in the Supreme Court's opinion in *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980), that notice and opportunity to respond must precede the imposition of sanctions. A separately filed motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

Only the caption of this rule has been amended. The changes are intended to be stylistic only.

Rule 39. Costs

(a) AGAINST WHOM ASSESSED. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) COSTS FOR AND AGAINST THE UNITED STATES. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) COSTS OF COPIES. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) BILL OF COSTS: OBJECTIONS; INSERTION IN MANDATE.

(1) A party who wants costs taxed must—within 14 days after entry of judgment—file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(e) COSTS ON APPEAL TAXABLE IN THE DISTRICT COURT. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES ON ADVISORY COMMITTEE ON RULES—1967

Subdivision (a). Statutory authorization for taxation of costs is found in 28 U.S.C. §1920. The provisions of this subdivision follow the usual practice in the circuits. A few statutes contain specific provisions in derogation of these general provisions. (See 28 U.S.C. §1928, which forbids the award of costs to a successful plaintiff in a patent infringement action under the circumstances described by the statute). These statutes are controlling in cases to which they apply.

Subdivision (b). The rules of the courts of appeals at present commonly deny costs to the United States except as allowance may be directed by statute. Those rules were promulgated at a time when the United States was generally invulnerable to an award of costs against it, and they appear to be based on the view that if the United States is not subject to costs if it loses, it ought not be entitled to recover costs if it wins.

The number of cases affected by such rules has been greatly reduced by the Act of July 18, 1966, 80 Stat. 308 (1 U.S. Code Cong. & Ad. News, p. 349 (1966), 89th Cong., 2d Sess., which amended 28 U.S.C. §2412, the former general bar to the award of costs against the United States. Section 2412 as amended generally places the United States on the same footing as private parties with respect to the award of costs in civil cases. But the United States continues to enjoy immunity from costs in certain cases. By its terms amended section 2412 authorizes an award of costs against the United States only in civil actions, and it excepts from its general authorization of an award of costs against the United States cases which are ''otherwise specifically provided (for) by statute.'' Furthermore, the Act of July 18, 1966, *supra*, provides that the amendments of section 2412 which it effects shall apply only to actions filed subsequent to the date of its enactment. The second clause continues in effect, for these and all other cases in which the United States enjoys immunity from costs, the presently prevailing rule that the United States may recover costs as the prevailing party only if it would have suffered them as the losing party.

Subdivision (c). While only five circuits (D.C. Cir. Rule 20(d); 1st Cir. Rule 31(4); 3d Cir. Rule 35(4); 4th Cir. Rule 21(4); 9th Cir. Rule 25, as amended June 2, 1967) presently tax the cost of printing briefs, the proposed rule makes the cost taxable in keeping with the principle of this rule that all cost items expended in the prosecution of a proceeding should be borne by the unsuccessful party.

Subdivision (e). The costs described in this subdivision are costs of the appeal and, as such, are within the undertaking of the appeal bond. They are made taxable in the district court for general convenience. Taxation of the cost of the reporter's transcript is specifically authorized by 28 U.S.C. §1920, but in the absence of a rule some district courts have held themselves without authority to tax the cost (*Perlman v. Feldmann*, 116 F.Supp. 102 (D.Conn., 1953); *Firtag v. Gendleman*, 152 F.Supp. 226 (D.D.C., 1957); *Todd Atlantic Shipyards Corps. v. The Southport*, 100 F.Supp. 763 (E.D.S.C., 1951). Provision for taxation of the cost of premiums paid for supersedeas bonds is common in the local rules of district courts and the practice is established in the Second, Seventh, and Ninth Circuits. *Berner v. British Commonwealth Pacific Air Lines, Ltd.*, 362 F.2d 799 (2d Cir. 1966); *Land Oberoesterreich v. Gude*, 93 F.2d 292 (2d Cir., 1937); *In re Northern Ind. Oil Co.*, 192 F.2d 139 (7th Cir., 1951); *Lunn v. F. W. Woolworth*, 210 F.2d 159 (9th Cir., 1954).

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Subdivision (c). The proposed amendment would permit variations among the circuits in regulating the maximum rates taxable as costs for printing or otherwise reproducing briefs, appendices, and copies of records authorized by Rule 30(f). The present rule has had a different effect in different circuits depending upon the size of the circuit, the location of the clerk's office, and the location of other cities. As a consequence there was a growing sense that strict adherence to the rule produces some unfairness in some of the circuits and the matter should be made subject to local rule.

Subdivision (d). The present rule makes no provision for objections to a bill of costs. The proposed amendment would allow 10 days for such objections. Cf. Rule 54(d) of the F.R.C.P. It provides further that the mandate shall not be delayed for taxation of costs.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to subdivision (c) is intended to increase the degree of control exercised by the courts of appeals over rates for printing and copying recoverable as costs. It further requires the courts of appeals to encourage cost-consciousness by requiring that, in fixing the rate, the court consider the most economical methods of printing and copying.

The amendment to subdivision (d) is 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. All references to the cost of ''printing'' have been deleted from subdivision (c) because commercial printing is so rarely used for preparation of documents filed with a court of appeals.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (d)(2). The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

Rule 40. Petition for Panel Rehearing

(a) TIME TO FILE; CONTENTS; ANSWER; ACTION BY THE COURT IF GRANTED.

(1) *Time*. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) *Contents*. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer*. Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) *Action by the Court*. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) FORM OF PETITION; LENGTH. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

This is the usual rule among the circuits, except that the express prohibition against filing a reply to the petition is found only in the rules of the Fourth, Sixth and Eighth Circuits (it is also contained in Supreme Court Rule 58(3)). It is included to save time and expense to the party victorious on appeal. In the very rare instances in which a reply is useful, the court will ask for it.

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Subdivision (a). The Standing Committee added to the first sentence of Rule 40(a) the words ''or by local rule,'' to conform to current practice in the circuits. The Standing Committee believes the change noncontroversial.

Subdivision (b). The proposed amendment would eliminate the distinction drawn in the present rule between printed briefs and those duplicated from typewritten pages in fixing their maximum length. See Note to Rule 28. Since petitions for rehearing must be prepared in a short time, making typographic printing less likely, the maximum number of pages is fixed at 15, the figure used in the present rule for petitions duplicated by means other than typographic printing.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). The amendment lengthens the time for filing a petition for rehearing from 14 to 45 days in civil cases involving the United States or its agencies or officers. It has no effect upon the time for filing in criminal cases. The amendment makes nation-wide the current practice in the District of Columbia and the Tenth Circuits, *see* D.C. Cir. R. 15(a), 10th Cir. R. 40.3. This amendment, analogous to the provision in Rule 4(a) extending the time for filing a notice of appeal in cases involving the United States, recognizes that the Solicitor General needs time to conduct a thorough review of the merits of a case before requesting a rehearing. In a case in which a court of appeals believes it necessary to restrict the time for filing a rehearing petition, the amendment provides that the court may do so by order. Although the first sentence of Rule 40 permits a court of appeals to shorten or lengthen the usual 14 day filing period by order or by local rule, the sentence governing appeals in civil cases involving the United States purposely limits a court's power to alter the 45 day period to orders in specific cases. If a court of appeals could adopt a local rule shortening the time