PROPOSED REVISED

RULES

OF THE

SUPREME COURT OF THE UNITED STATES

MARCH 13, 1995

PROPOSED EFFECTIVE DATE: JULY 3, 1995

The Clerk's Comments that accompany these proposed revised Rules are not part of the Rules. They are furnished solely for the purpose of assisting readers in understanding proposed changes. Stylistic changes have been made throughout the proposed Rules and are not explained in the Clerk's Comments. Comments concerning the proposed revised Rules must be received by April 28, 1995. Comments should be submitted to:

Clerk of the Court
Attn: Rules Committee
Supreme Court of the United States

Washington, DC 20543

SUPREME COURT OF THE UNITED STATES

1 First Street, N.E.,
Washington, D.C. 20543

Clerk of the Court	202-479-3011
Reporter of Decisions	202-479-3390
Marshal of the Court	202-479-3333
Librarian	202-479-3175
Telephone Operator	202-479-3000

Mailing Address of the Solicitor General of the United States
(see Rule 29.4)
Room 5614
Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Rule 1. Clerk

1. The Clerk shall receive documents for filing with the Court, and has authority to reject any requested filing that is not in compliance with these Rules.

2. The Clerk shall maintain the Court's records and shall not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of the proceedings in this Court, any original records and documents transmitted to this Court by any other court shall be returned to the court from which they were received.

3. The office of the Clerk will be open, except on federal legal holidays, from 9 a.m. to 5 p.m., Monday through Friday, unless otherwise ordered by the Court or the Chief Justice. See 5 U. S. C. §6103 for a list of federal legal holidays.

CLERK'S COMMENTS

Rule 1.1 clarifies the Clerk's authority to return documents that do not comply with the Rules.

Rule 2. Library

1. This Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and its departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the building, except by a Justice or a member of a Justice's staff.

CLERK'S COMMENTS

Rule 2.2 reflects current practice.

Rule 3. Term

The Court will hold a continuous annual Term commencing on the first Monday in October and ending the day before the first Monday in October of the following year. See 28 U. S. C. §2. At the end of each Term, all cases pending on the docket shall be continued to the next Term.

CLERK'S COMMENTS

Language is added to clarify the length of a Term.

Rule 3.2 is deleted as unnecessary.

Rule 4. Sessions and Quorum

1. Open sessions of the Court will be held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless otherwise ordered, the Court will sit to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U.S.C. §1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending, or if no Justice is present, the Clerk or a Deputy Clerk may announce that the Court will not meet until there is a quorum.

3. The Court in appropriate circumstances may direct the Clerk or the Marshal to announce recesses.

Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant shall have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately preceding the date of application; shall not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and shall appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement and (b) the statement of two sponsors (both must be members of the Bar of this Court who personally know, but are not related to, the applicant) endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, has signed the oath or affirmation, and has paid the required fee, the Clerk shall notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall take or subscribe to the following oath or affirmation: I, ..., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

Rule 5. Admission to the Bar

5. The fee for admission to the Bar and a certificate under seal is $100, payable to the U. S. Supreme Court. The Marshal shall deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar under seal is $15, payable to the U. S. Supreme Court. The proceeds shall be maintained by the Marshal as provided in paragraph 5 of this Rule.

CLERK'S COMMENTS

Rules 5.5 and 5.6 delete the word "Marshal." Currently, some applicants erroneously mail their applications to the Marshal, apparently because the check is made out to the Marshal.

"$15" is substituted for "$10" in Rule 5.6.

Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but who is otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice*.

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice*.

3. Oral argument *pro hac vice* will be allowed only on motion of the attorney of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice*. It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed and shall be accompanied by proof of service as required by Rule 29.

CLERK'S COMMENTS

Rule 6.2 deletes the words "barrister, or advocate who is."

Rule 6.3 deletes the words "and distinctly" and "appropriate."

Rule 7. Prohibition Against Practice

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any type of professional consultation or assistance, in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate, by way of any form of professional consultation or assistance, in any case that was pending in this Court during the employee's tenure.

CLERK'S COMMENTS

Rule 7.1 is deleted as unnecessary.

Rule 8. Disbarment and Disciplinary Action

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, an order shall be entered suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or upon the expiration of the 40 days if no response is made, the Court will enter an appropriate order.

2. The Court, after reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, may take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule of the Court.

CLERK'S COMMENTS

Rule 8.1 is changed to conform to current practice.

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court pursuant to Rule 5, but admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act, see 18 U. S. C. §3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing shall be counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. If an attorney is to be substituted as counsel of record in a particular case, a separate notice of appearance also shall be entered.

CLERK'S COMMENTS

Rule 9.1 includes a reference to the statute providing that Criminal Justice Act counsel may appeal or petition for certiorari "without prepayment of fees and costs or security therefor." This language has been interpreted by the Court for at least two decades to include the costs associated with being admitted to the Bar of the Court. Similar allowance is made for attorneys appointed under other federal statutes, such as 21 U.S.C. §848(q).

Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are compelling reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

A United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals; or has decided a federal question in a way that conflicts with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision;

A state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

CLERK'S COMMENTS

Rule 10.2 is deleted because there is no need to differentiate the United States Court of Appeals for the Armed Forces (formerly the United States Court of Military Appeals).

Rule 11. Certiorari to a United States Court of Appeals before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is given in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court. See 28 U. S. C. §2101(e).

Rule 12. Review on Certiorari; How Sought; Parties

1. Except as provided in paragraph 2 below, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38 docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, along with an original and 10 copies of the motion for leave to proceed *in forma pauperis*. The motion for leave to proceed *in forma pauperis* shall preface and be attached to the petition for a writ of certiorari. An inmate confined in an institution, who is proceeding *in forma pauperis* and is not represented by counsel, need file only an original petition and an attached motion for leave to proceed *in forma pauperis*.

3. Whether prepared pursuant to Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the duty of the petitioner to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

CLERK'S COMMENTS

The reference in Rule 12.1 to petitioner's counsel being a member of the Bar is deleted.

Provisions for filing *in forma pauperis* are now included in Rule 12.2. Rule 12.2 attempts to alleviate the paper-handling burden placed on the Clerk's Office because of the submission of *in forma pauperis* motions that are stapled separately from petitions for certiorari. The number of copies of the petition to be filed in *in forma pauperis* cases is clarified. The burden is put on counsel or the petitioner to provide copies of the petition unless the petitioner is an inmate confined in an institution and is not represented by counsel.

The last change to former Rule 12.1 (proposed Rule 12.3) reflects the change in Rule 15 making a brief in opposition due 30 days after the case is placed on the docket rather than 30 days after receipt of the petition by respondent.

Rule 12. Review on Certiorari; How Sought; Parties

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party who is not shown on the petition to have joined therein at the time the petition is filed with the Clerk may not thereafter join in that petition. When two or more cases are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the cases shall suffice. A petition for a writ of certiorari shall not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. Not more than 30 days after a case has been placed on the docket, a respondent wishing to file a cross-petition that would otherwise be untimely shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that materials already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis*. The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-petition will then be placed on the docket, subject, however, to the provisions of Rule 13.4. It is the duty of the cross-petitioner to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-petition may not be extended.

CLERK'S COMMENTS

Rule 12.4 (former Rule 12.2) emphasizes the requirement to attach the *in forma pauperis* motion to the petition.

Rule 12.5 (former Rule 12.3) makes the due date for a cross-petition consistent with the due date in Rule 15 for a brief in opposition. As with Rule 15, this revision establishes a known-to-all date certain for the filing of the cross-petition. The term "conditional" was added to reinforce the fact that a cross-petition will not be granted unless the original petition is granted.

Rule 12. Review on Certiorari; How Sought; Parties

6. All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner shall be respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that such response supporting the petition shall be filed within 20 days after placement of the case on the docket, and the time may not be extended.

7. The clerk of the court having possession of the record shall retain custody thereof pending notification from the Clerk of this Court that the record is to be certified and transmitted to this Court. A party may cite the record in any document filed with this Court even though the record has not yet been transmitted. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated portions thereof, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court otherwise requests. The record may consist of certified copies. If the presiding judge of the lower court is of the view that original documents of any kind should be seen by this Court, however, that judge may provide by order for the transport, safekeeping, and return of such originals.

CLERK'S COMMENTS

Rule 12.6 was formerly Rule 12.4

Rule 12.7 (former Rule 12.5) answers affirmatively the frequently asked question whether it is permissible to cite the record even though this Court does not have the record.

Rule 13. Review on Certiorari; Time for Petitioning

1. A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals is timely when it is filed with the Clerk of this Court within 90 days after the entry of the judgment unless otherwise provided by law. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review.

2. The Clerk shall refuse to receive any petition for a writ of certiorari that is jurisdictionally out of time. See, *e.g.*, 28 U. S. C. §2101(c).

CLERK'S COMMENTS

Rule 13.1 recognizes that Congress has passed, and may in the future pass, statutes requiring a petition to be filed within a period other than 90 days. The citation to the United States Court of Appeals for the Armed Forces is deleted as unnecessary.

Former Rule 13.2 has been added to former Rule 13.6 and moved to Rule 13.5 in order to consolidate the information pertaining to extensions of time.

Rule 13.2 (former Rule 13.3) adds a reference to the statute that makes jurisdictional the time to file a petition for a writ of certiorari in a civil case.

Rule 13. Review on Certiorari; Time for Petitioning

3. The time to file a petition for a writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. A suggestion made to a United States court of appeals for a rehearing in banc is not a petition for rehearing within the meaning of this Rule unless so treated by the United States court of appeals.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a cross-petition which, except for Rule 12.5, would be untimely, will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

5. A Justice, for good cause shown, may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis of jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set forth specific reasons why an extension of time is justified. The application must be received at least 10 days before the final due date, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

CLERK'S COMMENTS

Rule 13.3 (former Rule 13.4) deletes the words "in the case" from the second sentence so that the Rule covers situations in which multiple cases involving like issues are consolidated in the lower court and a single decision is rendered. The second change clarifies the meaning of "entry of a subsequent judgment." Some litigants mistakenly believe that the issuance of the certified judgment or mandate after the denial of a petition for rehearing starts the time running. The words added to the end of the last sentence bring the Court's Rule into conformity with the practice of a majority of the United States courts of appeals.

Rule 13.5 adds language to draw particular attention to the 10-day provision of Rule 30.2. Rule 13.5 also adds a reference to Rule 33.2, which covers the format of papers filed on 8½ x 11 inch paper.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order here indicated:

(a) The questions presented for review, expressed concisely in the terms and circumstances of the case, without unnecessary detail. If the petitioner seeks the setting aside of a judgment affirming or reversing the conviction or sentence in a case where the sentence of death has been imposed, the notation "capital case" shall precede the questions presented. The questions shall be set forth on the first page following the cover, and no other information may appear on that page. The statement of any question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition, or fairly included therein, will be considered by the Court.

(b) On a separate page, immediately following the questions presented for review, a list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the names of all parties appear in the caption of the case), and a list of parent companies and nonwholly owned subsidiaries as required by Rule 29.6.

(c) A table of contents and a table of authorities, if the petition exceeds five pages.

(d) A reference to the official and unofficial reports of opinions delivered in the case by other courts or administrative agencies.

CLERK'S COMMENTS

Rule 14.1(a) requires that capital cases be clearly identified.

Rule 14.1(b) establishes a specific location for the list of corporate affiliates.

Rule 14. Content of a Petition for a Writ of Certiorari

(e) A concise statement of the basis of jurisdiction in this Court, showing:

(i) the date of the entry of the judgment or decree sought to be reviewed;
(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;
(iii) express reliance upon Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;
(iv) the statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari; and
(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone shall suffice at this point, and their pertinent text shall be set forth in the appendix referred to in subparagraph 1*(i)* of this Rule.

(g) A concise statement of the case setting forth the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a judgment of a state court is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignment of errors), as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied upon under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1*(i)* of this Rule.
(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

CLERK'S COMMENTS

Rule 14.1(e)(iii) reflects the due date for a conditional cross-petition under Rule 12.3. Rule 14.1(e)(v) requires that the Rule 29.4(b) or (c) recitations concerning the constitutionality of a statute appear at a definite place.

Rule 14. Content of a Petition for a Writ of Certiorari

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the following order:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, delivered upon the rendering of the judgment or decree sought to be reviewed;

(ii) any other opinions, orders, findings of fact, and conclusions of law rendered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) any other appended materials.

If the material required by subparagraphs 1(f), 1(g)(i), and 1*(i)* of this Rule is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. A petition for a writ of certiorari and the appendix thereto, whether in the same or a separate volume, shall be prepared as required by Rule 33.

3. All contentions in support of a petition for a writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari shall be filed, and the Clerk shall refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

4. A petition for a writ of certiorari should be stated in short and plain terms and may not exceed the page limitations set out in Rule 33.

CLERK'S COMMENTS

The last sentence of former Rule 14.2 is now Rule 14.6.

Rule 14. Content of a Petition for a Writ of Certiorari

5. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration is sufficient reason to deny a petition.

6. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33, the Clerk shall return it with a letter indicating the deficiency. If a corrected petition is received no later than 60 days after the date of such letter, its filing shall be deemed timely.

CLERK'S COMMENTS

Rule 14.6 is intended to bring an end to litigation where a defective petition is submitted and returned for corrections but not promptly resubmitted.

Rule 15. Brief in Opposition; Reply Brief; Supplemental Brief

1. A brief in opposition to the petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a case denominated a capital case under Rule 14.1 or when ordered by the Court.

2. A brief in opposition shall be concise and may not exceed the page limitations set out in Rule 34. In addition to other arguments for denying the petition, the brief in opposition should address any perceived misstatements of fact or law in the petition that bear on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatements made in the petition. Any objection to consideration of the question presented based on what transpired in the proceedings below, if such objection does not go to jurisdiction, may be deemed waived unless called to the attention of the Court in the brief in opposition.

CLERK'S COMMENTS

Rule 15.1 codifies the long established unwritten requirement that the respondent must respond to a petition for a writ of certiorari in a capital case and when the Court requests a response.

Rule 15.2 contains the language previously found in Rules 15.1 and 15.3.

Rule 15. Brief in Opposition; Reply Brief; Supplemental Brief

3. A brief in opposition may be filed within 30 days after the case is placed on the docket, unless such time is extended by the Court or a Justice or by the Clerk under Rule 30.4. Forty copies shall be filed, except that respondents proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2, along with a motion for leave to proceed *in forma pauperis*, which shall preface and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent may file an original and 10 copies of a brief in opposition prepared as required by Rule 33.2. Whether prepared pursuant to Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition shall not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

CLERK'S COMMENTS

Rule 15.3 (former Rule 15.2) establishes a known-to-all due date for a brief in opposition. The provision making the brief due 30 days after receipt of a petition for writ of certiorari by the respondent confuses respondents and *amici curiae* when a petition is returned for corrections or when multiple respondents receive the petition on different dates.

The proposed method for calculating the due date for a brief in opposition should not significantly alter the time a respondent has for filing the brief. The date of receipt of the petition by the respondent will often be the same as the date the case is placed on the docket or within a few days of that date. Under both the former Rule and the proposed Rule, receipt of the petition for a writ of certiorari puts the respondent on notice that the petitioner has attempted to file a petition, and it is not until the receipt of notification of docketing that the respondent is informed that the case has been accepted for docketing. If the respondent was not timely served with the petition, an extension of time to file the brief in opposition may be granted.

Rule 15.3 reduces to 10 the number of copies of a brief in opposition in an *in forma pauperis* case.

Rule 15.3 dispenses with the requirement that a summary of the argument be contained in the brief in opposition. (There is no similar provision for a petition for a writ of certiorari.)

Rule 15. Brief in Opposition; Reply Brief; Supplemental Brief

4. No motion by a respondent to dismiss a petition for a writ of certiorari shall be filed. Objections to the jurisdiction of the Court to grant a writ of certiorari may be included in the brief in opposition.

5. Upon the filing of a brief in opposition, the expiration of the time allowed therefor, or an express waiver of the right to file, the Clerk shall distribute the petition and brief in opposition (if any) to the Court for its consideration. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be delayed until the filing of a brief in opposition by the cross-respondent, the expiration of the time allowed therefor, or an express waiver of the right to file with regard to the cross-petition.

6. A reply brief addressed to arguments first raised in the brief in opposition may be filed by any petitioner, but distribution and consideration by the Court under paragraph 5 of this Rule will not be delayed pending its receipt. Forty copies shall be filed, except that petitioners proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter; shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule; and shall comply in all respects with Rule 33. Forty copies shall be filed, except that parties proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

CLERK'S COMMENTS

Rules 15.6 and 15.7 clarify the filing requirements for parties proceeding *in forma pauperis* and parties who are inmates of institutions.

Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After consideration of the documents distributed pursuant to Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever a petition for a writ of certiorari to review a decision of any court is granted, the Clerk shall prepare, sign, and enter an order to that effect and shall notify the court below and counsel of record forthwith. The case will then be scheduled for briefing and oral argument. If the record has not previously been filed, the Clerk of this Court shall request the clerk of the court having possession of the record to certify it and transmit it to this Court. A formal writ will not issue unless specially directed.

3. Whenever a petition for a writ of certiorari to review a decision of any court is denied, the Clerk shall prepare, sign, and enter an order to that effect and shall notify the court below and counsel of record forthwith. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

CLERK'S COMMENTS

The words "prepare, sign, and" are added to Rules 16.2 and 16.3 to conform to practice.

Rule 17. Procedure in an Original Action

1. This Rule applies only to actions within the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. §1251 and the Eleventh Amendment to the Constitution. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed in accordance with Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure should be followed in an original action in this Court. In other respects those Rules and the Federal Rules of Evidence may be taken as a guide to procedure in an original action in this Court.

3. The initial pleadings in any original action shall be prefaced by a motion for leave to file, and all documents shall be prepared as required by Rule 33. A brief in support of the motion for leave to file also may be filed with the initial pleadings. Forty copies of each document shall be filed, with proof of service as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the attorney general of that State.

4. The case will be placed on the docket when the motion for leave to file and the pleading are filed with the Clerk. The Rule 38 docket fee shall be paid at that time.

5. Within 60 days after the receipt of the motion for leave to file and the pleading, an adverse party may file, with proof of service as required by Rule 29, 40 copies of a brief in opposition to the motion. The brief shall be prepared as required by Rule 33. Upon the filing of a brief in opposition, the expiration of the time allowed therefor, or an express waiver of the right to file, the Clerk shall distribute the filed documents to the Court for its consideration. A reply brief may be filed, but consideration of the case will not be delayed pending its receipt. The Court thereafter may grant or deny the motion, set it down for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

CLERK'S COMMENTS

A reference to the Federal Rules of Evidence is added to Rule 17.2 because provisions of the Federal Rules of Civil Procedure have been superseded by the Federal Rules of Evidence.

The number of copies required in an original case is reduced to 40 in Rules 17.3 and 17.5.

Rule 17.5 allows for the filing of a reply brief by the plaintiff, which conforms to practice.

Rule 17. Procedure in an Original Action

6. A summons issuing out of this Court in an original action shall be served on the defendant 60 days before the return day set out therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.

7. Process against a State issuing out of this Court in an original action shall be served on both the Governor and the attorney general of that State.

Rule 18. Appeal from a United States District Court

1. A direct appeal from a decision of a United States district court, when authorized by law, is commenced by filing a notice of appeal within the time provided by law with the clerk of the district court after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court with the notice of appeal.

2. All parties to the proceeding in the district court shall be deemed parties in this Court, but a party having no interest in the outcome of the appeal may so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly, severally, or otherwise in the judgment may appeal separately; or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the cases shall suffice.

CLERK'S COMMENTS

Rule 18.1 is changed to conform to 28 U. S. C. §§2101(a) and (b). Replacing the language with "provided by law" avoids any potential problem should Congress enact any statute conferring special appeals on the Court.

The addition to Rule 18.2 allows for the filing of a single jurisdictional statement covering multiple judgments entered by the same court involving identical or related cases. See Rule 10.6 of the 1980 Rules.

Rule 18. Appeal From a United States District Court

3. Not more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement prepared as required by Rule 33.1 and shall pay the docket fee prescribed by Rule 38, except that appellants proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2, along with a motion to proceed *in forma pauperis*, which shall preface and be attached to the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date it was filed in the district court. The jurisdictional statement and the appendices thereto shall be prepared as required by Rule 33. A Justice, for good cause shown, may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis of jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion, any order respecting rehearing, and the notice of appeal, and set forth specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. Not more than 30 days after a case has been placed on the docket, an appellee wishing to file a cross-appeal that would otherwise be untimely shall file, with proof of service as required by Rule 29, a jurisdictional statement which shall comply in all respects (including number of copies filed) with Rule 18.3, except that materials already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis*. The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal will then be placed on the docket. It is the duty of the cross-appellant to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal may not be extended.

CLERK'S COMMENTS

Rule 18.3 clarifies the number of copies required for parties filing *in forma pauperis.*

Rule 18.4 reinstates the procedure for docketing cross-appeals that was contained in Rule 12.4 of the 1980 Rules.

Rules 18.3 and 18.4 clarify the filing requirements for parties proceeding *in forma pauperis*.

Rule 18. Appeal from a United States District Court

5. After a notice of appeal has been filed, but before the case is docketed in this Court, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the motion of the appellant and notice to all parties. If a notice of appeal has been filed, but the case has not been docketed in this Court within the time prescribed for docketing or any extension thereof, the district court may dismiss the appeal on the motion of the appellee and notice to all parties and may make any just order with respect to costs. If the district court has denied appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of such motion in conformity with Rules 21 and 33.2. Such motion shall be accompanied by a certificate from the clerk of the district court, establishing the filing of notice of and denial of appellee's motion to dismiss, and by proof of service as required by Rule 29. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is docketed in this Court, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of such motion shall be filed, except that appellees proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2, along with a motion to proceed *in forma pauperis*, which shall preface and be attached to the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rules 21 and 33.

CLERK'S COMMENTS

Rule 18.5 elaborates upon the practice of filing a "motion to docket and dismiss an appeal" as it appeared in Rule 14.3 of the 1980 Rules.

Rule 18.6 directs counsel as to what should be contained in a motion to dismiss or affirm and what format to use. Language is added to clarify the filing requirements for parties proceeding *in forma pauperis* and parties confined in an institution.

Rule 18. Appeal From a United States District Court

7. Upon the filing of the motion, the expiration of the time allowed therefor, or an express waiver of the right to file, the Clerk shall distribute the jurisdictional statement and motion (if any) to the Court for its consideration. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be delayed until the filing of a Rule 18.6 motion, the expiration of the time allowed therefor, or an express waiver of the right to file with regard to the cross-appeal.

8. A brief opposing a motion to dismiss or affirm may be filed by any appellant, but distribution and consideration by the Court under paragraph 7 of this Rule will not be delayed pending its receipt. Forty copies shall be filed, prepared as required by Rule 33.1, except that appellants proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The brief shall be served as required by Rule 29.

9. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter; shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15; and shall comply in all respects with Rule 33. Forty copies shall be filed, except that parties proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

10. The clerk of the district court shall retain possession of the record pending notification from the Clerk of this Court that the record is to be certified and transmitted. See Rule 12.7.

CLERK'S COMMENTS

Rule 18.7 deals with distribution of a case when a cross-appeal is docketed.

Rule 18.9 now contains the same language found in Rule 15.7.

Rule 18.10 was formerly Rule 18.4.

Rule 18. Appeal from a United States District Court

11. After consideration of the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone further consideration of jurisdiction to the hearing of the case on the merits. If not disposed of summarily, the case shall stand for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed, the Clerk of this Court shall request the clerk of the court in possession of the record to certify and transmit it to this Court.

12. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33, the Clerk shall return it with a letter indicting the deficiency. If a corrected jurisdictional statement is received no later than 60 days after the date of such letter, its filing shall be deemed timely.

CLERK'S COMMENTS

Rule 18.11 reflects the current practice of the Clerk's Office when the Court notes probable jurisdiction or postpones further consideration of jurisdiction.

Rule 18.12 parallels Rule 14.6.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate submitted shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be distinct and definite. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on application or on its own motion, may consider and decide the entire matter in controversy. See 28 U. S. C. §1254(2).

3. When a question is certified, the Clerk shall notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk shall submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders that the case be briefed or set for argument, the parties shall be notified and permitted to file briefs. The Clerk of this Court shall then request the clerk of the court in possession of the record to certify it and transmit it to this Court. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix prepared in conformity with Rule 26 by the appellant in the court of appeals, but the fact that any part of the record has not been printed shall not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case on certificate shall comply with Rules 24, 25, and 33, except that the brief for the party who is the appellant below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

CLERK'S COMMENTS

Rule 19.1 conforms to the practice of the Court with respect to certified questions.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. The issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. The petition in any proceeding seeking the issuance by this Court of a writ authorized by 28 U. S. C. §§1651(a), 2241, or 2254(a) shall be prepared in all respects as required by Rule 33. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case shall be placed on the docket when 40 copies, prepared as required by Rule 33.1, are filed with the Clerk and the docket fee is paid, except that petitioners proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking the issuance of a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set forth with particularity why the relief sought is not available in any other court. There shall be appended to the petition a copy of the judgment or order in respect of which the writ is sought, including a copy of any opinion rendered in that connection, and any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding in respect of which relief is sought. Within 30 days after the petition is placed on the docket, the parties may file 40 copies of a brief or briefs in opposition thereto, which shall comply fully with Rule 15. If the parties named as respondents do not wish to respond to the petition, they may so advise the Clerk and all parties by letter. All persons served shall be deemed respondents for all purposes in the proceedings in this Court.

CLERK'S COMMENTS

Rule 20.2 clarifies the filing procedures for petitioners proceeding *in forma pauperis* as well as those who are inmates of institutions.

Rule 20.3(b) reflects the change to the calculation of time for the due date of a brief in opposition.

Rule 20. Procedure on a Petition for an Extraordinary Writ

4. (a) A petition seeking the issuance of a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§2241 and 2242, and in particular with the provision in the last paragraph of §2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set forth specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. §2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show exceptional circumstances warranting the exercise of the Court's discretionary powers and must show that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings will be *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. §2241(b) is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. When a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived, the Clerk shall distribute the documents to the Court for its consideration.

6. If the Court orders the case set for argument, the Clerk shall notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common law writ of certiorari, that the parties shall prepare a joint appendix pursuant to Rule 26.

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. For an application addressed to a single Justice, see Rule 22.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would be dispositive of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1. Forty copies of such motion shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2, along with a motion for leave to proceed *in forma pauperis* which shall preface and be attached to each copy of the motion. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court may be prepared as required by Rule 33.2; parties shall file an original and 10 copies of any such motion. The Court subsequently may order the motion to be prepared by the moving party as required by Rule 33.1; parties shall file 40 copies of any such motion.

CLERK'S COMMENTS

Rule 21.1 deletes the words "except for a motion to dismiss or affirm under [former] Rule 18." These words caused confusion because former Rule 18 stated that motions concerning jurisdictional statements should comply with Rule 21, yet the language in former Rule 21 excepted Rule 18.

Rule 21.2(b) deletes the first eight words for the reason stated above. Language is added to Rule 21.2(b) to clarify the filing requirements for parties proceeding *in forma pauperis* and inmates of institutions.

Rule 21. Motions to the Court

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion shall be presented in open court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument will not be permitted on any motion unless the Court so directs.

4. Any response to a motion shall be made as promptly as possible considering the nature of the relief asked and any asserted need for emergency action, and, in any event, within 10 days of receipt, unless otherwise ordered by the Court or a Justice or by the Clerk pursuant to Rule 30.4. A response to a motion prepared as required by Rule 33.1 shall be prepared in the same manner if time permits. In an appropriate case the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice having authority to grant the requested relief shall be filed with the Clerk, who shall promptly transmit it to the Justice concerned.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service on all parties as required by Rule 29.

3. The Clerk in due course shall advise all counsel concerned, by appropriately speedy means, of the disposition made of an application.

4. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice shall be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

5. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is out of time under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial has been without prejudice, a renewed application is not favored. A renewed application may be made by sending a letter to the Clerk of the Court designating the Justice to whom the application is to be directed, together with 10 copies of the original application and proof of service as required by Rule 29.

6. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

CLERK'S COMMENTS

Rule 22.1 clarifies the Clerk's authority to refuse to file an application when an individual Justice does not have the authority to grant the relief. The word "submitted" is changed to "filed" to conform to current practice.

Rule 22.5 clarifies the procedure and number of copies required when filing a renewed application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A petitioner entitled thereto may present to a Justice an application to stay the enforcement of the judgment sought to be reviewed on writ of certiorari. See 28 U. S. C. §2101(f).

3. An application for a stay shall set forth with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested has first been sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set forth specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. The judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond shall be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

CLERK'S COMMENTS

A reference to Rule 33.2 is added to Rule 23.3.

Rule 24. Brief on the Merits; In General

1. A brief for a petitioner or an appellant on the merits shall comply in all respects with Rules 33.1 and 33.3 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review, unless the caption of the case in this Court contains the names of all parties. Any amended listing of parent companies and nonwholly owned subsidiaries as required by Rule 29.6 shall be placed here.

(c) A table of contents and a table of authorities if the brief exceeds five pages.

(d) Citations of the opinions and judgments delivered in the courts below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked, with citation of the statutory provision and of the time factors upon which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone shall suffice at this point, and their pertinent text, if not already set forth in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set forth in an appendix to the brief.

(g) A concise statement of the case setting forth the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e.g.*, (App. 12), or to the record, *e.g.*, (Record 12).

(h) A summary of the argument, suitably paragraphed, which should be a clear and concise condensation of the argument made in the body of the brief. Mere repetition of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied upon.

(j) A conclusion specifying with particularity the relief the party seeks.

Rule 24. Brief on the Merits; In General

2. The brief filed by a respondent or an appellee shall conform to the foregoing requirements, except that no statement of the case need be made beyond what may be necessary to correct any inaccuracy or omission in the statement by the other side. Items required by subparagraphs 1(a), (b), (d), (e), and (f) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the other side.

3. A brief on the merits may not exceed the page limitations set out in Rule 34. An appendix to a brief shall be limited to relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set forth in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e.g.*, (Pl. Exh. 14; Record 199, 2134).

6. A brief shall be compact, logically arranged with proper headings, concise, and free of burdensome, irrelevant, immaterial, and scandalous matter. A brief not complying with this paragraph may be disregarded or stricken by the Court.

Rule 25. Brief on the Merits; Time for Filing

1. Forty copies of the brief on the merits for the petitioner or appellant shall be filed with the Clerk within 45 days of the order granting the writ of certiorari or of the order noting probable jurisdiction or postponing consideration of jurisdiction.

2. Forty copies of the brief on the merits for the respondent or appellee shall be filed with the Clerk within 30 days after the receipt of the brief filed by the petitioner or appellant.

3. Forty copies of the reply brief, if any, shall be filed within 30 days after receipt of the brief for the respondent or appellee, or must be received by the Clerk not later than one week before the date of oral argument, whichever is earlier.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time for filing briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or a party's application.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. No brief shall be filed by the Clerk after a case has been argued or submitted, except from a party and upon leave of the Court.

7. No brief shall be filed by the Clerk unless it is accompanied by proof of service as required by Rule 29.

CLERK'S COMMENTS

Rule 25.4 is intended to discourage unwarranted requests for extensions of time.

Rule 26. Joint Appendix

1. Unless the parties agree to use the deferred method described in paragraph 4 of this Rule, or the Court so directs, the petitioner or appellant, within 45 days after the entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file 40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing prepared as required by Rule 33.1, need not be reproduced in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree to the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, not later than 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. A respondent or appellee who considers the parts of the record so designated insufficient, within 10 days after receipt of the designation shall serve upon the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the respondent or appellee has been permitted by this Court to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices. Counsel may refer in their briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant shall immediately file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties otherwise agree, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix shall be taxed as costs in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

Rule 26. Joint Appendix

4. (a) Upon notice to the Clerk, if the parties agree or if the Court so orders, preparation of the joint appendix may be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix within 14 days after receipt of the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may make reference to the pages of the record. In that event, the joint appendix shall also include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief on 8½ by 11 inch paper as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out therein, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out following the table of contents. Thereafter, the other parts of the record shall be set out in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted. A question and its answer may be contained in a single paragraph.

CLERK'S COMMENTS

Rule 26.4 reflects the Court's view on deferral of the joint appendix. The Clerk discourages use of the deferred appendix except in the most unusual cases because it delays the work of the Court.

Rule 26. The Joint Appendix

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals shall be regarded as an exhibit for the purposes of this paragraph.

7. The Court by order may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause shown, the time limits specified in this Rule may be shortened or enlarged by the Court or a Justice, or by the Clerk pursuant to Rule 30.4.

Rule 27. The Calendar

1. The Clerk from time to time shall prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief for the respondent or appellee is due.

2. The Clerk shall advise counsel when they are required to appear for oral argument and shall publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. On the Court's own motion, or on motion of one or more parties, the Court may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as may be prescribed.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs in advance of oral argument. The Court disfavors oral argument read from a prepared text.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless otherwise directed, one-half hour on each side is allowed for argument. Counsel is not required to use all the allotted time. A request for additional time to argue shall be presented by motion under Rule 21 not later than 15 days after service of the petitioner's or appellant's brief on the merits and shall set forth specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of Court upon motion filed not later than 15 days after service of the brief for the party supported. The request shall be presented by motion under Rule 21 and shall set forth specifically and concisely why more than one attorney should argue. Divided argument is not favored.

CLERK'S COMMENTS

The words "service of the petitioner's or appellant's brief on the merits" in former Rule 28.4 are replaced with the words "service of the brief of the party supported." A respondent is handicapped by the former requirement to request divided argument 15 days after service of the petitioner's or appellant's brief on the merits. For example, a petitioner has the opportunity to read the Solicitor General's *amicus* brief supporting the petitioner before deciding whether to consent to the Solicitor General's motion for divided argument. Under the former rule, however, respondent had to decide whether to consent to divided argument prior to filing of the Solicitor General's *amicus* brief supporting the respondent.

Rule 28. Oral Argument

5. Regardless of the number of counsel participating, counsel making the opening argument shall present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed pursuant to Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may argue orally only by leave of the Court on a motion particularly setting forth why oral argument would provide assistance to the Court not otherwise available. The motion will be granted only in the most extraordinary circumstances.

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to this Court or to a Justice shall be filed with the Clerk.

2. To be timely filed, a document must actually be received by the Clerk within the time specified for filing; or be sent to the Clerk through the United States Postal Service by not less than first-class mail, postage prepaid, and bear a postmark showing that the document was mailed on or before the last day for filing (commercial postage meter labels alone are not acceptable); or, if filed by an inmate confined in an institution, be deposited in the institution's internal mail system on or before the last day for filing and be accompanied by a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting forth the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, the Clerk shall require the person who mailed the document to submit a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting forth the details of the mailing and stating that the mailing took place on a particular date within the permitted time. A document forwarded through a private delivery or courier service must actually be received by the Clerk within the time permitted for filing.

3. Any document required by these Rules to be served may be served personally or by mail on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other party separately represented shall suffice. If personal service is made, it shall consist of delivery at the office of counsel of record, either to counsel or to an employee therein. If service is by mail, it shall consist of depositing the document with the United States Postal Service, with not less than first-class postage prepaid, addressed to counsel of record at the proper post office address. When a party is not represented by counsel, service shall be made upon the party, personally or by mail.

CLERK'S COMMENTS

Clarifying language is added to eliminate current confusion over what types of mail service are contemplated under former Rule 29.2. The rule inserts a prohibition against the use of commercial postage meter labels that can be set for any date.

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

4. (a) If the United States or any department, office, agency, officer, or employee thereof is a party to be served, service shall be made upon the Solicitor General of the United States, Room 5614, Department of Justice, 10th and Constitution Ave., N.W., Washington, D.C. 20530. When an agency of the United States is authorized by law to appear on its own behalf as a party, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court wherein the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any department, office, agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. §2403(a) may be applicable and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 10th and Constitution Ave., N.W., Washington, D.C. 20530. In a proceeding from any court of the United States, as defined by 28 U. S. C. §451, the initial document also shall state whether that court, pursuant to 28 U. S. C. §2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court wherein the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. §2403(b) may be applicable and shall be served upon the attorney general of that State. In a proceeding from any court of the United States, as defined by 28 U. S. C. §451, the initial document also shall state whether that court, pursuant to 28 U. S. C. §2403(b), certified to the state attorney general the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

CLERK'S COMMENTS

Language referring to the date of receipt as controlling response time is deleted from Rule 29.4(a) for consistency with Rules 15.2 and 18.6.

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service of the document in question, signed by counsel of record for the party served;

(b) a certificate of service of the document in question, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act, see 18 U. S. C. §3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. §1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court.

6. Every document, except a joint appendix or brief *amicus curiae*, filed by or on behalf of one or more corporations shall list all parent companies and subsidiaries (except wholly owned subsidiaries) of each of the corporate filers. If there is no parent or subsidiary company to be listed, a notation to this effect shall be included in the document. If a list has been included in a document filed earlier in the particular case, reference may be made to the earlier document (except when the earlier list appeared in an application for an extension of time or for a stay), and only amendments to the listing to make it current need be included in the document being filed.

CLERK'S COMMENTS

The requirement for a corporate listing found in former Rule 29.1 is now in Rule 29.6. Changes include language clarifying when reference may be made to a previous document containing the list.

Rule 30. Computation and Extension of Time

1. In computing any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed. See 5 U. S. C. §6103 for a list of federal legal holidays.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. However, an application to extend the time to file a petition for a writ of certiorari or to docket an appeal must be received at least 10 days before the specified final filing date as computed under these Rules; if received less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

CLERK'S COMMENTS

In Rule 30.2 the word "filed" is substituted for the word "presented" to clarify that under Rule 29.2 a document may be filed upon mailing. The word "received" is substituted for the word "submitted" in the second sentence of Rule 29.2. The language "as computed under these Rules" is added to clarify the date to be used when computing the date on which the request for an extension is due. For example, when the 90th day is a Sunday, the final filing date as computed under these Rules is Monday. Therefore, the 10 days should be computed from Monday. Likewise, if the 10th day before the final filing date is a Saturday, Sunday, federal legal holiday, etc., the applicant will satisfy the 10-day provision by ensuring that the Clerk's Office receives the application on the next business day.

Rule 30. Computation and Extension of Time

3. An application to extend the time to file a petition for a writ of certiorari, to docket an appeal, to file a reply brief on the merits, or to file a petition for rehearing is an application to an individual Justice that shall be presented and served upon all other parties as provided by Rule 22. Once denied, such an application may not be renewed. An application to extend the time to file a petition for a writ of certiorari or to docket an appeal shall be presented in the form required by Rules 13.5, 18.3, and 22.

4. An application to extend the time to file any document or paper other than those specified in Rule 30.3 may be presented in the form of a letter to the Clerk setting forth specific reasons why an extension of time is justified. The letter shall be served upon all other parties as required by Rule 29. The application may be acted upon by the Clerk in the first instance. Any party aggrieved by the Clerk's action on an application to extend time may request that it be submitted to a Justice or to the Court. The Clerk shall report action under this paragraph to the Court in accordance with instructions the Court may issue.

CLERK'S COMMENTS

Rules 30.3 and 30.4 are redrafted to address separately applications presented to the Circuit Justice (Rule 30.3) and applications that may be acted upon by the Clerk in the first instance (Rule 30.4). Reference to an application to issue a mandate forthwith is deleted because it is not an extension application and it is already provided for in Rule 45.2.

Rule 31. Translations

Whenever any record to be transmitted to this Court contains any material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall immediately advise the Clerk of this Court so that this Court may order that a translation be supplied and, if necessary, printed as a part of the joint appendix.

Rule 32. Models, Diagrams, and Exhibits

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, and exhibits of material placed in the custody of the Clerk shall be removed by the parties within 40 days after the case is decided. If this is not done, the Clerk shall notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or make any other appropriate disposition of them.

Rule 33. Document Preparation

1. Booklet Format: (a) Except for documents permitted by Rules 21, 22, and 39 to be submitted on 8½ by 11 inch paper, every document filed with the Court shall be prepared using professional typesetting (*e.g.*, wordprocessing or commercial printing) and reproduced by offset printing, photocopying, or similar process. The process used must produce a clear, black image on white paper.

(b) The text of every document, including any appendix thereto, except a document produced on 8½ by 11 inch paper, shall appear in print as standard 11-point or larger type with 2-point or more leading between lines. The print size and typeface shall be no smaller than that contained in the United States Reports from Volume 453 to date. Print size and typeface should be standard throughout. No attempt should be made to reduce, compress, or condense the typeface in a manner that would increase the content of a document. Quotations in excess of three lines shall be indented. Footnotes shall appear in print as standard 9-point or larger type with 2-point or more leading between lines. The document must be prepared on both sides of the page.

CLERK'S COMMENTS

The language governing printing requirements is revised to conform to current practice. The term "professional typesetting" encompasses typesetting, computer generation of documents, and hot lead printing. Documents produced on a typewriter will not be accepted except as provided for under Rule 33.2.

The word "compress" was added to Rule 33.1(b) to prevent attempts to squeeze additional characters on a line. The addition concerning quotations conforms to practice.

Rule 33. Document Preparation

(c) Every document, except one produced on 8½ by 11 inch paper, shall be produced on paper that is opaque, unglazed 6 1/8 by 9¼ inches in size, and not less than 60 lb. weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, should be approximately 4 1/8 by 7 1/8 inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to make an easily opened volume, and no part of the text should be obscured by the binding. Spiral, plastic, metal, and string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every document, except one produced on 8½ by 11 inch paper, shall comply with the page limits shown on the chart in Rule 34. The page limits do not include the questions presented page, the listing of parties and corporate affiliates of the filing party, the subject index, the table of authorities, and the appendix. Verbatim quotations required under Rule 14.1(f), if set forth in the text of a brief rather than the appendix, are also excluded. The Court or a Justice, for good cause shown, may grant leave to file a document in excess of the page limits, but application for such leave is not favored. An application to exceed page limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

CLERK'S COMMENTS

Rule 33.1(c) specifies paper weight and forbids the use of plastic, metal, and string bindings. The change in the sentence concerning patent documents conforms to present practice.

Rule 33.1(d) is a combination of the former Rules 33.3 and 33.4. The page limits apply only to documents printed under Rule 33.1, not under Rule 33.2.

The word "submitted" in former Rule 33.4 is changed to "received" in Rule 33.1(d) to conform to the change in Rule 30.2.

Rule 33. Document Preparation

(e) Every document, except one produced on 8½ by 11 inch paper, shall have a suitable cover consisting of 65 lb. weight paper in the color indicated on the chart in Rule 34. The Clerk shall furnish a color chart upon request. Counsel must ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in Rule 34 shall have a tan cover.

(f) Forty copies of a document prepared under this Rule shall be filed.

(g) The chart in Rule 34 shows the page limits and cover color for documents filed under this paragraph. If a separate appendix is filed, the color of the cover shall be the same as the cover of the document it supports.

CLERK'S COMMENTS

Rule 33.1(e) is similar to former Rule 33.3. The additions to Rule 33.1(e) were made to conform to custom.

Rule 33.1(e) was originally found in former Rule 33.1(a) and was moved to make the Rule read in a more orderly fashion.

Rule 33.1(g) was inserted to introduce the chart and make it clear that it applies only to Rule 33.1. The second sentence clarifies the practice of the Clerk's Office. The additions to the chart conform to custom and clarify matters concerning original jurisdiction briefs.

Rule 33. Document Preparation

2. 8½ x 11 Inch Paper Format: (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½ x 11 inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper, and shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper. All copies presented to the Court must be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed in manuscript by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court. Rule 34 does not apply to documents prepared under this paragraph. An attorney appointed under the Criminal Justice Act, see 18 U. S. C. §3006A(d)(6), or under any other applicable federal statute, to represent a party proceeding *in forma pauperis* may file documents without being admitted to practice before this Court. Rule 34 does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½ x 11 inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The page exclusions set out in Rule 33.1(d) apply.

CLERK'S COMMENTS

Rule 33.2 (former Rule 34) governs the preparation requirements for all documents which the Court does not require to be prepared in booklet form (*e.g.*, applications and *in forma pauperis* petitions). The Court does not require Criminal Justice Act attorneys to pay the Bar admission fee.

Rule 33.2(b) is added to impose page limitations on documents filed on 8½ X 11 inch paper.

Rule 33. Document Preparation

3. General Requirements: Every document, whether prepared under paragraph 1 or 2 of this Rule, shall comply with the following provisions:

(a) Each document shall bear on its cover, in the following order, from the top of the page:

(i) the docket number of the case or, if there is none, a space for one;
(ii) the name of this Court;
(iii) the October Term in which the document is filed (see Rule 3.1);
(iv) the caption of the case as appropriate in this Court;
(v) the nature of the proceeding and the name of the court from which the action is brought (*e.g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");
(vi) the title of the document (*e.g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");
(vii) the name of counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in paragraph 2 of this Rule), and upon whom service is to be made, with a notation directly thereunder that the attorney is the counsel of record together with counsel's office address and telephone number.

There may be only one counsel of record noted on a single document. The individual names of other members of the Bar of this Court, or of the bar of the highest court of a State, and, if desired, their post office addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

CLERK'S COMMENTS

Rule 33.3 contains requirements for all documents filed with the Court regardless of the printing format.

Rule 33.3(a) (former Rule 33.2) clarifies the Term notation requirement and requires that a *pro se* petitioner's name, address, and telephone number be included on the cover.

Rule 33. Document Preparation

(b) Every document exceeding five pages (other than a joint appendix), whether prepared under paragraph 1 or 2 of this Rule, shall contain a table of contents and a table of authorities (*i.e*., cases alphabetically arranged, constitutional provisions, statutes, treatises, etc.) with references to the pages in the document where they are cited.

(c) The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with paragraph 3(a)(vii) of this Rule, as may be desired.

CLERK'S COMMENTS

Rule 33.3(b) is the same as former Rule 33.5.

Rule 33.3(c) is similar to former Rule 33.6.

Rule 34. Preparation of Booklet-Format Documents

	Type of Document	Page Limits	Color of Cover
i.	Petition for a Writ of Certiorari (Rule 14.4); Motion for Leave to file a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	30	White
ii.	Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to file an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4)	30	Orange
iii.	Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	10	Tan
iv.	Supplemental Brief (Rules 15.7, 18.9, and 25.5)	10	Tan
v.	Brief on the Merits by Petitioner or Appellant (Rule 24.3); Exceptions to Report of Special Master by Plaintiff (Rule 17.5)	50	Light Blue
vi.	Brief on the Merits by Respondent or Appellee (Rule 24.3); Brief on the Merits by Respondent or Appellee Supporting Petitioner or Appellant; Exceptions to Report of Special Master by Party Other than Plaintiff (Rule 17.5)	50	Light Red
vii.	Reply Brief on the Merits (Rule 24.4)	20	Yellow
viii.	Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17.5)	50	Orange
ix.	Reply to Exceptions to Report of Special Master by Parties Other than Plaintiffs.	50	Yellow
x.	Brief for an *Amicus Curiae* at the Petition Stage (Rule 37.2)	20	Cream
xi.	Brief for an *Amicus Curiae* on the Merits, or in an Original Action at the Exceptions Stage in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party (Rule 37.3)	30	Light Green
xii.	Brief for an *Amicus Curiae* on the Merits or in an Original Action at the Exceptions Stage in Support of the Defendant, Respondent, or Appellee (Rule 37.3)	30	Dark Green
xiii.	Petition for Rehearing (Rule 44)	10	Tan

Rule 35. Death, Substitution, and Revivor; Public Officers

1. In the event a party dies after filing a petition for a writ of certiorari to this Court, or after filing a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, shall be entitled to have the petition for a writ of certiorari or the appeal dismissed. A party so moving who is a petitioner or appellant shall be entitled to proceed as in any other case of nonappearance by a respondent or appellee. The substitution of a representative of the deceased shall be made within six months after the death of the party, or the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed because the deceased party has no authorized representative within the jurisdiction of that court, but does have an authorized representative elsewhere, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

CLERK'S COMMENTS

Rule 35.3 requires parties to notify the Clerk of any successions.

Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner shall not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian showing a need therefor, the court, Justice, or judge who rendered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged upon personal recognizance or bail, as may appear fitting to the court, Justice, or judge who rendered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged upon personal recognizance or bail, unless the court, Justice, or judge who rendered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

2. An *amicus curiae* brief submitted prior to the consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ, accompanied by the written consent of all parties, may be filed only if submitted within the time allowed for filing a brief in opposition to the petition for a writ of certiorari or for filing a motion to dismiss or affirm. The brief shall specify that consent was granted, and its cover shall identify the party supported. A motion for leave to file an *amicus curiae* brief when consent has been withheld is not favored. Any such motion shall be filed within the time allowed for the filing of the *amicus curiae* brief, indicate the party or parties who have refused consent, state the nature of the movant's interest, and be prepared as required by Rule 33.1 as one document with the brief sought to be filed.

3. An *amicus curiae* brief in a case before the Court for oral argument may be filed when accompanied by the written consent of all parties and presented within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. The brief shall specify that consent was granted and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. No reply brief for an *amicus curiae*, and no brief for an *amicus curiae* in support of or in opposition to a petition for rehearing shall be filed.

4. An *amicus curiae* brief submitted in support of or in opposition to an application addressed to an individual Justice shall be submitted to the Clerk.

CLERK'S COMMENTS

Rule 37.2 requires notation of the interest of the *amicus* at the petition stage and conforms to practice.

Rule 37.3 conforms to the practice of the Court.

Rule 37.4 provides guidance on how *amicus curiae* briefs are to be processed.

Rule 37. Brief for an *Amicus Curiae*

5. When consent to the filing of an *amicus curiae* brief in a case before the Court for oral argument is withheld by a party to the case, a motion for leave to file indicating the party or parties who have withheld consent (accompanied by the proposed brief and prepared as required by Rule 33.1 as one document), may be presented to the Court. Such a motion shall not be filed unless submitted within the time allowed for the filing of an *amicus curiae* brief on written consent. The cover of such an *amicus curiae* brief shall identify the party supported or indicate whether it supports affirmance or reversal.

6. Consent to the filing of a brief for an *amicus curiae* is not necessary when the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States authorized by law to appear on its own behalf when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its attorney general; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

7. A brief or motion filed under this Rule shall comply with the applicable provisions of Rules 21, 24, and 33 (except that it is sufficient to set forth in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion) and shall be accompanied by proof of service as required by Rule 29. The motion for leave to file may not exceed five pages and shall be filed with the brief as one document. A party served with the motion may file an objection thereto, concisely stating the reasons for withholding consent, which shall be prepared as required by Rule 33.1.

CLERK'S COMMENTS

The term "political subdivision" was removed from Rule 37.6 and replaced with language that clarifies the meaning of the Rule.

The term "argument" follows the "summary of the argument" in Rule 37.7. The requirements for a motion are added.

Rule 38. Fees

Under 28 U. S. C. §1911, the fees to be charged by the Clerk are:

(a) For docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300.

(b) For filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200.

(c) For the reproduction and certification of any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, $.50 per page.

(d) For a certificate bearing the seal of this Court, $10.

(e) For a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

CLERK'S COMMENTS

"$10" is substituted for "$25" in Rule 38(d).

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to proceed *in forma pauperis*, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. §1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. See 28 U. S. C. §1915. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act, see 18 U. S. C. §3006A, or under any other applicable federal statute, no affidavit or declaration in compliance with 28 U. S. C. §1746 is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and affidavit or declaration if required, shall be filed with that document and shall comply in every respect with Rule 21. As provided therein, it shall be sufficient to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original shall suffice. The motion for leave to proceed *in forma pauperis* shall preface and be attached to any accompanying substantive document.

CLERK'S COMMENTS

Rule 39.2 allows, at later stages of the proceeding, a motion for leave to proceed *in forma pauperis* that is not accompanied by a substantive document.

Rule 39.2 places the burden of providing copies on the attorney or the non-inmate *pro se* petitioner and is consistent with Rule 12.

Rule 39.2 attempts to alleviate the paper-handling burden placed on the Clerk's Office because of the submission of *in forma pauperis* motions that are stapled separately from petitions for certiorari.

Rule 39. Proceedings *In Forma Pauperis*

3. Every document presented under this Rule must be legible and, whenever possible, shall be prepared as required by Rule 33.2. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk shall refuse to receive any document sought to be filed that does not comply with the substance of these Rules or that appears to be jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they shall be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, shall suffice. The respondent or appellee may challenge the grounds for the motion to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs submitted by that counsel, unless otherwise requested, shall be prepared under the supervision of the Clerk. The Clerk shall also reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act, see 18 U. S. C. §3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis*.

CLERK'S COMMENTS

Rule 39.5 replaces the term "may" with "shall" to ensure all the documents in a case are in the same format. Rule 39.5 also makes the original and 10 copies the standard for documents submitted on 8½ x 11 inch paper.

Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing to establish reemployment rights under 38 U. S. C. §2022, or under any other provision of law exempting veterans from the payment of fees or court costs, may file a motion to proceed on papers prepared as required by Rule 33.2, except that the motion shall ask leave to proceed as a veteran and the affidavit shall set forth the moving party's veteran status. The motion shall preface and be attached to the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. §1916 may proceed without prepayment of fees or costs or furnishing security therefor, but a seaman is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. §1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

CLERK'S COMMENTS

The changes bring the Rule into conformity with Rule 33.

The change in the name of the United States Court of Military Appeals is reflected in Rule 40.3.

Rule 41. Opinions of the Court

Opinions of the Court shall be released by the Clerk immediately upon their announcement from the bench, or as otherwise directed by the Court. Thereafter, the Clerk shall cause the opinions to be issued in slip form, and the Reporter of Decisions shall prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment reviewed was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in state courts shall be allowed at the same rate that similar judgments bear interest in the courts of the State where judgment is directed to be entered. Interest in cases arising in a court of the United States shall be allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages and single or double costs. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's attorney, or against both.

CLERK'S COMMENTS

A sentence is added to conform Rule 42.1 to the requirements of federal law. See, *e.g.*, 28 U. S. C. §§1961, 2411, 2516, 2674, and 2718. This will allow the Court to distinguish between cases arising in a state court and those arising in a federal court.

Rule 43. Costs

1. If a judgment or decree is affirmed by this Court, costs shall be paid by the petitioner or appellant unless otherwise ordered by the Court.

2. If a judgment or decree is reversed or vacated by this Court, costs shall be allowed to the petitioner or appellant unless otherwise ordered by the Court.

3. The fees of the Clerk and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs shall be equally divided unless otherwise ordered by the Court; but if a decision is rendered on the whole matter in controversy, see Rule 19.2, costs shall be allowed as provided in paragraphs 1 and 2 of this Rule.

5. In a civil action commenced on or after July 18, 1966, costs under this Rule shall be allowed for or against the United States or an officer or agent thereof, unless expressly waived, or otherwise ordered by the Court. See 28 U. S. C. §2412.

6. When costs are allowed in this Court, the Clerk shall insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Rule 44. Rehearing

1. A petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after the entry of the judgment or decision, unless the time is shortened or extended by the Court or a Justice. The petitioner shall file 40 copies of the petition as required by Rule 33.1, and shall pay the filing fee prescribed by Rule 38, except that petitioners proceeding *in forma pauperis* under Rule 39, including inmates of institutions, may file the number of copies required for petitions by such persons under Rule 12.2. The petition shall be served as required by Rule 29. The petition shall state its grounds briefly and distinctly and shall be accompanied by certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the manuscript signature of counsel (or of a party unrepresented by counsel). A petition for rehearing is not subject to oral argument and will not be granted except at the instance of a Justice who concurred in the judgment or decision and with the concurrence of a majority of the Court.

2. A petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be accompanied by certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the manuscript signature of counsel (or of a party unrepresented by counsel). A petition without a certificate shall not be filed by the Clerk. The petition is not subject to oral argument.

CLERK'S COMMENTS

The language added to Rule 44.1 clarifies the filing requirements for petitioners proceeding *in forma pauperis* and those petitioners who are inmates of institutions.

Rule 44.2 is amended to conform to practice.

Rule 44. Rehearing

3. No response to a petition for rehearing shall be filed unless requested by the Court. Absent extraordinary circumstances, no petition will be granted without an opportunity to submit a response.

4. No brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing shall be filed.

5. Consecutive petitions and petitions that are out of time under this Rule shall not be filed.

CLERK'S COMMENTS

The Rule 37.3 prohibition of *amicus curiae* briefs is repeated in Rule 44.4.

In Rule 44.5, the term "received" was changed to "filed" to conform to practice.

Rule 45. Process; Mandates

1. All process of this Court shall issue in the name of the President of the United States.

2. In a case on review from a state court, the mandate shall issue 25 days after the entry of judgment, unless the time is shortened or extended by the Court or a Justice, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing shall stay the mandate until disposition of the petition, unless otherwise ordered. If the petition is denied, the mandate will issue forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. §451, a formal mandate will not issue unless specially directed; instead, the Clerk shall send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by the Clerk, shall provide for costs, if any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

CLERK'S COMMENTS

Rule 45.3 conforms to the practice followed in the Clerk's Office when preparing certified copies of judgments.

Rule 46. Dismissing Cases

1. Whenever all parties, at any stage of the proceedings, file with the Clerk an agreement in writing that a case be dismissed, specifying the terms with respect to the payment of costs, and pay to the Clerk any fees that may be due, the Clerk, without further reference to the Court, shall enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, and shall tender to the Clerk any fees and costs payable. An adverse party may, within 15 days after service thereof, file an objection, limited to the quantum of damages and costs in this Court alleged to be payable or, in a proper case, to showing that the moving party does not represent all petitioners or appellants. The Clerk shall refuse to receive any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter shall be submitted to the Court for its determination.

(c) If no objection is filed, or if upon objection going only to the quantum of damages and costs in this Court the party moving for dismissal tenders the whole of such additional damages and costs within 10 days of the demand therefor, the Clerk, without further reference to the Court, shall enter an order of dismissal. If, after objection as to the quantum of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk shall report the matter to the Court for its determination.

3. No mandate or other process shall issue on a dismissal under this Rule without an order of the Court.

Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals and the Supreme Court of the Commonwealth of Puerto Rico. See 28 U. S. C. §§1257 and 1258. References in these Rules to the common law and statutes of a State include the common law and statutes of the District of Columbia and of the Commonwealth of Puerto Rico.

Rule 48. Effective Date of Rules

1. These Rules adopted , 1995, shall be effective , 1995.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a particular matter pending would not be feasible or would work injustice, in which event the former procedure applies.

CLERK'S COMMENTS

Rule 48 adds a saving measure to prevent proceedings pending on the Rules' effective date from working an injustice.