

Updated January 1, 1993  
FRAP 1

## SCOPE OF RULES

(a) Scope of rules. These rules govern procedure in appeals to United States courts of appeals from the United States district courts and the United States Tax Court; in appeals from bankruptcy appellate panels; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the district court, the procedure for making such motion or application shall be in accordance with the practice of the district court.

(b) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989.)

## CIRCUIT RULE 1-1

### SCOPE OF CIRCUIT RULES

In cases where the Federal Rules of Appellate Procedure (FRAP) and the Rules of the United States Court of Appeals for the Ninth Circuit (Circuit Rules) are silent as to a particular matter of appellate practice, any relevant rule of the Supreme Court of the United States shall be applied.

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FRAP 2

### SUSPENSION OF RULES

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in

accordance with its direction.

FRAP 3

#### APPEAL AS OF RIGHT-HOW TAKEN

(a) Filing the notice of appeal. An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant 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 such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. 1292(b) and appeals in bankruptcy shall be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

(b) Joint or consolidated appeals. If 2 or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the notice of appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party; and the clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date on which the notice of appeal

was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

(e) Payment of fees. Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute, and also the docket fee

Updated January 1, 1993 prescribed by the Judicial Conference of the United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989.)

CIRCUIT RULE 3-1

FILING THE APPEAL

In appeals from the district court, appellant's counsel shall simultaneously submit to the clerk of the district court the notice of appeal, the filing fee, the appellate docket fee and sufficient copies of the notice of appeal for the parties and the court. In appeals from the bankruptcy appellate panel and the Tax Court, the notice of appeal and fees shall be submitted to the Clerk of the court from which the appeal is taken. Petitions for review and applications to enforce federal agency orders, and fees for those petitions and applications, shall be submitted to the Clerk of the Court of Appeals. If the fees are not paid promptly, the Court of Appeals Clerk will dismiss the case after transmitting a warning notice.

The above rules are subject to several exceptions. The docket fee need not be paid upon filing the notice of appeal when:

(a) the district court or this court has granted in forma pauperis or Criminal Justice Act status;

(b) an application for in forma pauperis relief or for a certificate of probable cause to appeal is pending; or (c) the appellant, e.g., the Government, is exempt by statute from

paying the fee. Counsel shall advise the Clerk at the time the notice of appeal is filed if one of these conditions exists. (See FRAP 24 regarding appeals in forma pauperis.) If a party has filed a petition for permission to appeal pursuant to 28 U.S.C. 1292(b), the filing fee and docket fee will become due in the district court upon an order of this court granting permission to appeal. A notice of appeal need not be filed. (See FRAP 5.)

#### CIRCUIT RULE 3-2

#### PROCEDURE FOR RECALCITRANT WITNESS APPEALS

Every notice of appeal from an order holding a witness in contempt and directing incarceration under 28 U.S.C. 1826 shall bear the caption "RECALCITRANT WITNESS APPEAL." Immediately upon filing, the notice of appeal must be forwarded by the district court clerk's office to the Court of Appeals clerk's office.

It shall also be the responsibility of the appellant to notify directly the criminal motions unit of the Court of Appeals that such a notice of appeal has been filed in the district court. Such notification must be given both in writing and by telephone (415/744-9800) within 24 hours of the filing of the notice of appeal. The written notification shall be addressed to:

CRIMINAL MOTIONS UNIT  
United States Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

A failure to provide such notice may result in sanctions against counsel imposed by the court.

Cross Reference: FRAP 27, Motions; Circuit Rules 27-1 through 27-10, Motions Practice.

Cross Reference: Circuit Rule 10-1, Notice of Filing of Appeal; Docket Sheet, Circuit Rule 25-1, Principal Office of Clerk.

#### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 3-2

A recalcitrant witness summarily ordered confined pursuant to 28 U.S.C. 1826(a) is entitled to have his appeal from the order of confinement decided within 30 days after the filing of the notice of appeal. In the interest of obtaining a rapid

disposition of these appeals, the court impresses upon counsel that the record on appeal and briefs must be filed with the court as soon as possible after the notice of appeal is filed. The court will establish expedited schedules for filing the record and briefs and will submit the appeals for decision to the weekly panels. If expedited treatment is sought for an interlocutory appeal, motions for expedition, summary affirmance or reversal, or dismissal may be filed pursuant to Circuit Rule 27-4.

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FRAP 3.1

#### APPEALS FROM JUDGMENTS ENTERED BY MAGISTRATES IN CIVIL CASES

When the parties consent to a trial before a magistrate pursuant to 28 U.S.C. 636(c)(1), an appeal from a judgment entered upon the direction of a magistrate shall be heard by the court of appeals pursuant to 28 U.S.C. 636(c)(3), unless the parties, in accordance with 28 U.S.C. 636(c)(4), consent to an appeal on the record to a judge of the district court and thereafter by petition only, to the court of appeals. Appeals to the court of appeals pursuant to 28 U.S.C. 636(c)(3) shall be taken in identical fashion as appeals from other judgments of the district court.

(As added Mar. 10, 1986, eff. July 1, 1986.)

FRAP 4

#### APPEAL AS OF RIGHT-WHEN TAKEN

(a) Appeals in civil cases.

(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in (a)(4) of this Rule 4, a notice

of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule

4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(7) A judgment or order is entered within the meaning of the Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeals in criminal cases. In a criminal case the notice of appeal by a defendant shall be filed in the district court within 10 days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the government is authorized by statute, the notice of appeal shall be filed in the district court within 30 days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by any defendant. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. Upon a showing of excusable neglect the district court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Nov. 18, 1988, Apr. 30, 1991, eff. Dec. 1, 1991.)

Cross-Reference: Circuit Rule 3-2, Recalcitrant Witness Appeals; Circuit Rule 10-2, Record on Appeal; and Circuit Rule 27-4, Emergency Criminal Interlocutory Appeals.

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FRAP 5

APPEALS BY PERMISSION  
UNDER 28 U.S.C. 1292(b)

(a) Petition for permission to appeal. An appeal from an interlocutory order containing the statement prescribed by 28 U.S.C. 1292(b) may be sought by filing a petition for permission to appeal with the clerk of the court of appeals within 10 days after the entry of such order in the district

court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) Content of the petition; answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of papers; number of copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) Grant of permission; cost bond; filing of record. Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.) Updated January 1, 1993

Cross Reference: Circuit Rule 39-2.1, Attorneys Fees and Expenses Under the Equal Access to Justice Act and Circuit Rule 39-2.2, Petitions by Permission.

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FRAP 5.1

APPEALS BY PERMISSION UNDER 28 U.S.C. 636(c) (5)

(a) Petition for Leave to Appeal; Answer or Cross Petition. An appeal from a district court judgment, entered after an appeal pursuant to 28 U.S.C. 636(c)(4) to a judge of the district court from a judgment entered upon direction of a magistrate in a civil case, may be sought by filing a petition for leave to appeal. An appeal on petition for leave to appeal is not a matter of right, but its allowance is a matter of sound judicial discretion. The petition shall be filed with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.

(b) Content of Petition; Answer. The petition for leave to appeal shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those questions and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and a copy of the order, decree or judgment complained of and any opinion or memorandum relating thereto. The petition and answer shall be submitted to a panel of judges of the court of appeals without oral argument unless otherwise ordered.

(c) Form of Papers; Number of Copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) Allowance of the Appeal; Fees; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting the appeal, the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice, the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b).

(As added Mar. 10, 1986, eff. July 1, 1986.) Updated January 1, 1993

FRAP 6

APPEALS IN BANKRUPTCY CASES FROM FINAL JUDGMENTS AND ORDERS OF

DISTRICT COURTS OR OF BANKRUPTCY APPELLATE PANELS

(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 pursuant to 28 U.S.C. 1334 shall be taken in identical fashion as appeals from other judgments, orders or decrees of district courts in civil actions.

(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. All provisions of these rules are applicable to an appeal to a court of appeals pursuant to 28 U.S.C. 158(d) from a final judgment, order or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U.S. C. 158(a) or (b), except that :

(i) Rules 3.1, 4(a)(4), 4(b), 5.1, 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) are not applicable;

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

(iii) 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 subsection (b)(1) of this rule, the following rules shall apply to an appeal to a court of appeals pursuant to 28 U.S.C. 158(d) from a final judgment, order or decree of a district court or of a bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U.S.C. 158 (a) or (b):

(i) Effect of motion for rehearing on time for appeal. If a timely motion for rehearing under Bankruptcy Rule 8015 is filed in the district court or the bankruptcy appellate panel, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying the rehearing or the entry of the subsequent judgment.

(ii) The record on appeal. Within 10 days after filing the notice of appeal, the appellant shall file with the clerk possessed of the record assembled pursuant to 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 transmitted to the clerk of the court of appeals. If the appellee deems other parts of the record necessary, the appellee shall, within 10 days after service of the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included. The record, redesignated as provided above, plus the proceedings in the district court or bankruptcy appellate panel and a certified copy of the docket entries prepared by the clerk pursuant to Rule 3(d) shall constitute the record on appeal.

(iii) Transmission of the record. When the record is complete for purpose of the appeal, the clerk of the district court or the appellate panel, shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court or of the appellate panel shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeal may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangement with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record. The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the redesignated record, subject to the right of any party to request at any time during the pendency of the appeal that the redesignated record be transmitted.

(iv) Filing of the record. Upon receipt of the record, the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed. Upon receipt of a certified copy of the docket entries transmitted in lieu of the redesignated record pursuant to rule or order, the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989, Apr. 30, 1991, eff. Dec. 1, 1991.)

Cross Reference: Circuit Rule 11.4.1, Retention of Clerk's Record.

CIRCUIT RULE 6-1

APPEALS FROM FINAL DECISIONS OF THE SUPREME COURT OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

(a) Applicability of other rules. All provisions of the Federal Rules of Appellate Procedure and the Ninth Circuit Rules are applicable to an appeal pursuant to 48 U. S. C. 1694c(a) from a final decision of the Supreme Court of the Northern Mariana Islands, except that:

(i) The term "district court" as used in these rules shall apply to the Supreme Court of the Commonwealth of the Northern Mariana Islands ("CNMI");

(ii) Both civil and criminal appeals shall be taken pursuant to the provisions set forth in FRAP 4(a)(1), 4(a)(3), and 4(a)(5);

(iii) FRAP 3.1, 4(a)(4), 4(a)(6), 4(b), 5, 5.1, 6, 10(a), 10(b), 11(a), 11(b), 13 through 20, 22, 23 and 24(b) are not applicable;

(iv) Ninth Circuit Rules 3-2, 10-2, 10-3, 11-1, 11-2, 11-5, 13-1 through 17-3, and 23-1 are not applicable;

(b) Additional rules. In addition to the rules made applicable by section (a) of this rule, the following rules shall apply to all appeals pursuant to 48 U. S. C. 1694c(a):

(i) Effect of petition for rehearing on time for appeal. If a timely petition for rehearing under Rule 40 of the Rules of Appellate Procedure of the CNMI Supreme Court is filed in the CNMI Supreme Court, the time for appeal to this court shall run from the entry of the order denying the rehearing. A notice of appeal filed before the disposition of a petition for rehearing shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(ii) The record on appeal. The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the trial court, the proceedings in the CNMI Supreme Court, (although transcripts of oral argument are not required) and a certified copy of the docket entries prepared by the clerk of the CNMI Supreme Court shall constitute the record on appeal.

(iii) The certificate of record. When the record is

complete for purpose of the appeal, the clerk of the CNMI Supreme Court shall file a certificate of record with the clerk of the Court of Appeals. The certificate shall attest that all documents which comprise the record on appeal (as defined in paragraph ii above) are available to the parties in the CNMI Supreme Court or CNMI Superior Court clerk's office. The filing of the certificate of record with the Court of Appeals shall indicate that the Court of Appeals considers the record filed.

(iv) Statement of federal question. In addition to the requirements set forth in Cir. R. 28-2.2, the statement of jurisdiction in all appeals pursuant to 48 U. S. C. 1694c(a) shall include a separate paragraph which sets forth the constitutional provisions, treaties or laws of the United States, or any authority exercised thereunder, which are involved in the case.

#### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 6-1

The Ninth Circuit has held that when a decision of the CNMI Supreme Court is based solely on local law, the fact that the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. 94-241, 90 Stat. 263 (March 24, 1976) was adopted by the United States Congress is not sufficient to confer Ninth Circuit jurisdiction over actions arising from the CNMI courts. *Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

#### FRAP 7

#### BOND FOR COSTS ON APPEAL IN CIVIL CASES

The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

#### FRAP 8

#### STAY OR INJUNCTION PENDING APPEAL

(a) Stay must ordinarily be sought in the first instance in district court; motion for stay in court of appeals.

Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

(b) Stay may be conditioned upon giving of bond; proceedings against sureties. Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the district court. If security is given 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 clerk of the district court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the district court without the necessity of an independent action. The motion and such notice of the motion as the district court prescribes may be served on the clerk of the district court, who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stays in criminal cases. Stays in criminal cases shall be had in accordance with the provisions of Rule 38(a) of the Federal Rules of Criminal Procedure.

(As amended Mar. 10, 1986, eff. July 1, 1986.)

Cross Reference: Circuit Rules 27-1, 27-2, 27-3, Motions Practice.

RELEASE IN CRIMINAL CASES

(a) Appeals from orders respecting release entered prior to a judgment of conviction. An appeal authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the district court shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals or a judge thereof may order the release of the appellant pending the appeal.

(b) Release pending appeal from a judgment of conviction. Application for release after a judgment of conviction shall be made in the first instance in the district court. If the district court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the court of appeals or to a judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The court of appeals or a judge thereof may order the release of the appellant pending disposition of the motion.

(c) Criteria for release. The decision as to release pending appeal shall be made in accordance with Title 18, U.S.C. 3143. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community and that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or in an order for a new trial rests with the defendant. (As amended Apr. 24, 1972, eff. Oct. 1, 1972; Oct. 12, 1984.)

CIRCUIT RULE 9-1

RELEASE IN CRIMINAL CASES

9-1.1 Release Pending Conviction

(a) Within 14 days of the filing of a notice of appeal from a release or detention order entered before or at the time of a

judgment of conviction, the appellant shall file a memorandum of law and facts in support of the appeal. Appellant's memorandum shall be accompanied by a copy of the district court's release or detention order, and, if the appellant questions the factual basis of the order, a transcript of the proceedings had on the motion for bail made in the district court. If unable to obtain a transcript of the bail proceedings, the appellant shall state in an affidavit the reasons why the transcript has not been obtained.

(b) The appellee shall file a response to appellant's memorandum within 7 days of receipt thereof. The appeal shall be decided promptly after submission of the appellee's response.

#### 9-1.2 Release Pending Appeal

(a) A motion for bail pending appeal or for revocation of bail pending appeal, made in this court, shall be accompanied by a copy of the district court's bail order, and, if the movant questions the factual basis of the order, a transcript of the proceedings had on the motion for bail made in the district court. If unable to obtain a transcript of the bail proceedings, the movant shall state in an affidavit the reason why the transcript has not been obtained.

(b) A movant for bail pending appeal shall also attach to the motion a certificate of the court reporter containing the name, address, and telephone number of the reporter who will prepare the transcript on appeal and the reporter's verification that the transcript has been ordered and that satisfactory arrangements have been made to pay for it, together with the estimated date of completion of the transcript. A motion for bail which does not comply with part (b) of this rule will be prima facie evidence that the appeal is taken for the purpose of delay within the meaning of 18 U.S.C. 3143(b).

(c) The government shall file a written response to all motions for bail pending appeal within 7 days of receipt thereof.

(d) If the appellant is on bail at the time the motion is filed in this court, that bail will remain in effect until the court rules on the motion.

Cross Reference: Circuit Rule 27-1, 27-3, Motions Practice.  
FRAP 10

THE RECORD ON APPEAL

(a) Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

(1) Within 10 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 the appellant deems necessary, subject to local rules of the courts of appeals. The order shall be in writing and within the same period a copy shall be filed with the clerk of the district court. If funding is to come from the United States under the Criminal Justice Act, the order shall so state. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) 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 shall include in the record a transcript of all evidence relevant to such findings or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in (b)(1) of this Rule 10, file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript or other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered 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) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of

the evidence or proceedings at a hearing or trial was made, or if a transcript 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 shall be served on the appellee, who may serve objections or proposed amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal.

(d) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the court of appeals as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 11. Copies of the agreed statement may be filed as the appendix required by Rule 30.

(e) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

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

CIRCUIT RULE 10-1

NOTICE OF FILING OF APPEAL; DOCKET SHEET

When the notice of appeal is filed in the district court, the clerk of the district court shall immediately transmit a copy of the notice to the Court of Appeals, together with a copy of the district court docket sheet. The clerk of the district court shall immediately transmit a copy of the docket sheet to all parties.

Cross Reference: FRAP 3, Appeal as of Right-How Taken; Circuit Rule 3-1, Filing the Appeal.  
CIRCUIT RULE 10-2

#### CONTENTS OF THE RECORD ON APPEAL

Pursuant to FRAP 10(a), the complete record on appeal consists of:

(a) the official transcript of oral proceedings before the district court ("transcript"), if there is one; and

(b) the district court clerk's record of original pleadings, exhibits and other papers filed with the district court ("clerk's record").

Cross Reference: Circuit Rule 30-1, The Excerpts of Record.

CIRCUIT RULE 10-3

#### ORDERING THE REPORTER'S TRANSCRIPT

##### 10-3.1 Ordering the Reporter's Transcript in Civil Appeals

(a) Notice By Appellant of Transcript Portions to be Ordered: Unless counsel have agreed on transcript portions to be ordered, within 10 days after the notice of appeal is filed, the appellant shall serve on the appellee a notice setting forth the portions of the transcript the appellant will order from the court reporter. If no transcript is needed, the appellant shall file in the district court and serve on the appellee a notice so stating, and at the same time shall provide a copy of this notice to the court reporter and to the Court of Appeals.

(b) Notice By Appellee of Additional Transcript Portions to be Ordered: Within 10 days after the date of service on the appellee of the appellant's notice of transcript portions to be ordered, the appellee may serve on the appellant a notice setting forth additional portions of the transcript, if any, necessary for the appeal.

(c) Ordering the Transcript: Within 10 days after the date of service of the appellee's notice of additional transcript portions or, if appellee does not timely serve such notice, within 30 days after the notice of appeal is filed in the district court, the appellant shall file a transcript order in the district court using the United States Court of Appeals Transcript Designation and Order Form. At the same time, the appellant shall provide a copy of the Transcript Designation and Order Form to the court reporter and to the Court of Appeals. Appellant shall order all transcript portions designated by both the appellant and the appellee. The transcript will be considered ordered when appellant's counsel files the Transcript Order Form in the district court.

(d) Payment for Transcript: On or before the date the Transcript Order Form is filed with the district court, the appellant shall make suitable arrangements with the court reporter for payment of the cost of the transcript. The Judicial Conference of the United States has approved rates for court reporters for the first copy and for subsequent copies of the original transcript. It is the appellant's obligation to pay for the original transcript.

#### 10-3.2 Ordering the Reporter's Transcript in Criminal Appeals

(a) Ordering Transcripts Prior to Filing the Notice of Appeal in Extended Criminal Trials: In criminal proceedings in which the trial lasted ten days or more, the district court may authorize the preparation of the transcript on appeal and execution of an Authorization and Voucher for Payment of Transcript (CJA Form 24), after the entry of a verdict but prior to the entry of judgment and the filing of a notice of appeal, if, based upon the certificate of counsel, the court determines that defense counsel has informed the defendant of the right to appeal and the defendant has instructed counsel to appeal regardless of the nature or length of the sentence to be imposed. The certificate of counsel shall be in addition to the attorney's statement in Box 11 of the CJA Form 24. Retained counsel also may order the trial transcript prior to entry of judgment and filing of the notice of appeal provided they make acceptable financial arrangements for payment of the transcript. The Court of Appeals waives the reduction in transcript price for transcripts ordered pursuant to this rule for the time period from the early ordering of the transcripts and the time that would otherwise be required. The parties shall comply with all other applicable requirements of Circuit Rule 10-3.2(b)-(f).

(b) Notice by Appellant of Transcript Portions to be Ordered: Unless counsel have agreed on transcript portions to be ordered, within 7 days after the notice of appeal is filed, the appellant shall serve on the appellee a notice setting forth the portions of the transcript the appellant will order from the court reporter. If no transcript is needed, the appellant shall file in the district court and serve on the appellee a notice so stating, and at the same time shall provide a copy of this notice to the court reporter and to the Court of Appeals.

(c) Notice by Appellee of Additional Transcript Portions To Be Ordered: Within 7 days after the date of service of the appellant's notice on the appellee, the appellee may serve on the appellant a notice setting forth additional portions of the transcript, if any, necessary for the appeal.

(d) Ordering the Transcript: Within 7 days after the date of service of the appellee's notice of additional transcript portions or, if appellee does not timely serve such notice, within 21 days after the notice of appeal is filed, the appellant shall file a transcript order in the district court using the United States Court of Appeals Transcript Designation and Order Form. At the same time, the appellant shall provide a copy of the Transcript Designation and Order Form to the court reporter and the Court of Appeals. Appellant shall order all transcript portions designated by both the appellant and the appellee. The transcript will be considered ordered when appellant's counsel files the Transcript Order Form in the district court.

(e) Payment for the Transcript: In cases where appellant is represented by retained counsel, on or before the date the Transcript Order Form is filed with the district court, the appellant's counsel shall make suitable arrangements with the court reporter for payment of the cost of the transcript and shall certify in the Transcript Order Form that this has been done. Failure to make suitable arrangements with the court reporter may result in sanctions pursuant to FRAP 46(c).

(f) Preparation of the Transcript: The court reporter shall begin preparation of the transcript as soon as a Transcript Order Form is filed in the district court and is received by the court reporter.

### 10-3.3 Payment for Additional Portions of Transcript

Whenever the appellee serves notice upon the appellant that

additional portions of the transcript are required under Circuit Rule 10-3.1(b) or 10-3.2(c), the appellant shall be responsible for payment unless the appellant certifies that the requested portion is not necessary to the appeal, stating the reasons therefor. After such a certificate is served and filed in the district court, and copies are furnished to the Court of Appeals and the court reporter(s), the district court shall determine the allocation of costs.

FRAP 11

TRANSMISSION OF THE RECORD

(a) Duty of appellant. After filing the notice of appeal the appellant, or in the event that more than 1 appeal is taken, each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) Duty of reporter to prepare and file transcript; notice to court of appeals; duty of clerk to transmit the record. Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that the reporter has received it and the date on which the reporter expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the court of appeals. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the court of appeals and the action of the clerk of the court of appeals shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps as may be directed by the court of appeals. Upon completion of the transcript the reporter shall file it with the clerk of the district court and shall notify the clerk of the court of appeals that the reporter has done so.

When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by

the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary retention of record in district court for use in preparing appellate papers. Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event the clerk of the district court shall certify to the clerk of the court of appeals that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

(d) [Extension of time for transmission of the record; reduction of time] [Abrogated]

(e) Retention of the record in the district court by order of court. The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

(f) Stipulation of parties that parts of the record be retained in the district court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) Record for preliminary hearing in the court of appeals. If prior to the time the record is transmitted a party desires

to make in the court of appeals a motion 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 intermediate order, the clerk of the district court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.

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

## CIRCUIT RULE 11-1

### FILING THE REPORTER'S TRANSCRIPT

#### 11-1.1 Time for Filing the Reporter's Transcript

The reporter's transcript shall be filed in the district court within 30 days from the date the Transcript Designation/Ordering Form is filed with the district court, pursuant to the provisions of FRAP 11(b) and in accordance with the scheduling orders issued by the court for all appeals. Upon motion by a reporter, the Clerk of the Court of Appeals or a designated deputy clerk may grant a reasonable extension of time to file the transcript. The grant of an extension of time does not waive the mandatory fee reduction for the late delivery of transcripts unless such waiver is stated in the order.

#### 11-1.2 Procedure for Reporter Defaults

In the event the reporter fails to prepare the transcripts in accordance with the scheduling order issued by the court or within an extension of time granted by this court, appellant shall notify this court of the need to modify the briefing schedule. Such notice shall be filed within 14 days after the due date for filing of the transcripts. The notice shall indicate when the transcripts were designated, when financial arrangements were made or the voucher was approved, the dates of hearings for which transcripts have not been prepared and the name of the reporter assigned to those hearings.

#### 11-1.3 Form and Content of the Reporter's Transcript

The transcript shall be bound by the reporter in a volume or volumes with pages uniformly and consecutively numbered throughout all volumes. It shall include an index with the names of witnesses, the direct, cross, redirect and other examinations, and exhibit numbers, when offered and received or rejected, as well as instructions and colloquy on instructions. The index shall refer to the number of the volume and the page,

shall be cumulative for all volumes, and shall be placed in the first volume. The original set of the transcript shall serve as the copy required by 28 U.S.C. 753(b).

#### CIRCUIT RULE 11-2

##### THE CERTIFICATE OF RECORD

Upon the filing of the transcript in the district court, or alternatively, when the district court clerk receives notice that no transcript will be ordered, the clerk of the district court shall file a certificate of record with the clerk of the Court of Appeals. The certificate shall attest that all documents which comprise the clerk's record on appeal (pleadings, exhibits and other papers filed) and the reporters' transcript (if any) are available to the parties in the district court clerk's office. The filing of the certificate of record with the Court of Appeals shall indicate that the Court of Appeals considers the record filed.

#### CIRCUIT RULE 11-3

##### RETENTION OF THE TRANSCRIPT AND CLERK'S RECORD IN THE DISTRICT COURT DURING PREPARATION OF THE BRIEFS

In all cases, as authorized by FRAP 11(c), both the transcript and the clerk's record shall remain in the custody of the district court for use by the parties in preparing their briefs.

#### CIRCUIT RULE 11-4

##### RETENTION OF CLERK'S RECORD IN THE DISTRICT COURT IN CIVIL CASES WHERE EXCERPTS OF RECORD ARE FILED; RETENTION OF PHYSICAL EXHIBITS IN THE DISTRICT COURT; TRANSMITTAL OF REPORTER'S TRANSCRIPT; TRANSMITTAL OF CLERK'S RECORD ON REQUEST

###### 11-4.1 Retention of Clerk's Record in the District Court

Except as noted below, in all civil cases where excerpts of record are to be filed with the Court of Appeals pursuant to Circuit Rule 30-1, the entire clerk's record shall be retained in the district court unless requested by the Court of Appeals. This provision shall not apply to Tax Court Cases or to cases involving review of Social Security Administration determinations of eligibility for disability insurance benefits and supplemental security income benefits. In appeals from the

Bankruptcy Appellate Panel, records will be treated in the same fashion as records on appeal in other civil cases arising from the district court.

11-4.2 Retention of Physical Exhibits in the District Court

All physical exhibits in all cases shall be retained in the district court unless requested by the Court of Appeals.

11-4.3 Transmittal of Reporter's Transcript

The reporter's transcript shall be transmitted to the Clerk of the Court of Appeals by the clerk of the district court within 7 days after the district court receives notice from the Court of Appeals that the appellee's brief has been filed.

11-4.4 Transmittal of Clerk's Record Upon Request

In cases where the clerk's record is retained in the district court, if a judge or staff member of the Court of Appeals at any time requires all or part of the clerk's record, the judge or staff member shall, through the Clerk of the Court of Appeals, request the record from the district court. The district court clerk shall transmit the record to the requesting judge or staff member within 10 days of receiving the request.

CIRCUIT RULE 11-5

TRANSMITTAL OF THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT AND EXHIBITS IN ALL OTHER CASES

In all cases not falling within the provisions of Circuit Rule 11-4.1, the entire clerk's record and the reporter's transcript shall be transmitted to the Court of Appeals within 7 days after the clerk of the district court receives notice from the Court of Appeals that the appellee's brief has been filed in the Court of Appeals. All physical exhibits shall be retained in the district court unless requested by the Court of Appeals.