docket. Thus from the point at which the transcript is ordered the clerk of the court of appeals is made aware of any delays. If the transcript is not filed on time, the clerk of the court of appeals will notify the district judge.

Present Rule 11(b) provides that the record shall be transmitted when it is ''complete for the purposes of the appeal.'' The proposed amended rule continues this requirement. The record is complete for the purposes of the appeal when it contains the original papers on file in the clerk's office, all necessary exhibits, and the transcript, if one is to be included. Cf. present Rule 11(c). The original papers will be in the custody of the clerk of the district court at the time the notice of appeal is filed. See Rule 5(e) of the F.R.C.P. The custody of exhibits is often the subject of local rules. Some of them require that documentary exhibits must be deposited with the clerk. See Local Rule 13 of the Eastern District of Virginia. Others leave exhibits with counsel, subject to order of the court. See Local Rule 33 of the Northern District of Illinois. If under local rules the custody of exhibits is left with counsel, the district court should make adequate provision for their preservation during the time during which an appeal may be taken, the prompt deposit with the clerk of such as under Rule 11(b) are to be transmitted to the court of appeals, and the availability of others in the event that the court of appeals should require their transmission. Cf. Local Rule 11 of the Second Circuit.

Usually the record will be complete with the filing of the transcript. While the proposed amendment requires transmission ''forthwith'' when the record is complete, it was not designed to preclude a local requirement by the court of appeals that the original papers and exhibits be transmitted when complete without awaiting the filing of the transcript.

The proposed amendments continue the provision in the present rule that documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted without direction by the parties or by the court of appeals, and the requirement that the parties make special arrangements for transmission and receipt of exhibits of unusual bulk or weight. In addition, they give recognition to local rules that make transmission of other record items subject to order of the court of appeals. See Local Rule 4 of the Seventh Circuit.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rule 11(b) are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) DOCKETING THE APPEAL. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) FILING A REPRESENTATION STATEMENT. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) FILING THE RECORD, PARTIAL RECORD, OR CERTIFICATE. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

Subdivision (a). All that is involved in the docketing of an appeal is the payment of the docket fee. In practice, after the clerk of the court of appeals receives the record from the clerk of the district court he notifies the appellant of its receipt and requests payment of the fee. Upon receipt of the fee, the clerk enters the appeal upon the docket and files the record. The appellant is allowed to pay the fee at any time within the time allowed or fixed for transmission of the record and thereby to discharge his responsibility for docketing. The final sentence is added in the interest of facilitating future reference and citation and location of cases in indexes. Compare 3d Cir. Rule 10(2); 4th Cir. Rule 9(8); 6th Cir. Rule 14(1).

Subdivision (c). The rules of the circuits generally permit the appellee to move for dismissal in the event the appellant fails to effect timely filing of the record. See 1st Cir. Rule 21(3); 3d Cir. Rule 21(4); 5th Cir. Rule 16(1); 8th Cir. Rule 7(d).

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Subdivision (a). Under present Rule 12(a) the appellant must pay the docket fee within the time fixed for the transmission of the record, and upon timely payment of the fee, the appeal is docketed. The proposed amendment takes the docketing out of the hands of the appellant. The fee is paid at the time the notice of appeal is filed and the appeal is entered on the docket upon receipt of a copy of the notice of appeal and of the docket entries, which are sent to the court of appeals under the provisions of Rule 3(d). This is designed to give the court of appeals control of its docket at the earliest possible time so that within the limits of its facilities and personnel it can screen cases for appropriately different treatment, expedite the proceedings through prehearing conferences or otherwise, and in general plan more effectively for the prompt disposition of cases.

Subdivision (b). The proposed amendment conforms the provision to the changes in Rule 11.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to Rule 12(a) is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

Note to new subdivision (b). This amendment is a companion to the amendment of Rule 3(c). The Rule 3(c) amendment allows an attorney who represents more than one party on appeal to ''specify'' the appellants by general description rather than by naming them individually. The requirement added here is that whenever an attorney files a notice of appeal, the attorney must soon thereafter file a statement indicating all parties represented on the appeal by that attorney. Although the notice of appeal is the jurisdictional document and it must clearly indicate who is bringing the appeal, the representation statement will be helpful especially to the court of appeals in identifying the individual appellants.

The rule allows a court of appeals to require the filing of the representation statement at some time other than specified in the rule so that if a court of appeals requires a docketing statement or appearance form the representation statement may be combined with it.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language of the rule is amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (b). The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

Rule 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) NOTICE TO THE COURT OF APPEALS. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) REMAND AFTER AN INDICATIVE RULING. If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

(As added Mar. 26, 2009, eff. Dec. 1, 2009.)

COMMITTEE NOTES ON RULES—2009

This new rule corresponds to Federal Rule of Civil Procedure 62.1, which adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party moves under Civil Rule 60(b) to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant relief under a rule such as Civil Rule 60(b) without a remand. But it can entertain the motion and deny it, defer consideration, state that it would grant the motion if the court of appeals remands for that purpose, or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an ''indicative ruling.'' (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

The procedure formalized by Rule 12.1 is helpful when relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. In the criminal context, the Committee anticipates that Rule 12.1 will be used primarily if not exclusively for newly discovered evidence motions under Criminal Rule 33(b)(1) (*see United States v. Cronic*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. §3582(c).

Rule 12.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court's authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Appellate Rule 12.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission.

To ensure proper coordination of proceedings in the district court and in the court of appeals, the movant must notify the circuit clerk if the district court states that it would grant the motion or that the motion raises a substantial issue. The ''substantial issue'' standard may be illustrated by the following hypothetical: The district court grants summary judgment dismissing a case. While the plaintiff's appeal is pending, the plaintiff moves for relief from the judgment, claiming newly discovered evidence and also possible fraud by the defendant during the discovery process. If the district court reviews the motion and indicates that the motion ''raises a substantial issue,'' the court of appeals may well wish to remand rather than proceed to determine the appeal.

If the district court states that it would grant the motion or that the motion raises a substantial issue, the movant may ask the court of appeals to remand so that the district court can make its final ruling on the motion. In accordance with Rule 47(a)(1), a local rule may prescribe the format for the litigants' notifications and the district court's statement.

Remand is in the court of appeals' discretion. The court of appeals may remand all proceedings, terminating the initial appeal. In the context of postjudgment motions, however, that procedure should be followed only when the appellant has stated clearly its intention to abandon the appeal. The danger is that if the initial appeal is terminated and the district court then denies the requested relief, the time for appealing the initial judgment will have run out and a court might rule that the appellant is limited to appealing the denial of the postjudgment motion. The latter appeal may well not provide the appellant with the opportunity to raise all the challenges that could have been raised on appeal from the underlying judgment. *See, e.g., Browder v. Dir., Dep't of Corrections of Ill.*, 434 U.S. 257, 263 n.7 (1978) (''[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review.''). The Committee does not endorse the notion that a court of appeals should decide that the initial appeal was abandoned—despite the absence of any clear statement of intent to abandon the appeal—merely because an unlimited remand occurred, but the possibility that a court might take that troubling view underscores the need for caution in delimiting the scope of the remand.

The court of appeals may instead choose to remand for the sole purpose of ruling on the motion while retaining jurisdiction to proceed with the appeal after the district court rules on the motion (if the appeal is not moot at that point and if any party wishes to proceed). This will often be the preferred course in the light of the concerns expressed above. It is also possible that the court of appeals may wish to proceed to hear the appeal even after the district court has granted relief on remand; thus, even when the district court indicates that it would grant relief, the court of appeals may in appropriate circumstances choose a limited rather than unlimited remand.

If the court of appeals remands but retains jurisdiction, subdivision (b) requires the parties to notify the circuit clerk when the district court has decided the motion on remand. This is a joint obligation that is discharged when the required notice is given by any litigant involved in the motion in the district court.

When relief is sought in the district court during the pendency of an appeal, litigants should bear in mind the likelihood that a new or amended notice of appeal will be necessary in order to challenge the district court's disposition of the motion. *See, e.g., Jordan v. Bowen*, 808 F.2d 733, 736–37 (10th Cir. 1987) (viewing district court's response to appellant's motion for indicative ruling as a denial of appellant's request for relief under Rule 60(b), and refusing to review that denial because appellant had failed to take an appeal from the denial); *TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1354 (9th Cir. 1990) (''[W]here a 60(b) motion is filed subsequent to the notice of appeal and considered by the district court after a limited remand, an appeal specifically from the ruling on the