

EMERGENCY
COURT OF APPEALS
OF THE
UNITED STATES

Rule 1. Scope of Rules

These Rules govern the procedure in the Temporary Emergency Court of Appeals of the United States. Except as to matters specifically covered by these Rules, the Federal Rules of Appellate Procedure shall govern the procedure in all cases or proceedings in this court. The Rules shall be construed to secure the just, speedy and inexpensive determination of every action.

Rule 2. Effective Date

These Rules shall be before effective and govern the course of all appeals as of February 2, 1976. Upon appropriate showing of hardship in cases pending at the time of adoption of these Rules the court will grant such relief as may be warranted.

Rule 3. Name

The name of the court as provided by s. 211 of the Economic Stabilization Act of 1970 as amended by The Economic Stabilization Act Amendments of 1971, P.L. 92-210, 85 Stat. 748-750, is the "Temporary Emergency Court of Appeals of the United States."

Rule 4. Seal

The seal of the court shall contain the words "Temporary Emergency Court of Appeals" in the upper sector of space included within the two outer concentric circles, and the words "of the United States of America" in the lower sector, and shall contain the standardized eagle rampant in the center.

Rule 5. Court Executive, Administrator, Deputy Clerks and Supporting Personnel

The court may appoint an administrator who shall also be clerk and who shall be subject to removal by the court. His official station shall be at the United States Courthouse, Washington, D.C. 20001. The clerk and his deputies shall take the oath of office of clerks and deputies as set forth by 28 U.S.C. s. 951, and shall be subject to all of the provisions of Title 28, United States Code, Chapter 57. For their general duties see Rule 45 of the Federal Rules of Appellate Procedure, which is hereby made applicable. Such deputy clerks and supporting personnel other than a judge's personal staff may be appointed by the Chief Judge at such times and places as the volume of court business requires.

Rule 6. Composition of Court

The court shall be composed of a Chief Judge and other judges designated by the Chief Justice of

the United States from the judges of the United States district courts and the United States courts of appeals in accordance with s. 211(b)(1) of P.L. 92-210.

Rule 7. Divisions

The Chief Judge may, from time to time, divide the court into divisions of three or more members for the hearing and determination of cases, controversies and issues and may make such changes in the membership of such divisions as he may deem appropriate. Sessions shall be held at such places and times as the Chief Judge or presiding judge of a panel may designate. The Chief Judge shall assign cases to the divisions on an equitable basis having due regard for the geographical locations of the parties and the workloads of the divisions and individual judges thereof. Cases, controversies and issues shall be heard and determined by a division unless a hearing or rehearing before the court en banc is ordered by the court.

Rule 8. Quorum

A majority of the number of judges authorized to constitute a division of the court shall constitute a quorum for such division.

(b) Not less than five members of the court shall be required to constitute a quorum for the court sitting en banc.

(c) If a quorum does not attend on any day appointed for holding a session of the court or a division thereof, any judge who does attend may adjourn the court or division from time to time, or, in the absence of any judge, the clerk may adjourn the court or division from day to day.

Rule 9. Sessions

The court shall not hold formal terms. The court shall be deemed always open.

Rule 10. Precedence

The Chief Judge shall have precedence and preside at any session which he attends. Other judges shall have precedence and president according to the seniority of their commissions as judges of the United States.

Rule 11. Judicial Conference of TECA

There shall be held at such times and places as shall be designated by the Chief Judge of TECA a conference of all TECA judges for the purposes of considering the state of business of the court and advising ways and means of improving the administration of justice. The Chief Judge shall preside at the Conference.

Rule 12. Office Hours

The clerk's office shall be open from 9:00 a.m. to 4:30 p.m. on all business days.

Rule 13. Attorneys

- (a) Admission to the bar of this court shall be governed by the provisions of Rule 46, Federal Rules of Appellate Procedure, except as hereinafter set out.
- (b) Prior to participation in a case, all attorneys shall file a written application for admission on a form provided by the clerk. Motions for admissions in open court will not be entertained.
- (c) Attorneys can be admitted to argue on appeal pro hac vice.
- (d) Suspension or disbarment shall be governed by Rule 46(b), Federal Rules of Appellate Procedure.

Rule 14. Clerk's Fees

The fees of the clerk are as follows:

- (a) For docketing a case on appeal or review, or docketing any other proceeding, \$100.00.
- b) For every search of the records of the court and certifying the results of the same, \$15.00.
- (c) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, \$5.00.
- (d) For making a typed copy of any record or paper, \$1.00 per page of 250 words or fraction thereof. For reproducing any record or paper (by any means other than retyping), 50 cents per page. These fees do not include certification.
- (e) For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, \$1.00 per page or fraction thereof. This fee is in addition to the fee for certification.
- (f) For each printed copy of any opinion, such copy to include all separate and dissenting opinions in a single case, regardless of whether such copy be certified or uncertified, the sum of \$2.00 provided that such charge shall not be assessed for copies of opinions furnished each party of record according to the court's direction or to governmental offices and agencies.

(Amended May 1, 1987.)

Rule 15. Notice of Appeal

- (a) A notice of appeal in any civil or criminal case arising under the Economic Stabilization Act of 1970 as amended; or under further legislation incorporating s. 211 of the Economic Stabilization Act as amended; or a motion for injunctive relief as provided by s. 211(e)(2), shall be filed with the clerk of this court within 30 days of the entry of judgment by the district court. This time limitation shall be binding upon both government appeals and private appeals. The appellant shall submit sufficient copies of the notice of appeal for service by the clerk of this

court on all parties. [note TECA Rule 21, for timely filing by mail.]

/* Usually the notice of appeal is filed with the lower Court. */

(b) The notice of appeal shall specify the party or parties taking the appeal; contain a short statement indicating the judgment, date and purport of the district court's judgment, order or part thereof appealed from, and the district court judge.

(c) The appellant shall submit with his notice of appeal a statement which shall contain:

- 1) A mailing list with the names, addresses and telephone numbers of all other counsel or Pro Se to the proceeding.
- 2) A brief description of the subject matter and issues of the case, including the applicable regulations and statute under which the appeal is made.
- 3) An indication if a party is proceeding in Forma Pauperis and/or Pro Se.
- 4) An indication if an appeal has been taken in this case to any other court of appeals.
- 5) Transcript information if one is to be provided [date ordered, reporter's name, estimated pages].

(d) The clerk of this court shall serve notice of the filing of the notice of appeal by mailing a copy thereof to each counsel or Pro S listed on the mailing list. the clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve the notice of appeal shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note on the docket the name of the parties to whom he mails copies with date of mailing.

(e) All parties in the court below shall be deemed parties involved in the appeal, unless otherwise indicated by the appellant in writing to the clerk of this court. The clerk shall serve such notice on all parties for reply or rebuttal.

Rule 16. Question Certified by District Court -- Constitutional Issues

(a) When a district court certifies to this court a question involving a substantial constitutional issue, the certificate shall contain a statement of the nature of the cause and of the facts on which such issue arises. The certificate shall constitute (be in lieu of) a notice of appeal.

(b) When a constitutional issue is certified by a district court the clerk will upon receipt thereof from the district court notify the plaintiff in the district court, who shall promptly pay the docket fee, after which the case will be placed on the docket. If the plaintiff fails to pay the fee within 7 days, unless exempt or relieved from its payment, the proceeding will be dismissed.

(c) After docketing, the certificate shall be submitted to the Chief Judge for disposition pursuant

to Rule 24 and s. 211(c) of P.L. 92-210 for a preliminary examination to determine whether the certificate will be dismissed, or whether other disposition shall be made.

(d) The brief of the party who was plaintiff below shall be filed within 20 days after the certificate has been filed in this court.

(e) Briefs on the merits in proceedings on certificates shall comply with Rule 21 herein.

Rule 17. Docketing the Appeal

Upon receipt of the notice of appeal the clerk shall enter the appeal upon the docket. Except in those cases where the party seeking review is exempt or relieved from prepayment of the fees the appellant shall pay at the time of filing the notice of appeal or no later than 7 days after the filing of the notice of appeal a docket fee of \$100.00.

Rule 18. Record on Appeal

(a) The composition of the record on appeal shall be as provided by Rule 10(a), Federal Rules of Appellate Procedure.

(b) The original record on appeal shall be retained in the district court, subject to the right of any party to request, or a judge or the clerk to direct that all or designated parts of the record be transmitted.

(c) The clerk shall request that a certified copy of the docket entries be transmitted within 20 days after the notice of appeal is filed.

(d) Within 3 days after filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record and make satisfactory arrangements with the reporter for payment of the cost of the transcript.

In appeals taken pursuant to 28 U.S.C. s. 1915 and 18 U.S.C. s. 3006A the appellant shall take appropriate action to obtain authorization to have the necessary parts of the reporter's transcript prepared at the expense of the United States within the time allowed for filing the notice of appeal.

Rule 19. Transmission of Record -- Duty of Appellant

(a) The appellant shall file 7 copies of the record or stipulated record as may be designated or agreed upon within the time allowed for filing the appellant's brief. An index shall be provided for all records filed.

(b) It shall be the responsibility of the parties, within the time periods incorporated in these rules and Rule 30(b), Federal Rules of Appellate Procedure, to agree upon and provide for the submission of the agreed parts of the record.

Rule 20. Disqualification of Judges

If, based upon any information available to him, counsel for any party is of the opinion that any member of the panel of this court to which his case is assigned is disqualified pursuant to 28 U.S.C. s. 455 (P.L. 93-512, 88 Stat. 1609, December 5, 1974), he shall, prior to the calendaring of the case for oral argument, advise the clerk in writing of the facts and circumstances supporting such opinion.

Rule 21. Briefs and Certificate of Counsel

a) Briefs, except as herein provided, shall be prepared in accordance with the provisions of Rule 28, Federal Rules of Appellate Procedure.

(b) The procedure described in Rule 30(f), Federal Rules of Appellate Procedure, for hearing appeals on the original record without the necessity of an appendix is authorized in all appeals.

(c) A certificate will be furnished by counsel for all private (non-governmental) parties, both appellants and appellees, which shall be incorporated on the first page(s) of each brief before the table of contents or index, and which shall certify a full and complete list of all parties; officers, directors, or trustees of parties; and of all other persons, associations of persons, firms, partnerships, corporations, or organizations which have a financial interest in, or another interest which could be substantially affected by, the outcome of the particular case.

This certificate shall be furnished in order that the judges of this court may evaluate possible disqualification or recusal. It shall be in form as follows:

[Number and Title of Case]

Certificate Required by TECA Rule 21(c):

The undersigned, Counsel of record for _____, certifies that the following is a full and complete list of the parties in this action:

Name	Identification & Relationship
------	-------------------------------

The undersigned further certifies that the following is a full and complete list of officers, directors, or trustees of the above-identified parties:

Name	Identification, Relationship and Interests
------	--

(d) A certificate will be furnished by counsel for all parties, governmental and non-governmental, both appellants and appellees, which shall be incorporated on the first page(s) of each brief before the table of contents or index (and immediately following the certificate required by Rule 21(c), if one be required), and which shall certify a full and complete list of each person acting as a lawyer in the proceeding.

The certificate shall be furnished in order that the judges of this court may evaluate possible disqualification or recusal. It shall be in form as follows:

Certificate Required by TECA Rule 21(d):

The undersigned, counsel of record for _____ certifies that the following is a full and complete list of each person acting as a lawyer in the proceeding:

Name	Identification
------	----------------

(e) The appellant shall serve and file his brief within 20 days after the date on which the notice of appeal is filed. The appellee shall serve and file his brief within 15 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 7 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

/* Perhaps the shortest time period for filing a brief in appellate courts. */

(f) Seven copies of briefs shall be filed, but the court may require that additional copies be filed.

(g) Except by permission of the court or a division thereof, principal briefs, including those of intervenors, shall not exceed 25 pages, exclusive of pages containing the Certificate, Table of Contents, Tables of Citations and any Addenda or Appendices containing statutes, rules, regulations or exhibits.

(h) Motions for leave to file briefs in excess of 25 pages must be filed at least 3 days in advance of the due date of the brief.

(i) Reply briefs shall not exceed 15 pages.

(j) Briefs shall contain the relevant parts of statutes, treaties, regulations or rules involved. If lengthy, these may be set out in an Addendum to the brief. Unpublished orders including explanatory memoranda of this court are not to be cited in briefs or memoranda of counsel as precedents.

(k) When pertinent and significant authorities come to the attention of a party after his brief (or memorandum on a motion) has been filed, or after oral argument but before decision, a party shall, without obtaining special leave of court, supplement his brief by letter to the clerk of this court, three (3) extra copies to the clerk, and copy to adversary counsel, setting forth the citations. There shall be a reference either to a page of the brief or to a point orally argued to which the citations pertain, but the letter shall contain no argument or explanations.

Rule 22. Reproduction of Record, Briefs and Other Written Materials Filed

Printing of the record, briefs or any other papers filed in the court is not required. Papers and briefs may be typewritten, on standard 8 1/2 x 11 size paper, with copies reproduced by any method resulting in clearly readable copy. All written material shall be double spaced. Briefs shall be bound in soft covers: blue for appellant; red for appellee; green for intervenor or amicus curiae; gray for reply briefs and fastened at the left side at three places.

Rule 23. Filing, Mailing and Proof of Service

(a) Papers required or permitted to be filed in this court shall be filed with the clerk of this court in his office in Washington, D.C. or as directed.

(b) Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely, unless the papers are received by the clerk within the time fixed for filing, except that papers shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail is utilized. Service by mail is complete on mailing.

/* This is different that the general rules within federal appeals that the briefs are deemed filed when mailed by first class mail. */

(c) Papers presented for filing shall contain an acknowledgment or proof of service which shall be accomplished in the manner provided in Rule 25(d), Federal Rules of Appellate Procedure. Service shall be accomplished by the most expeditious method practicable.

Rule 24. Docket Control

In the interest of docket control, the Chief Judge or another judge or judges designated by him may from time to time review pending cases for appropriate assignment or disposition under Rules 25, 26, or 27 or any other Rules of this court.

Rule 25. Dismissal

(a) If upon the hearing of an interlocutory motion or as a result of a review under Rule 24, it shall appear to the court, or a division thereof, that the appeal is frivolous and entirely without merit, the appeal will be dismissed.

(b) The court, sua sponte or on motion, may dismiss with prejudice, for undue delay, any case in which there has been a deliberate effort on the part of counsel to avoid prompt hearing and disposition on the merits.

(c) The court also may dismiss sua sponte and summarily any appeal of which the court's lack of jurisdiction clearly appears.

(d) When an appellant fails to comply with a requirement of the Federal Rules of Appellate Procedure or the Rules of this court, the clerk shall notify the appellant or his counsel that upon the expiration of 7 days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. If the appellant fails to comply within the 7 day period, the clerk shall then enter an order dismissing the appeal for want of prosecution and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to remedy his default after dismissal under this rule, unless by order of the Chief Judge.

Rule 26. Motion to Dismiss or Affirm

(a) Within a maximum of 10 days after the notice of appeal has been filed in this court, the appellee

may file a motion to dismiss or a motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss. The limitation of 10 days may be extended by the court, a division thereof, or the Chief Judge on proper showing of extraordinary reasons for delay in filing a motion to dismiss or affirm, upon such terms and conditions as may be prescribed, or such extension may be granted sua sponte.

(b) The motion to dismiss or affirm shall be filed with the clerk in conformity with Rule 27 of the Federal Rules of Appellate Procedure, except clause (d) thereof.

(c) The appellant shall have 7 days from the date of receipt of the motion to dismiss or affirm within which to file a response opposing the motion.

(d) The time for filing briefs pursuant to Rule 21 shall not be tolled or extended by the filing of a motion to dismiss or affirm.

/* The general rule is that motions do toll the time for further actions. Again, this court is quite different. */

Rule 27. Calendars

(a) Whenever the Chief Judge concludes sua sponte, or on the recommendation of a judge acting under Rule 24 or of the assigned panel, that a case is so insubstantial as to justify only limited oral argument or as to justify no oral argument he may direct the clerk to place the case on a restricted oral argument calendar or a summary calendar.

(b) The clerk shall give written notice to the parties or their counsel of the transfer of a case to the summary or restricted oral argument calendar.

(c) Motions for restoration to the argument calendar will not ordinarily be entertained by the court.

Rule 28. Oral Argument

(a) Not more than two counsel shall be heard for each side in the argument of a case, except by special leave of the court or a division thereof, upon sufficient reason shown. Not more than one counsel shall be heard for each side in cases placed on the restricted oral argument calendar.

(b) Counsel in all cases scheduled for argument on the merits shall be allotted 30 minutes to a side, except that only 15 minutes to a side shall be allotted to cases placed on the restricted oral argument calendar and to motions scheduled for argument.

(c) A motion or request for the allowance of additional time pursuant to Rule 34(b), Federal Rules of Appellate Procedure, shall be filed or made not later than 7 days after appellee's brief has been filed.

Where two or more cases are consolidated they shall be considered as one case for the allotment of time for argument.

(d) Counsel for the parties, including counsel for any intervenor, on each side may agree on the

appointment of the side's time; otherwise the court will apportion it. Counsel for an intervenor ordinarily shall be permitted to argue only to the extent that counsel for the party on whose side he intervenes is willing to share his allotted time. If the apportionment is agreed upon, counsel who opens the argument on his side shall announce the apportionment. The time so apportioned to each party shall not be exceeded unless the court permits, in which event the time apportioned to the other parties on that side will not be reduced.

(e) A party who fails to file a brief shall not be heard at the time of oral argument except by permission of the court.

(f) Amicus curiae will not be permitted to argue except on motion in writing filed within the time allowed for filing the brief of the appellee.

(g) Counsel may assume there will be no oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Rule 29. Opinions and Rulings of the Court

(a) Opinions shall be filed in the Office of the Clerk who shall promptly reproduce them and distribute one copy to each party.

(b) In accordance with recommendations for improvement of judicial administration, this court may, while according full consideration of the issues, dispense with opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, e.g., affirmance by order of a decision or judgment of a court or administrative agency; a judgment, or affirmance or reversal, containing a notation of precedents, or accompanied by a brief memorandum.

(c) If the record in any case is remanded to a court or agency, this court retains jurisdiction over the case.

If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal will be necessary if a party seeks review of the remand proceedings.

Rule 30. En Banc Proceedings

(a) A majority of the judges of the court may order that an appeal or other proceeding be heard or reheard by this court en 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) A party, pursuant to Rule 35(b), Federal Rules of Appellate Procedure, who suggests the appropriateness of hearing or rehearing, en banc, where the suggestion is not contained in a petition for rehearing, shall file an original and 10 copies of said suggestion on or before the date on which appellee's brief is due to be filed if the suggestion is for hearing en banc, or within the time prescribed by Rule 40, Federal Rules of Appellate Procedure, for the filing of a petition for rehearing if the suggestion is for rehearing en banc. The suggestion shall not exceed 10 pages in length and shall be served in compliance with TECA Rule 23 and Rule 25, Federal Rules of Appellate Procedure.

(c) If a party desires to suggest a rehearing en banc, the suggestion must be made within the time prescribed by Rule 40, Federal Rules of Appellate Procedure, 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.

(d) The clerk shall transmit a suggestion for hearing or rehearing en banc to the judges of the court but a vote will not be taken to determine whether the cause shall be heard or reheard en banc unless a judge of the court requests a vote on such a suggestion made by a party.

(e) An original and eighteen copies of all en banc papers will be filed with the court.

Rule 31. Mandate

The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order of a judge or the court. The issuance and stay of mandates shall be governed by Rules 35(c) and 41, Federal Rules of Appellate Procedure.

Rule 32. Writ of Certiorari

Section 211(G) of the Economic Stabilization Act, as amended, provides "Within 30 days after entry of any judgment or order by the Temporary Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States."

Rule 33. Motions

(a) Motions will ordinarily be considered on motion papers and briefs filed with the clerk. An original and 6 copies of all motions shall be filed, but a judge or the clerk may require additional copies. No oral argument will be heard unless ordered by the court, a division thereof, or a judge thereof. Motions for oral argument will not be entertained.

(b) A motion for a stay of the judgment or order of a district court pending appeal, pursuant to Rule 8(a), Federal Rules of Appellate Procedure, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal shall include a copy of the judgment decision or order involved and the opinion thereon, if any.

(c) If there is failure to comply with the provisions of subdivision (b) of this Rule, the court will not consider the motion in question until there is either full compliance, or a satisfactory explanation of the failure so to comply.

(d) A motion is affirmatively opposed only when a document is filed (within the time limitations of Rule 27, Federal Rules of Appellate Procedure) which clearly sets forth opposition to the relief sought in the motion with points and authorities incorporated therein.

(e) The clerk is authorized in his discretion and subject to review by the court to act for the court upon the following when uncontested:

- (1) Any motion for extension of time to file a pleading or perform an act required by Rules 11, 12, 24, 27, 29 and 30, Federal Rules of Appellate Procedure, and Rules 17, 19, 21, and 26 of these Rules.
 - (2) Motions to make corrections on briefs or pleadings.
 - (3) Motions to supplement or correct records or to incorporate records on former appeals.
 - (4) Motions to consolidate appeals.
 - (5) Motions for leave to file briefs or petitions for rehearing in excess of the number of pages usually permitted.
 - (6) Motions for leave to file amicus curiae briefs.
 - (7) Motions to substitute parties.
 - (8) Orders for the dismissal of an appeal under 42(b), Federal Rules of Appellate Procedure or pursuant to an order of the court or a judge.
 - (9) Order on mandate from the Supreme Court of the United States.
 - (10) Orders and judgments on decisions by the court on motions and appeals. (See Rule 36 of the Federal Rules of Appellate Procedure.)
- (f) All correspondence directed to the court, a judge or the clerk's office requesting any type of judicial action shall be in the form of a motion unless otherwise provided.

APPENDICES

NOTICE OF APPEAL TO THE TEMPORARY EMERGENCY COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

Temporary Emergency Court of Appeals of the United States

TECA Docket No. _____

(To be assigned)

District Court No. _____

A.B., Plaintiff

v.

C.D., Defendant

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the Temporary
Emergency Court of Appeals of the United States [from the final judgment or order (describing it)]
entered in this action on the ____ day of _____, by Judge _____ in the District Court for
the _____ District of _____, 19__.

(s) _____