to the Clerk of the court of appeals a completed voucher form claiming compensation for his appellate services. Forms are distributed by and available from the Clerk. The form is due 7 days after oral argument or, if no oral argument is heard, 7 days after the date of submission. Vouchers for supplemental work such as a petition for rehearing or petition for writ of certiorari may also be filed after completion of the supplemental work. All appellate vouchers are sent by the Clerk to the presiding judge of the panel for distribution to the judge authoring the majority disposition, if

the judge is a member of the Court. If the author is a visiting judge, the presiding judge will dispose of the matter. If the approving judge wishes to reduce the amount requested by the attorney, he or she shall seek the concurrence of the other panel members. If the amount requested is reduced, and the attorney seeks reconsideration, the panel shall decide the matter. If the judge certifies payment in excess of the statutory maximum, the voucher will be sent to the Chief Judge for review and final approval.

Any vouchers claiming compensation in excess of the statutory maximum provided by the Criminal Justice Act for attorney and non- attorney services in the district court must be filed in that court. However, the district court must still forward to the Clerk of the court of appeals the voucher indicating the amount certified. The Clerk transmits the voucher to the Chief Judge for approval of such compensation as he deems reasonable.

Once signatures of the appropriate judges are obtained, the vouchers are submitted by the Clerk to the Administrative Office of the United States Courts for payment directly to the applicant.