

FEDERAL RULES OF APPELLATE PROCEDURE

(As amended to January 15, 2013)

HISTORICAL NOTE

The Federal Rules of Appellate Procedure were adopted by order of the Supreme Court on Dec. 4, 1967, transmitted to Congress by the Chief Justice on Jan. 15, 1968, and became effective on July 1, 1968.

The Rules have been amended Mar. 30, 1970, eff. July 1, 1970; Mar. 1, 1971, eff. July 1, 1971; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 30, 1979, eff. Aug. 1, 1979; Oct. 12, 1984, Pub. L. 98-473, title II, §210, 98 Stat. 1987; Mar. 10, 1986, eff. July 1, 1986; Nov. 18, 1988, Pub. L. 100-690, title VII, §7111, 102 Stat. 4419; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1996, Pub. L. 104-132, title I, §103, 110 Stat. 1218; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011.

TITLE I. APPLICABILITY OF RULES

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| Rule | |
| 1. | Scope of Rules; Definition; Title. |
| 2. | Suspension of Rules. |

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

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| 3. | Appeal as of Right—How Taken. |
| [3.1. | Abrogated.] |
| 4. | Appeal as of Right—When Taken. |
| 5. | Appeal by Permission. |
| [5.1. | Abrogated.] |
| 6. | Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel. |
| 7. | Bond for Costs on Appeal in a Civil Case. |
| 8. | Stay or Injunction Pending Appeal. |
| 9. | Release in a Criminal Case. |
| 10. | The Record on Appeal. |
| 11. | Forwarding the Record. |
| 12. | Docketing the Appeal; Filing a Representation Statement; Filing the Record. |
| 12.1. | Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal. |

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

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| 13. | Review of a Decision of the Tax Court. |
| 14. | Applicability of Other Rules to the Review of a Tax Court Decision. |

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

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| 15. | Review or Enforcement of an Agency Order—How Obtained; Intervention. |
| 15.1. | Briefs and Oral Argument in a National Labor Relations Board Proceeding. |
| 16. | The Record on Review or Enforcement. |
| 17. | Filing the Record. |
| 18. | Stay Pending Review. |
| 19. | Settlement of a Judgment Enforcing an Agency Order in Part. |

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| Rule | |
| 20. | Applicability of Rules to the Review or Enforcement of an Agency Order. |

TITLE V. EXTRAORDINARY WRITS

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| 21. | Writs of Mandamus and Prohibition, and Other Extraordinary Writs. |
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TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

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| 22. | Habeas Corpus and Section 2255 Proceedings. |
| 23. | Custody or Release of a Prisoner in a Habeas Corpus Proceeding. |
| 24. | Proceeding in Forma Pauperis. |

TITLE VII. GENERAL PROVISIONS

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| 25. | Filing and Service. |
| 26. | Computing and Extending Time. |
| 26.1. | Corporate Disclosure Statement. |
| 27. | Motions. |
| 28. | Briefs. |
| 28.1. | Cross-Appeals. |
| 29. | Brief of an Amicus Curiae. |
| 30. | Appendix to the Briefs. |
| 31. | Serving and Filing Briefs. |
| 32. | Form of Briefs, Appendices, and Other Papers. |
| 32.1. | Citing Judicial Dispositions. |
| 33. | Appeal Conferences. |
| 34. | Oral Argument. |
| 35. | En Banc Determination. |
| 36. | Entry of Judgment; Notice. |
| 37. | Interest on Judgment. |
| 38. | Frivolous Appeal—Damages and Costs. |
| 39. | Costs. |
| 40. | Petition for Panel Rehearing. |
| 41. | Mandate: Contents; Issuance and Effective Date; Stay. |
| 42. | Voluntary Dismissal. |
| 43. | Substitution of Parties. |
| 44. | Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party. |
| 45. | Clerk's Duties. |
| 46. | Attorneys. |
| 47. | Local Rules by Courts of Appeals. |
| 48. | Masters. |

APPENDIX OF FORMS

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| Form | |
| 1. | Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court. |
| 2. | Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court. |
| 3. | Petition for Review of Order of an Agency, Board, Commission or Officer. |
| 4. | Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis. |
| 5. | Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel. |
| 6. | Certificate of Compliance With Rule 32(a). |

EFFECTIVE DATE AND APPLICATION OF RULES

Section 2 of the Order of the Supreme Court, dated Dec. 4, 1967, provided: "That the foregoing rules shall

take effect on July 1, 1968, and shall govern all proceedings in appeals and petitions for review or enforcement of orders thereafter brought in and in all such proceedings then pending, except to the extent that in the opinion of the court of appeals their application in a particular proceeding then pending would not be feasible or would work injustice, in which case the former procedure may be followed.”

EFFECTIVE DATE OF 1970 AMENDMENT; TRANSMISSION
TO CONGRESS

Sections 2 and 3 of the Order of the Supreme Court, dated Mar. 30, 1970, provided:

“2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on July 1, 1970, and shall govern all proceedings in actions brought thereafter and also in all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action then pending would not be feasible or would work injustice, in which event the former procedure applies.

“3. That the Chief Justice be, and he hereby is, authorized to transmit to the Congress the foregoing amendments to existing rules, in accordance with the provisions of Title 18, U.S.C., §3372, and Title 28, U.S.C., §§2072 and 2075.”

TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Definition; Title

(a) SCOPE OF RULES.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) DEFINITION. In these rules, ‘state’¹ includes the District of Columbia and any United States commonwealth or territory.

(c) TITLE. These rules are to be known as the Federal Rules of Appellate Procedure.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2010, eff. Dec. 1, 2010.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

These rules are drawn under the authority of 28 U.S.C. §2072, as amended by the Act of November 6, 1966, 80 Stat. 1323 (1 U.S. Code Cong. & Ad. News, p. 1546 (1966)) (Rules of Civil Procedure); 28 U.S.C. §2075 (Bankruptcy Rules); and 18 U.S.C. §§3771 (Procedure to and including verdict) and 3772 (Procedure after verdict). Those statutes combine to give to the Supreme Court power to make rules of practice and procedure for all cases within the jurisdiction of the courts of appeals. By the terms of the statutes, after the rules have taken effect all laws in conflict with them are of no further force or effect. Practice and procedure in the eleven courts of appeals are now regulated by rules promulgated by each court under the authority of 28 U.S.C. §2071. Rule 47 expressly authorizes the courts of appeals to make rules of practice not inconsistent with these rules.

As indicated by the titles under which they are found, the following rules are of special application: Rules 3 through 12 apply to appeals from judgments and orders of the district courts; Rules 13 and 14 apply to appeals from decisions of the Tax Court (Rule 13 establishes an appeal as the mode of review of decisions of the Tax Court in place of the present petition for re-

view); Rules 15 through 20 apply to proceedings for review or enforcement of orders of administrative agencies, boards, commissions and officers. Rules 22 through 24 regulate habeas corpus proceedings and appeals in forma pauperis. All other rules apply to all proceedings in the courts of appeals.

NOTES OF ADVISORY COMMITTEE ON RULES—1979
AMENDMENT

The Federal Rules of Appellate Procedure were designed as an integrated set of rules to be followed in appeals to the courts of appeals, covering all steps in the appellate process, whether they take place in the district court or in the court of appeals, and with their adoption Rules 72-76 of the F.R.C.P. were abrogated. In some instances, however, the F.R.A.P. provide that a motion or application for relief may, or must, be made in the district court. See Rules 4(a), 10(b), and 24. The proposed amendment would make it clear that when this is so the motion or application is to be made in the form and manner prescribed by the F.R.C.P. or F.R.Cr.P. and local rules relating to the form and presentation of motions and is not governed by Rule 27 of the F.R.A.P. See Rule 7(b) of the F.R.C.P. and Rule 47 of the F.R.Cr.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1989
AMENDMENT

The amendment is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1994
AMENDMENT

Subdivision (c). A new subdivision is added to the rule. The text of new subdivision (c) has been moved from Rule 48 to Rule 1 to allow the addition of new rules at the end of the existing set of appellate rules without burying the title provision among other rules. In a similar fashion the Bankruptcy Rules combine the provisions governing the scope of the rules and the title in the first rule.

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. The Advisory Committee recommends deleting the language in subdivision (a) that describes the different types of proceedings that may be brought in a court of appeals. The Advisory Committee believes that the language is unnecessary and that its omission does not work any substantive change.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (b). Two recent enactments make it likely that, in the future, one or more of the Federal Rules of Appellate Procedure (“FRAP”) will extend or limit the jurisdiction of the courts of appeals. In 1990, Congress amended the Rules Enabling Act to give the Supreme Court authority to use the federal rules of practice and procedure to define when a ruling of a district court is final for purposes of 28 U.S.C. §1291. See 28 U.S.C. §2072(c). In 1992, Congress amended 28 U.S.C. §1292 to give the Supreme Court authority to use the federal rules of practice and procedure to provide for appeals of interlocutory decisions that are not already authorized by 28 U.S.C. §1292. See 28 U.S.C. §1292(e). Both §1291 and §1292 are unquestionably jurisdictional statutes, and thus, as soon as FRAP is amended to define finality for purposes of the former or to authorize interlocutory appeals not provided for by the latter, FRAP will “extend or limit the jurisdiction of the courts of appeals,” and subdivision (b) will become obsolete. For that reason, subdivision (b) has been abrogated.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

¹ So in original.