

ignate the parts that it wants filed; the agency can then forward the parts designated by each party. In contrast, paragraph (b)(2) continues to require stipulation, that is agreement of the parties, that the agency need not file either the record or a certified list.

### Rule 18. Stay Pending Review

(a) MOTION FOR A STAY.

(1) *Initial Motion Before the Agency.* A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) *Motion in the Court of Appeals.* A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) BOND. The court may condition relief on the filing of a bond or other appropriate security.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

While this rule has no counterpart in present rules regulating review of agency proceedings, it merely assimilates the procedure for obtaining stays in agency proceedings with that for obtaining stays in appeals from the district courts. The same considerations which justify the requirement of an initial application to the district court for a stay pending appeal support the requirement of an initial application to the agency pending review. See Note accompanying Rule 8, Title 5, U.S.C. § 705 (5 U.S.C.A. § 705 (1966 Pamphlet)) confers general authority on both agencies and reviewing courts to stay agency action pending review. Many of the statutes authorizing review of agency action by the courts of appeals deal with the question of stays, and at least one, the Act of June 15, 1936, 49 Stat. 1499 (7 U.S.C. § 10a), prohibits a stay pending review. The proposed rule in nowise affects such statutory provisions respecting stays. By its terms, it simply indicates the procedure to be followed when a stay is sought.

#### 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 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

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

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

This is section 12 of the uniform rule (see General Note following Rule 15) with changes in phraseology.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The deletion of the words "in whole or" is designed to eliminate delay in the issuance of a judgment when the court of appeals has either enforced completely the order of an agency or denied completely such enforcement. In such a clear-cut situation, it serves no useful purpose to delay the issuance of the judgment until a proposed judgment is submitted by the agency and reviewed by the respondent. This change conforms the Rule to the existing practice in most circuits. Other amendments are technical and no substantive change is intended.

#### 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

Rule 19 formerly required a party who disagreed with the agency's proposed judgment to file a proposed judgment "within 7 days." Under former Rule 26(a), "7 days" always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 10 days offsets the change in computation approach. See the Note to Rule 26.

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

All provisions of these rules, except Rules 3–14 and 22–23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

The proposed rule continues the present uniform practice of the circuits of regulating agency review or enforcement proceedings by the general rules applicable to appeals from judgments of the district courts.

#### 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