

/* The Federal Rules of Appellate Procedure follow. */

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.)

Updated January 1, 1993

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.)

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.)

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

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.)

/* This rule presumably will be updated soon since there are no more "Bankruptcy Appellate Panels." */

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.)

FRAP 9

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.)

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.)

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.)

FRAP 12

DOCKETING THE APPEAL; FILING OF THE RECORD

(a) Docketing the appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3(d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title.

(b) Filing the record, partial record, or certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), 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.

(c) [Dismissal for failure of appellant to cause timely transmission or to docket appeal] [Abrogated]

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

FRAP 14

APPLICABILITY OF OTHER RULES TO REVIEW
OF DECISIONS OF THE TAX COURT

All provisions of these rules are applicable to review of a decision of the Tax Court, except that Rules 4-9, Rules 15-20, and Rules 22 and 23 are not applicable.

FRAP 15

REVIEW OR ENFORCEMENT OF AGENCY ORDERS - HOW OBTAINED;
INTERVENTION

(a) Petition for review of order; joint petition. Review of an order of an administrative agency, board, commission or officer (hereinafter, the term "agency" shall include agency, board, commission or officer) shall be obtained by filing with the clerk of a court of appeals which is authorized to review such order, within the time prescribed by law, a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute (hereinafter, the term "petition for review" shall include a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal). The petition shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. Form 3 in the Appendix of Forms is a suggested form of a petition for review. In each case the agency shall be named respondent. The United States shall also be deemed a respondent if so required by statute, even though not so designated in the petition. If two or more persons are entitled to petition the same court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) Application for enforcement of order; answer; default; cross-application for enforcement. An application for enforcement of an order of an agency shall be filed with the clerk of a court of appeals which is authorized to enforce the order. The application shall contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief prayed. Within 20 days after the

application is filed, the respondent shall serve on the petitioner and file with the clerk an answer to the application. If the respondent fails to file an answer within such time, judgment will be awarded for the relief prayed. If a petition is filed for review of an order which the court has jurisdiction to enforce, the respondent may file a cross-application for enforcement.

(c) Service of petition or application. A copy of a petition for review or of an application or cross-application for enforcement of an order shall be served by the clerk of the court of appeals on each respondent in the manner prescribed by Rule 3(d), unless a different manner of service is prescribed by an applicable statute. At the time of filing, the petitioner shall furnish the clerk with a copy of the petition or application for each respondent. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who shall have been admitted to participate in the proceedings before the agency other than respondents to be served by the clerk, and shall file with the clerk a list of those so served.

(d) Intervention. Unless an applicable statute provides a different method of intervention, a person who desires to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and file with the clerk of the court of appeals a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A motion for leave to intervene or other notice of intervention authorized by an applicable statute shall be filed within 30 days of the date on which the petition for review is filed.

FRAP 15.1

BRIEFS AND ORAL ARGUMENT IN NATIONAL LABOR RELATIONS BOARD
PROCEEDINGS

Each party adverse to the National Labor Relations Board in an enforcement or a review proceeding shall proceed first on briefing and at oral argument unless the court orders otherwise.

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

FRAP 16

THE RECORD ON REVIEW OR ENFORCEMENT

(a) Composition of the record. The order sought to be reviewed or enforced, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency.

(b) Omissions from or misstatements in the record. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

FRAP 17

FILING OF THE RECORD

(a) Agency to file; time for filing; notice of filing. The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provided by the statute authorizing review. In enforcement proceedings the agency shall file the record within 40 days after filing an application for enforcement, but the record need not be filed unless the respondent has filed an answer contesting enforcement of the order, or unless the court otherwise orders. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.

(b) Filing - What Constitutes. The agency may file the entire record or such parts thereof as the parties may designate by stipulation filed with the agency. The original papers in the agency proceeding or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the agency may file a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the clerk of the court of appeals and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a

certified list be filed, the agency shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the agency shall be a part of the record on review for all purposes.

FRAP 18

STAY PENDING REVIEW

Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. 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 agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant had requested. 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 to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief under this rule upon the filing of a bond or other appropriate security. 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.

Cross Reference: Circuit Rules 27-1, 27-2, 27-3, and 27-6, Motions Practice.

FRAP 19

SETTLEMENT OF JUDGMENTS ENFORCING ORDERS

When an opinion of the court is filed directing the entry of a judgment enforcing in part the order of an agency, the agency shall within 14 days thereafter serve upon the respondent and file with the clerk a proposed judgment in conformity with the opinion. If the respondent objects to the proposed judgment as not in conformity with the opinion, the respondent shall

within 7 days thereafter serve upon the agency and file with the clerk a proposed judgment which the respondent deems to be in conformity with the opinion. The court will thereupon settle the judgment and direct its entry without further hearing or argument.

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

FRAP 20

APPLICABILITY OF OTHER RULES TO REVIEW OR ENFORCEMENT OF AGENCY ORDERS

All provisions of these Rules are applicable to review or enforcement of orders of agencies, except that Rules 3-14 and Rules 22 and 23 are not applicable. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders.

FRAP 21

WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUDGE OR JUDGES AND OTHER EXTRAORDINARY WRITS

(a) Mandamus or prohibition to a judge or judges; petition for writ; service and filing. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the court of appeals with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; order directing answer. If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes.

Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) Other extraordinary writs. Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the court of appeals with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

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

/* In the Federal Rules of Civil Procedure Writs of Mandamus and other similar writs are abolished; they are however permitted in appeals courts. */

FRAP 22

HABEAS CORPUS PROCEEDINGS

(a) Application for the original writ. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

(b) Necessity of certificate of probable cause for appeal. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of probable cause. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate should not issue. The certificate or the statement shall be

forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a state or its representative, a certificate of probable cause is not required.

FRAP 23

CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

(a) Transfer of custody pending review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court, justice or judge rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or release of prisoner pending review of decision failing to release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon the prisoner's recognizance, with or without surety, as may appear fitting to the court or justice or judge rendering the decision, or to the court of appeals or to the Supreme Court, or to a judge or justice of either court.

(c) Release of prisoner pending review of decision ordering release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon the prisoner's recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court shall otherwise order.

(d) Modification of initial order respecting custody. An initial order respecting the custody or enlargement of the

prisoner and any recognizance or surety taken, shall govern review in the court of appeals and in the Supreme Court unless for special reasons shown to the court of appeals or to the Supreme Court, or to a judge or justice of either court, the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

FRAP 24

PROCEEDINGS IN FORMA PAUPERIS

(a) Leave to proceed on appeal in forma pauperis from district court to court of appeals. A party to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed, together with an affidavit, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party's belief that party is entitled to redress, and a statement of the issues which that party intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the district court, or if the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of

this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

(b) Leave to proceed on appeal or review in forma pauperis in administrative agency proceedings. A party to a proceeding before an administrative agency, board, commission or officer (including, for the purpose of this rule, the United States Tax Court) who desires to proceed on appeal or review in a court of appeals in forma pauperis, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of (a) of this Rule 24.

(c) Form of briefs, appendices and other papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

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