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## An Attorney's Guide to Appellate Practice Before the District of Columbia Court of Appeals

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An Attorney's Guide to

**APPELLATE PRACTICE BEFORE**

**THE DISTRICT OF COLUMBIA COURT OF**  
**APPEALS**

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*District of Columbia Court of Appeals*

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#### PREFACE

In 1985, 1,978 cases were appealed to the District of Columbia Court of Appeals, the highest Court for the District of Columbia, and during 1985, 1,570 cases were decided.<sup>1</sup> Though these statistics indicate few practitioners go before the Court, it is important that those who do have a fundamental

1. A. Herman, District of Columbia Court of Appeals Caseflow Report 1 Dec. 1985 (unpublished).

#### FILINGS BY CATEGORY, 1985

Criminal	Civil	Agency	Special Proceeding	Disciplinary	Reinstated
891	511	266	55	47	28

#### DISPOSITIONS BY CATEGORY, 1985

Criminal	Civil	Agency	Special Proceeding	Disciplinary	Rehearing
589	562	322	50	44	2

*Id.* at 2. Some cases pending in 1984 were decided in 1985.

knowledge of the proper practice and procedure. This guide attempts to provide practitioners with an understanding of the rules and requirements for appellate practice before the District of Columbia Court of Appeals through a review of filing requirements, court rules, and statutory requirements. This guide is not intended to replace the Rules of the District of Columbia Court of Appeals. Rather, it is designed to provide a practitioner with a basic checklist of requirements for practice and procedure during the course of an appeal.<sup>2</sup>

The Court rules were extensively revised by a Court order dated October 22, 1984, to govern all proceedings effective January 1, 1985.<sup>3</sup> During 1983-1984, a committee made up of Court of Appeals judges and staff examined the rules for their purpose and efficiency, and the revisions are the product of that examination. No advisory committee notes explained the reasons for the revisions or suggested the future interpretation of the new rules.<sup>4</sup> Therefore, this guide will also attempt to explain and interpret the revisions.

#### I. Civil Appeals from the Superior Court.

##### A. Jurisdiction: Appeals Permitted by Law as of Right.

The Court of Appeals has civil jurisdiction over:<sup>5</sup>

- 1) All final orders and final judgments of the Superior Court;
- 2) Interlocutory orders of the Superior Court:
  - a) Granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;
  - b) Appointing receivers, guardians or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or
  - c) Changing or affecting the possession of property.
- 3) Orders or rulings of the Superior Court appealed by the United States or the District of Columbia pursuant to D.C. Code Ann. §§ 23-104, 3-11(d)(2); and

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2. The Young Lawyers Section of the Bar Association of the District of Columbia recently published a comprehensive manual for appellate practice before the Court of Appeals. See *APPELLATE PRACTICE MANUAL FOR THE DISTRICT OF COLUMBIA COURT OF APPEALS* (1985) [hereinafter cited as *APPELLATE PRACTICE MANUAL*].

3. See District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 481 (codified in D.C. CODE ANN. § 11-743 (1981)). See also District of Columbia Court of Appeals Order (Dec. 17, 1984) (making minor amendments to the revised court rules).

4. See *APPELLATE PRACTICE MANUAL*, *supra* note 2, at 1-2; see generally Hoffman & Nettler, *The D.C. Court of Appeals, A Practical Guide to the New Rules*, DISTRICT LAW. 38 (May/June 1985) (a discussion of the most important changes to the rules).

5. D.C. CODE ANN. § 11-721(a) (1981).

- 4) Expedited appeals: *See* Rule 3.
- B. How Taken: *See generally* Rules 3 and 4.
- 1) Notice of Appeal.
    - a) Time for filing.

An appeal of right is taken by filing a notice of appeal within thirty days after entry of the judgment or order.
    - b) Filing.

File eight copies of the notice with the clerk of the Superior Court.<sup>6</sup>
    - c) Contents of the Notice.

The notice shall: specify the party, or parties, taking the appeal; designate the judgment, order or part thereof from which the appeal is taken; be signed by the appellant or appellant's attorney. The notice may be mailed but must be received in the clerk's office within the thirty days.
    - d) Joint Appeals.

Parties who have filed separate notices of appeal may join their appeal by a) stipulating to joinder, or b) filing a joint designation of appeal or stipulation with the clerk of the Superior Court. Alternately, two or more persons appealing may file a joint notice of appeal. Also, the Court of Appeals may consolidate appeals upon its own motion or motion of a party.
    - e) Mistaken Filing.

Notices mistakenly filed in the Court of Appeals will be sent to the Superior Court with the date of first receipt used as the filing date. The clerk will transmit the notice to the Superior Court.
    - f) Termination of the Filing Notice.

The timely filing of the following motions terminate the running of the time for filing a notice of appeal:

      - (i) for a judgment NOV;
      - (ii) to make additional findings of fact;
      - (iii) to vacate, alter or amend the judgment;
      - (iv) for new trial; or
      - (v) for reconsideration, if authorized by the rules of the Superior Court.
    - g) Special Rule for Remittitur.

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6. *See* D.C.R. APP. P. 3(a).

The time for filing a notice regarding remittitur begins on the date the affected party files a statement of acceptance or rejection of the remittitur in the Superior Court.

h) **Excusable Neglect.**

Upon a showing of excusable neglect, the Superior Court may extend the time for filing a notice of appeal, but not more than thirty days after the expiration of the original due date. If a party requests the extension after the original deadline has expired, it must do so by motion and notice as the Court shall prescribe.

i) **Bond for Costs.**

A bond is not required except by order of the Court of Appeals upon motion and satisfactory cause shown. *See Rule 7.*

2) **Civil Appeals Settlement Conference Procedure.** *See generally Rule 7A.*

a) **Application.** This rule applies to all:

i) appeals from orders and judgments entered in the Civil Division (except the Landlord and Tenant, Small Claims, and Conciliation Branches), and

ii) administrative appeals, upon order of the Court of Appeals.

b) **Civil Appeal Statement.**

Each appellant, within fifteen days from filing a notice of appeal, must file a Civil Appeal Statement with all other parties and four copies with the clerk of the Court of Appeals, together with the prescribed docketing fee, unless the party is authorized to proceed in forma pauperis.

c) **Response.**

Each appellee may file with all other parties a response within ten days of the time for filing a notice of cross appeal. Four copies must be filed with the clerk of the Court of Appeals.

d) **Cross Appeals.**

If a party files a cross appeal, he shall file a counter Civil Appeal Statement within ten days after expiration of the time for filing a notice of cross appeal. The appellant may file a response within seven days after service.

e) **Consolidated Appeals.**

Individual appellants or appellees may file a statement

or response. Where separate statements are filed by individuals, the response may be filed within seven days after service of the latest statement to which it is responding. The filing of joint or separate statements or responses does not obligate the parties to file briefs in the same manner.

3) **Form and Content of the Civil Appeal Statement.** *See generally* Rule 7A(c).

The statement must be in the following form and contain the information below with appropriate headings.

- a) **Title Page:** "Civil Appeal Statement."
- b) **Caption Page.** A caption page must name the parties on behalf of whom the statement is filed and identify them as appellants or cross-appellants.
- c) **Nature of Case or Decision.**  
A short statement of the case and decision on appeal, including:
  - (i) name, division, and branch of the Superior Court;
  - (ii) name of the presiding judge; and
  - (iii) all stated grounds for the decision.
- d) **Statement of Facts.**  
A brief factual description of the case, and if the judge issued a written decision, include a copy in lieu of the description.
- e) **Method of Disposition.**  
A statement of the method of disposition: jury, nonjury, or grant or denial of motion.
- f) **Relief granted.**  
A short statement of the relief granted in the Superior Court.
- g) **Relief Denied.**  
A short statement of the relief sought by the party that was denied.
- h) **Date of Decision.**  
The date the decision was entered in the Superior Court.
- i) **Post-Decision Motions.**  
A statement of each post-decision motion, including:
  - (i) nature of the motion;
  - (ii) date it was filed;
  - (iii) the judge's decision; and



- (iv) its date of entry.
  - j) Notice of Appeal.  
The date the notice was filed. Appellant must also attach a copy to the statement.
  - k) Counsel.  
Name, address, and telephone number of counsel for each party.
  - l) Certificate of Counsel.  
A statement signed by counsel certifying:
    - (i) that the appeal is taken in good faith;
    - (ii) that it is not taken for purposes of delay; and
    - (iii) whether the party is prepared to take all steps to complete the appeal. If the party is so prepared, he must state the reasons therefore.
  - m) Issues on Review.  
A statement of each issue on review.
  - n) Relief Sought.  
A statement of the relief sought from the Court of Appeals.
- 4) Form and Content of the Response to the Civil Appeal Statement. *See generally* Rule 7A(d).
- a) Caption.  
Identify the responding parties in the same manner as in the civil appeal statement.
  - b) Modifications.  
If the responding party(s) deem it necessary to modify the statement, the party(s) should include the modifications. If necessary, the party(s) should correct alleged errors in the statement, present new issues, or modify the issues in the statement.
- 5) Notice of Settlement Conference. *See generally* Rule 7A(e).
- a) Conference or Conferences.  
If the court decides a conference(s) will be held, it will notify the parties. The notice will include:
    - (i) date, time, and place of conference;
    - (ii) name of the conference judge; and
    - (iii) whether the parties' attendance is required.If the court decides a conference will not be held, the clerk will notify the parties of the dates on which to complete the appellate process. Attendance by the attorneys for each party is required,

but the presence of an individual party is not required unless he is not represented by counsel, or by order of the judge.

- b) Sanctions.  
The Court of Appeals may impose sanctions on an attorney or party for failure to comply with the requirements of the settlement conference procedures. Sanctions include dismissal of appeal, assignment of costs, and/or compensatory damages. *See* Rule 7A(i).
  - c) Settlement Conference Judge.  
Generally, the conference judge will not be a member of any division of the court which is to consider the case on the merits. All statements made in a settlement conference, unless embodied in a settlement conference order, are privileged and confidential.
  - d) The Settlement Conference Order.  
If the parties voluntarily agree to:
    - (i) settle the case;
    - (ii) limit the issues; or
    - (iii) other matters that may lead to a settlement, the conference judge may enter an order giving effect to the agreement. If the order fully disposes of all the issues, the clerk will issue the mandate. If the order does not dispose of all the issues, the order will generally be binding on the parties during the appeal. *See* Rules 7(A)(j), (k).
  - e) Suspension of Rule 10. The Record on Appeal.  
The appellant need not comply with Rule 10 with regard to ordering the record and transcript until completion of the settlement conference or notification that the conference will not be held. *See* Rule 7A(f).
- 6) Stay or Injunction. *See generally* Rule 8.
- a) First in Superior Court.  
An application to stay a judgment, decision, or order pending appeal or an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be first made in the Superior Court. However, if a motion to stay is filed with the clerk of the Court of Appeals, it must state:
    - (i) that application for the relief sought in the Superior Court is not practicable; or

- (ii) that the motion has been filed in the Superior Court, and the Superior Court has denied the application and the relief that the applicant requested before the Superior Court.
  - b) By Motion in the Court of Appeals.  
The motion must also include:
    - (i) the reasons the Superior Court denied relief;
    - (ii) the reasons for the relief requested and the facts relied upon; and
    - (iii) affidavits or other sworn statements supporting disputed facts.
  - c) Service of Motion.  
A party requesting a ruling before the expiration of the normal time for responses to be filed must personally serve the opposing party, unless the party can show why personal service is not feasible.
  - d) Bond or Other Security. *See generally* Rule 8(b).  
On a motion to stay, the Court of Appeals in its discretion may impose conditions to prevent irreparable injury, including the filing of a bond or other appropriate security. Security posted pursuant to this rule will be placed in an escrow account, and accrued interest will be paid to the party prevailing on appeal.
- II. Criminal Appeals from the Superior Court.
- A. Jurisdiction: Appeals Permitted by Law as of Right.  
The Court of Appeals has jurisdiction over all final orders and judgments of the Superior Court.<sup>7</sup>
  - B. How Taken. *See generally* Rules 3 and 4.
    - 1) Notice of Appeal.
      - a) Filing.  
The rules are identical for filing a notice of appeal in a civil case.<sup>8</sup>
      - b) Premature Appeals.  
A notice of appeal filed after the announcement of a verdict, decision, sentence or order, but not followed by entry of the judgment,<sup>9</sup> is subject to dismissal for lack of jurisdiction. If the notice is filed after verdict but before

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7. *See* D.C. CODE ANN. § 11-721 (1981).

8. *See supra* text §§ 1(B)(1)(a)-(e), (h), at pp. 705, 706 of this text.

9. A judgment or order is deemed entered when it is entered on the criminal docket by the Clerk of the Superior Court. As in civil cases, if the judgment or order occurs out of the

entry of the judgment or order, it will be treated as filed after such entry and on the day thereof.

c) Mistaken Filing.

As in civil cases, a notice mistakenly filed in the Court of Appeals will be sent to the Superior Court with the date of receipt retained as well as the filing date. The clerk will transmit the notice to the Superior Court.

d) Termination of Time for Filing Notice of Appeal.

The timely filing of a motion in arrest of judgment or for a new trial on grounds other than newly discovered evidence suspends the appeal from a judgment of a conviction thirty days after the entry of an order denying the motion.

e) Excusable Neglect.

Upon a showing of excusable neglect the Superior Court may, before or after the expiration of the notice filing day, extend the time for filing a notice of appeal thirty days from the original deadline date. Unlike civil cases, the request, when made after the original deadline has passed, need not be made by motion.

C. Release in Criminal Cases. *See generally* Rule 9.

1) Appeals from Orders Denying Release: Before Trial

a) Promptness.

Appeals from orders regarding release or detention prior to conviction will be heard without record or briefs after reasonable notice to the government, and shall be determined promptly.

b) Detention Ordered.

Where detention is ordered or the appellant is unable to make bail or meet the conditions of release, and the Superior Court judge refuses to grant the appellant's release on timely request, the judge must state his reasons on the record.

c) Release Orders.

When release is ordered and the prosecution indicates an intention to appeal that decision the judge shall state his reasons for ordering release.

2) Release After Conviction and Pending Appeal.

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presence of the parties, the five day mailing period is tacked onto the thirty day notice requirement. *See* D.C.R. APP. P. 4(b)(4).

### Release Sought by Defendant.

A Superior Court judge may allow a convicted defendant who is held in custody, pursuant to D.C. Code Ann. § 23-1325 (b) or (c) released subject to D.C. Code Ann. § 23-1327, unless a petition for writ of certiorari or an appeal to the Supreme Court of the United States has been filed.

### The Requirements.

- (i) trial judge refuses to set bail, or
- (ii) the appellant is unable to make bail or meet the conditions of release, or the trial judge refuses to reduce bail or modify the release conditions pursuant to a timely request. The trial judge shall state the reasons for his actions. Through its existing appeal, the appellant by motion can thereafter request the Court of Appeals to review the action of the trial judge.

### III. Appeals as of Right: Expedited Appeals. *See generally* Rules 3(a) and 4(c).

#### A. Jurisdiction: Kinds of Appeals.

- 1) Expedited appeals are allowed by statute and include but are not limited to bail appeals (D.C. Code Ann. § 23-2324); family appeals (D.C. Code Ann. § 16-2328); government appeals from intra-trial orders (D.C. Code Ann. § 23-104); extradition appeals (D.C. Code Ann. § 23-704).

#### B. How Taken. Appellant must do the following. *See generally* Rule 4(c).

- 1) Promptly file a notice of appeal with the clerk of the Superior Court and personally notify the clerk of the Court of Appeals and opposing counsel of the appeal.
- 2) Forthwith advise the clerk of the Superior Court and opposing counsel of the necessary trial material (transcript, pleadings, documents) for inclusion in the record on appeal. The record must contain the notice of appeal, a copy of the order appealed from, or, if there is no written order, the docket entry, and any written opinion or findings of fact or conclusions of law. The clerk of the Superior Court will transmit the record to the clerk of the Court of Appeals.
- 3) Make advance arrangements to pay any necessary fees to the clerks of the Superior Court and the Court of Appeals.

- 4) File an appropriate written motion to the clerk of the Court of Appeals and personally serve the motion to opposing counsel and append to the motion other essential documents.
- 5) Notify the clerk of the Court of Appeals of a telephone number where counsel may be reached and the name, address, and telephone number of opposing counsel.

C. Response: Opposing Counsel must do the following:

- 1) Promptly advise the clerk of the Superior Court of any additional pleadings, documents, or transcript deemed necessary for the record on appeal.
- 2) Submit a written response to appellant's motion including additional documents or memoranda believed essential to the Court's consideration, and personally serve a copy of any response on counsel for appellant.

D. Special Rule for Juvenile Interlocutory Appeals.

Counsel for appellant must submit the motion to the clerk of the Court of Appeals no later than the first working day after the notice of appeal is filed, and personally serve opposing counsel.

IV. Appeals by Permission Pursuant to D.C. Code Ann. § 11-721(d):

Certified Interlocutory Appeals. *See* Rule 5 and D.C. Code Ann. § 11-721(d):

How Taken.

- 1) File four copies of an application for permission to appeal with the clerk of the Court of Appeals within ten days after entry of the order of the Superior Court with proof of service on all copies. The filing must contain the statement of the trial judge that the ruling or order includes a controlling question of law if there are substantial grounds for difference of opinion and that an immediate appeal from the filing or order may materially advance the ultimate termination of the litigation. The Court of Appeals has discretion to accept the appeal.
- 2) Opposing counsel may file a response in the Court of Appeals within seven days of receipt of the application. Oral argument will not be allowed on the application and response unless otherwise ordered.
- 3) Content of Application.
  - (i) Statement of facts necessary to an understanding of the

controlling question of law determined by the order of the Superior Court;

- (ii) Statement of the question;
- (iii) Statement of reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation;
- (iv) A copy of the order, any findings, issues of fact, conclusions of law and written opinions.

4) Stay.

The application does not stay the Superior Court proceedings unless by order of the judge who certifies the appeal or by a judge of the Court of Appeals.

V. Appeals by Application Pursuant to D.C. Code Ann. §§ 11-721(c) and 17-301: Appeals from Small Claims Judgments and Minor Criminal Penalties. *See generally* Rule 6.

A. Jurisdiction.

The Court of Appeals has jurisdiction to review judgments by the Small Claims Branch of the Conciliation Branch of the Superior Court and Judgments by the Criminal Division of the Superior Court where the penalty imposed is a fine of less than \$50.00 for an offense punishable by imprisonment of one year or less, or by fine of not more than \$1,000.00, or both.

B. How Taken. *See generally* Rule 6.

1) Application. The appellant must:

- a) File five copies of the application for the allowance of an appeal with the clerk of the Court of Appeals within three days from the date of the order or judgment.
- b) Filing may be by mail, but it must be received by the clerk within the time prescribed.
- c) The application must show proof of service.

2) Content of Application.

The application must contain a sufficient recital of the proceedings and evidence to present the ruling. A brief statement of points and authorities may accompany the application. An adverse party may file a response within three days of service of the application.

3) Statement of Proceedings and Evidence.

If the Court needs a further statement of the proceedings to act on the application, it may call for a statement of proceedings and evidence from the trial judge, and may also

require the original record and exhibits to be transmitted to the Court.

4) Grant of Application.

The applications are submitted to a three-judge panel, and one judge may grant the appeal. The clerk of the Court of Appeals will transmit a notice of the granting with a copy of the application and response to the clerk of the Superior Court. The clerk will also transmit a copy of the application and response. Within ten days after the transmission, the trial judge will either:

- a) Certify to the Court of Appeals that the facts, issues, and rulings are sufficiently correct in the application and response, or
- b) Transmit to the Court of Appeals a statement of proceedings and evidence that modifies, supplements, or corrects the application and answers that adequately present the facts, issues, and rulings to the Court of Appeals.

5) The Record.

The Record shall consist of:

- a) The original papers in the Superior Court;
- b) The application;
- c) The response;
- d) The certificate of the trial judge; and
- e) The statement of proceedings and evidence, if any.

6) Denial of Application.

Denial shall constitute affirmance of the judgment of the Superior Court. The aggrieved party may petition for reconsideration within seven days from the date of the order denying the application.

VI. Proceedings In Forma Pauperis: Civil and Criminal Cases.

Allowances.

A party in either a criminal or civil case may be allowed to proceed in forma pauperis under certain circumstances which relieves the party from payment of fees and costs relating to the appeal in both courts and from posting security. *See generally* Rule 23 and D.C. Code Ann. § 15-712(b).

1) Previously Allowed.

A party who has proceeded in forma pauperis in the Superior Court, or one who is financially unable to obtain an



adequate defense in a criminal case, is automatically entitled to proceed in forma pauperis on appeal.

2) Not Previously Approved.

A party before the Superior Court or a criminal defendant who did not proceed in forma pauperis may seek approval to proceed in forma pauperis on appeal.

a) Filing the Motion and Affidavit.

The party must file with the clerk of the Court of Appeals a motion for leave to proceed in forma pauperis accompanied by an affidavit containing all of the information required by Form 5 of the Appendix of Forms to the Rules of the District of Columbia Court of Appeals, showing the party's inability to pay fees and costs or to give security. Incomplete forms will be returned or the motion denied. The movant must attach to the motion a notice of appeal. The movant must also indicate to what extent a reporter's transcript of the Superior Court proceedings is necessary for appellate review.

b) Time for Filing.

The motion and affidavit must be filed within the time permitted for filing a notice of appeal.

c) Motion Granted, Denied.

If the motion is granted, the clerk of the Court of Appeals will transmit a copy of the order with the notice of appeal to the clerk of the Superior Court. The notice of appeal is deemed filed on the date the motion was received by the clerk of the Court of Appeals.

If the motion is denied, the clerk will send a copy of the order to the movant or his counsel. The petitioner must then tender the appropriate fee to the clerk of the Superior Court within thirty days from the filing date of the order. If the fee is timely paid, the notice of appeal is deemed filed on the date the motion was received by the clerk of the Court of Appeals.

d) Reporter's Transcript: In Forma Pauperis Appeals.

In in forma pauperis appeals, a party's notice of appeal will be considered by the Superior Court to encompass a request for the preparation of a transcript at government expense. If the appellant is represented by counsel, the notice of appeal must state to what extent the reporter's transcript is necessary to prosecute the ap-

peal. In appeals where the United States Attorney, the Corporation Counsel or the Public Defender Service represents a party and orders reporter's transcripts prepared, counsel must serve a copy of the order for transcript upon opposing counsel and the Clerk of the Court of Appeals.

e) Grant or Denial: Procedure.

The trial judge will rule on the request for preparation of reporter's transcripts within ten days after the filing of the notice of appeal. If the judge grants the request, the order will state to what extent the transcripts will be furnished at government expense. If the judge denies the request, the ruling will state the reasons for the denial. The clerk of the Superior Court will furnish a copy of the order to the court reporter and to the clerk of the Court of Appeals.

VII. The Record on Appeal. *See generally* Rule 10.

A. Designation of the Record.

1) Appellant.

Unless proceeding in forma pauperis, the appellant must file six copies of his designation of the record on appeal with the clerk of the Superior Court within ten days of filing the notice of appeal, and must simultaneously file a copy with the clerk of the Court of Appeals and the other parties. The designation must include:

- a) The court's findings of fact and conclusions of law;
- b) Any written opinion of the trial court;
- c) The judgment or order from which the appeal is taken;
- d) The notice of appeal with the date of its filing; and
- e) Any other relevant material.

2) All Other Parties: Counter-designation.

Any other party may within five days after the filing of the designation, file six copies of a counter-designation of additional portions of the record with the clerk of the Superior Court, and simultaneously file a copy with the clerk of the Court of Appeals and serve the other parties.

3) Designation by Stipulation.

The parties may instead of separately designating the record file a written stipulation designating the record with the clerks of both courts within ten days after appellant files the notice of appeal.

4) Suspension.

The requirement of designations does not apply until a case is no longer awaiting completion of settlement conference proceedings or has been removed from such proceedings.

5) Exception.

Designations are not required in appeals in forma pauperis and all criminal and juvenile delinquency cases.

B. Reporter's Transcript. *See generally* Rule 10(c).

1) Appellant.

a) The appellant must order from the court reporter a copy of the transcripts or portions not already in the Superior Court's file within ten days after filing the notice of appeal, unless proceeding in forma pauperis. The appellant must also file a statement with the clerk of the Superior Court stating:

- (i) the name of the court reporter;
- (ii) that the transcript has been ordered;
- (iii) the reporter's estimated completion date; and
- (iv) that payment arrangements have been made with the reporter.

A separate statement is required for each different court reporter. The appellant must also file a copy with the clerk of the Court of Appeals and opposing counsel.

b) If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or contrary to the evidence, the record shall include the reporter's transcript of all the evidence relevant to such finding or conclusion.

c) Suspension.

A statement need not be filed until the case is no longer awaiting completion of settlement conference proceedings or has been removed from such proceeding.

2) When Appellant Does Not Order Transcript.

If the appellant does not order any transcript, he must file a statement setting forth the issues to be presented on appeal with the clerk of the Superior Court within ten days after filing the notice of appeal, and file a copy with the clerk of the Court of Appeals and serve opposing counsel.

3) Order of Partial Transcript.

If the appellant will not rely upon the entire transcript, he must file four copies of a statement of the portions he will

rely upon and the issues to be presented on appeal with the clerk of the Superior Court within ten days after filing the notice of appeal. The appellant must also file a copy with the clerk of the Court of Appeals and serve the appellee. The appellee may file four copies of a counter-designation or additional portions with the clerk of the Superior Court and serve one copy with the appellant within five days of the service of the statement.

4) Appellant: Refusal to Order.

The appellant need not order the additional portions of the transcript designated by the appellee, but must give appellee notice of the refusal within five days of service of appellee's designation and must file a copy of the notice with the clerk of both courts. Within five days thereafter, appellee must either order the designated portions or request the Superior Court to issue an order requiring the appellant to order the portions. If he orders the portions, he must file a statement similar to appellant's under Rule 10(c)(1).

5) Role of Court Reporter or Transcriber. *See* Rule 10(c)(6) and D.C. Court Reporter Rules.

6) Statement of Proceedings and Evidence: Extraordinary Circumstances.

Statements of proceedings and evidence, completed from recollections of counsel and other available means, may only be used in lieu of the transcript in extraordinary circumstances with special leave of the Court of Appeals, and must be approved by the trial judge, who may allow for revisions. They may not be used in small claims appeals.

VIII. Transmission of the Record on Appeal. *See generally* Rule 11.

A. Transmission of the Record.

The clerk of the Superior Court must transmit the record to the clerk of the Court of Appeals within sixty days of the appellant's filing the notice of appeal. The clerk of the Superior Court will notify all parties that the record is completed, or that it is to be transmitted in incomplete form. The appellant is to pay the fee to the clerk of the Superior Court within five days after the notice, and must arrange the transmission of the record to the Court of Appeals.

B. Bulk Items.

If documents of the record are of unusual bulk or size, the clerk of the Superior Court will not transmit them unless requested by

a party or by request of the Court of Appeals. A party must make advance arrangements with the clerks of both courts for the transportation of the items.

C. Time Extension.

The Court of Appeals may, on motion for cause shown, extend or shorten the time for transmitting the record. The Superior Court may not grant a time extension.

D. Record for Preliminary Hearing.

If, before the record is transmitted, a party desires to file in the Court of Appeals a motion for:

- 1) Dismissal;
- 2) Summary reversal;
- 3) Summary affirmance;
- 4) Release pending appeal;
- 5) Stay or injunction pending appeal,
- 6) Additional security on a supersedeas bond; or
- 7) Any other relief, at the request of any party and payment of the appropriate fee, the clerk of the Superior Court will transmit to the Court of Appeals a preliminary record. The record will include: the notice of appeal, the order appealed from, and the parts of the record designated by any party.

IX. Docketing the Appeal in Civil and Criminal Cases. *See generally* Rule 12.

Appellant.

The appellant must pay the Court of Appeals the docket fee within the time period for transmitting the record, and the clerk shall docket the appeal. However, if the appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall docket the appeal without fee. The clerk has the discretion to refuse to file any record if received after the sixty day transmission period unless the time has been extended by the Court of Appeals. The appellant may, upon motion and good cause shown, and with payment of the fee, request the record to be docketed out of time. The clerk will give notice to each party of the date the record was filed.

X. Dismissal for Appellant's Failure to Comply with the Rules of Court. *See* Rule 13.

A. Failure to Comply.

If the appellant fails to comply with the time limitations fixed by the rules of the Court of Appeals, an appellee may file a motion in the court to dismiss the appeal. The appellant may respond

by motion within fourteen days of service, and must pay the docket fee, unless otherwise exempt from payment. The appellant will not be allowed to respond unless he has paid the fee.

**B. Dismissal by Court: Rule 14.**

The Court of Appeals, with or without notice, may dismiss an appeal for failure to comply with the rules of the Court of Appeals or for any other lawful reason.

**XI. Review of Orders of Administrative Agencies.<sup>10</sup> See generally Rules 15-20.**

**A. Jurisdiction.<sup>11</sup> See D.C. Code Ann. § 11-722.**

1) The Court of Appeals, in accordance with the District of Columbia Administrative Procedure Act (APA), see D.C. Code Ann. §§ 1-1501 to 1-1510 (1981), has jurisdiction to review all orders and decisions of:

- a) The Mayor;
- b) The District of Columbia Council; and
- c) All agencies of the District of Columbia.

2) The Court of Appeals also has jurisdiction to review orders and decisions of the Public Service Commission in accordance with D.C. Code Ann. §§ 43-101 to 43-1001 (1981).

**B. Standing.**

Only individuals who have suffered a legal wrong, or who are adversely affected or aggrieved, by an order of the Mayor or an agency in a contested case have standing to petition the Court of Appeals for judicial review. D.C. Code Ann. § 1-1510 (1981).

10. Practitioners should consult the specific agency's rules and regulations and all statutes applicable to its existence and authority to act in conducting an administrative appeal. Each agency may have different rules regarding its procedure and operation.

11. Under the District of Columbia Administrative Procedure Act, D.C. CODE ANN. §§ 1-1501 to -1510 (1981) [hereinafter cited as DCAPA], the Court has jurisdiction over an order or decision of the mayor or an agency only in a contested case. § 1-1510. A contested case is defined as:

a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:

- (A) Any matter subject to a subsequent trial of the law and facts de novo in any court;
  - (B) The selection or tenure of an officer or employee of the District;
  - (C) Proceedings in which decisions rest solely on inspections, tests, or elections;
- and
- (D) Cases in which the Mayor or an agency act as an agent for a court of the District.

D.C. CODE ANN. § 1-1502(8) (1981).

C. How Taken: Petition for Review. *See generally* Rule 15.

1) Filing.

To appeal an order or decision of a District of Columbia agency, a party must file a petition of review with the clerk of the Court of Appeals. *See* Rule 15(a).

2) When Taken.

The petition must be filed within thirty days after the notice of the order or decision is given in conformance with the rules and regulations of that agency unless an applicable statute provides a different time period for a particular agency. The petitioner will have a five day mailing period if the order or decision is made out of the presence of the parties. The petitioner may file the petition by mail addressed to the clerk, but the petition and fee must be received within the prescribed time to be timely filed. *See* Rule 15(a).

3) Joint Petition.

Two or more persons may file a joint petition for review of the same order if their interests are such as to make joinder practicable. *See* Rule 15(a).

4) Cross-Petition.

Any other party to the agency proceeding may file a cross-petition within fourteen days after the petition is timely filed, or within thirty days of the date of the challenged order or decision, whichever is the latest date. *See* Rule 15(a).

5) Rehearing or Reconsideration: Termination of Filing Time.

If a petition for rehearing or reconsideration is filed timely pursuant to the rules of the agency, the running of the time for filing a petition is terminated. If the agency denies the petition for rehearing or reconsideration, the time for filing a petition for review begins again from the date of the notice of the order denying the petition for rehearing or reconsideration. If no provision for reconsideration is made by the rules of the agency, then this provision is inapplicable. *See* Rule 15(b).

6) Contents of the Petition for Review.

The petition for review must:

- a) Specify the party or parties seeking review;
- b) Designate the respondent agency, or agency official, and the order, decision or part thereof to be reviewed;
- c) Contain a concise statement of the nature of the agency proceedings; and

d) The grounds on which error is alleged.

The petition need only be signed by counsel if the petition is filed by a corporation or other entity. *See* Rules 15(a) and 15(c).

7) Copies and Fees.

The petitioner must file six copies of the petition with the clerk of the Court of Appeals along with the prescribed docketing fee. The petitioner must serve a copy on all parties formally participating in the agency proceedings, and attach to the petition a list of those served, on or before the time of filing with the clerk.

8) Service of Petition to Respondent Agency: Clerk's Duties.

The clerk of the Court of Appeals on the day the petition is filed or promptly thereafter will transmit a copy of the petition for review to the respondent agency and the Corporation Counsel or other counsel representing the agency. The petitioner need not file a copy with the agency or Corporation Counsel. *See* Rule 15(e).

9) Intervention: Notice.

Any party to the agency proceeding may intervene after serving upon all parties and the clerk of the Court of Appeals a copy of a notice of intention to intervene within thirty days of the date on which the petition for review is filed. The court by order may extend the time for good cause shown.

Any other party wishing to intervene may do so only by motion for leave to intervene. The motion must:

- a) Contain a concise statement of his interests in the appeal;
- b) State the grounds upon which he seeks intervention; and
- c) Indicate on which side he is intervening.

The same filing time limitation applies to the motion for leave to intervene. *See* Rule 15(f).

10) Stay Pending Appeal. *See generally* Rule 18(a).

a) The Stay.

In order to seek a stay of an order or decision of an agency, a petitioner must first make application for stay with the agency or thereafter by motion filed with the clerk of the Court of Appeals. The motion must state that application to the agency for stay is not practicable,



or that the petitioner has made application to the agency and it denied the relief requested. The motion must include:

- (i) if the agency has denied relief, its reasons therefor;
- (ii) the reasons for the relief requested and the facts relied upon;
- (iii) affidavits or other sworn statements supporting facts subject to dispute, or copies thereof;
- (iv) a copy of the agency order or decision from which the petitioner seeks a stay, unless the record has been filed with the clerk.

b) Notice and Service.

The petitioner shall give reasonable notice of the motion to all parties. If the petitioner requests a ruling prior to expiration of the normal time for responses to be filed under court rules, notice must be made by personal service on all parties. If personal service is not feasible, the petitioner must state the reasons in his motion to stay.

c) The Court's Consideration.

The motions to stay will normally be considered by a division of the court. In exceptional or emergency cases where time is a factor, the application for stay may be submitted to the clerk or a judge for an interim order.

D. The Agency Record. *See generally* Rules 16 and 17.

1) Transmitting the Record.

The agency must certify and file with the clerk of the Court of Appeals four certified copies of the record within fifteen days from the date of service of the petition. The clerk will notify the petitioner of the filing. The Court may require the production of originals of all papers comprising the record.

2) Composition of the Record.

The original papers and exhibits filed with the agency shall constitute the record on review, but the agency may substitute copies for the originals. If any material matter is omitted from the record by error, accident or misstatement, the parties may after transmission of the record by motion request the court to direct that the omission be corrected. The record shall also include a copy of the transcript of testimony before the agency, if one exists, certified by the Secretary or any other executive officer of the agency.

3) Statement of Proceedings and Evidence.

If the transcript is not available, the Secretary or other executive officer of the agency shall include a narrative statement of proceedings and evidence.

4) Supersedeas Bond.

The court may in its discretion require a party seeking a stay to post a supersedeas bond in the amount and with such sureties it deems necessary.

E. Proceeding In Forma Pauperis in Agency Appeals. *See generally* Rule 24.

A party who did not proceed before the agency in forma pauperis may do so in the Court of Appeals on review of an agency decision by motion for leave to proceed in forma pauperis. The petitioner must file the motion with the petition for review within thirty days after he was given notice of the agency order or decision, unless a statute provides a different time for filing the petition for review. The motion and petition must be accompanied by an affidavit containing the information required by Form 5, except that it need not be signed by a Superior Court judge.

XII. Extraordinary Writs: Mandamus and Prohibition Against Judge or District of Columbia Officer. *See generally* Rules 21 and 22.

A. Petition.

The petitioner must file four copies of a petition for the writ with the clerk of the Court of Appeals with proof of service on the judge, the District of Columbia officer, and on all parties to the action in the Superior Court or the agency proceeding. The clerk will not docket the petition and submit it to the court until he has received the docket fee.

1) Contents of the Petition.

The petition must contain:

- a) A statement of the facts necessary to understand the issues;
- b) A statement of the issues;
- c) A statement of the relief sought;
- d) A statement of the reasons why the writ should issue; and
- e) Copies of any order or opinion or parts of the record relevant to the matter.

B. The Court's Discretion: The Order.

The court in its discretion may grant or deny the petition. If the

court is not disposed to deny the petition, it will order the respondent to file an answer and set a filing date, though the respondent is free to file an answer before the court rules on the motion. The rule appears to require that an answer be filed before any petition is granted.

C. The Order: Procedure.

The clerk will serve the order on the respondents and all the other parties in the Superior Court or before the agency, who shall also be deemed respondents. Two or more respondents may answer jointly. A judge or District of Columbia officer does not need to appear in the proceeding, and he shall advise the clerk and the parties by letter of his nonappearance.

D. Briefs and Oral Argument.

The court in its discretion may order the parties to file briefs and to argue orally. The clerk will inform the parties of the due dates for both.

XIII. Written Briefs. *See Generally* Rules 28 through 33.

A. Brief of Appellant.

1) Contents.

a) Title Page.

(i) the number and caption of the case in the Court of Appeals.

(ii) the name(s) of counsel filing the brief. If known, the appellant should indicate the name of counsel who will argue the appeal. If counsel has been appointed, that fact should be noted underneath counsel's name.

(iii) the type of appeal or proceeding.

b) Headings.

The brief must also contain, under appropriate headings and in the following order:

(i) a certificate of counsel in all civil and agency cases setting forth a complete list of all parties and amici who have appeared below. Whenever a corporation is a party or amicus, the certificate must list all parent companies, subsidiaries and affiliates. Whenever a partnership is a party or amicus, the certificate must list all partners, including silent partners. The certificate of counsel must appear on the first page of the brief after the title

- page and before the table of contents and must conform to the form contained in Rule 28(a).
- (ii) a table of contents with page references containing a table of the following:
    - Cases arranged in alphabetical order with asterisks before cases chiefly relied upon;
    - Statutes;
    - Rules;
    - Regulations;
    - Other authorities cited,with references to the pages of the brief where the authorities are cited.
  - (iii) a statement of the issues presented for review.
  - (iv) a statement of the case, first briefly indicating the nature of the case, the course of proceedings, and its disposition below, followed by a statement of facts relevant to the issues on review, with citations to the record.
  - (v) a summary of the argument should precede the argument. The argument must contain the contentions with respect to the issues, its reasons therefore, with citations to the authorities and the record.
  - (vi) a short conclusion stating the precise relief sought.
- c) **Joint or Consolidated Briefs.**  
In an appeal involving more than one appellant, including consolidated cases, any number of appellants may file a single brief and adopt by reference any part of the brief of another.
- d) **Length.**  
Maximum of fifty pages, except by special order of the court.
- e) **Time for Filing.**  
The appellant must file and serve a brief within forty days after the date on which the record is filed with the clerk. However, when the reporter's transcript has been ordered and prepared, the time for filing will not commence until the complete reporter's transcript as ordered is filed with the clerk, either as part of the record on appeal or as a supplemental record on appeal.

Within five days after the transcript has been filed with the clerk of the Superior Court, counsel except in forma pauperis appeals, must arrange with that clerk to have a supplemental record containing the transcript transmitted to the Court of Appeals if the original record has previously been transmitted to this court.

f) Reply Brief.

The appellant may serve and file a brief in reply to the brief of the appellee within fourteen days after service of the brief of appellee. Except for good cause shown, a reply brief must be filed at least three days before oral argument. However, if separate briefs are filed by individual appellees, the reply brief is due within fourteen days from the service of the latest brief to which the reply brief is responding.

g) Consequences of Failure to File Briefs.

If the appellant fails to file a brief within the time provided or extended, an appellee may move for dismissal, or the Court may dismiss the case in accordance with Rule 14. *See* Rule 31(c).

B. Brief of Appellee. *See generally* Rule 28(b).

1) Contents.

The brief must contain all the sections required in the brief of appellant, except that a statement of the issues or of the case need not be included unless the appellee chooses to include one. In cases including cross-appeals, the brief of appellee must contain the issues and arguments involved in the appellee's appeal and an answer to the brief of appellant.

2) Joint or Consolidated Briefs.

In an appeal involving more than one appellee, including consolidated appeals, any number of appellees may file a single brief and adopt by reference any part of the brief of another.

3) Length.

Maximum of fifty pages, except by special order of the court.

4) Time for Filing.

The appellee must file and serve a brief within thirty days, after the service of the brief of appellant or petitioner. However, if separate briefs are filed by individual appellants, the brief of appellee is due within thirty days from the

service of the latest brief to which the brief of appellee is responding.

C. Rules Applicable to Both Appellant and Appellee.

1) References to Parties.

Counsel should refer to opposing parties in briefs and at oral argument using the actual names of the parties used before the lower court or agency. *See* Rule 28(d).

2) References to the Record.

References in the briefs to parts of the record must be to the pages at which those parts appear. *See* Rule 28(e).

3) Copies of Statutes, Rules, Regulations, and Other Authorities.

The parties should include copies of relevant statutes, rules, regulations, and other authorities in an addendum, or supply them in pamphlet form. *See* Rule 28(f).

4) Citations in Briefs.

Unpublished opinions of the Court of Appeals may only be cited when they are relevant under the doctrines of the law of the case, *res judicata*, or collateral estoppel, or in a criminal action or proceeding involving the same defendant, or in a disciplinary action or proceeding. *See* Rule 28(h).

5) Citation of Supplemental Authorities.

If after the filing of the brief and oral argument but before the decision, a pertinent authority comes to the attention of a party, the party may notify the court by filing four copies of a letter to the clerk and a copy to all counsel setting forth the citation. If no citation is available, the party should file copies of the authority in its place. The letter must refer either to the page of the brief or to a point argued orally to which the authority pertains, and must state the reasons for citing the authority, but without argument. Four copies of a response by other parties may be filed promptly and must be similarly limited. *See* Rule 28(k).

6) Number of Briefs to be Filed and Served.

Four copies of each brief must be filed with the clerk, unless the court otherwise directs, and one copy must be served on counsel for each party separately represented. If the case will be heard *en banc*, file ten copies of each brief with the clerk. If the case is to be reheard *en banc*, the clerk may request counsel to furnish additional copies. *See* Rule 31(b).

7) Consequences of Failure to File Briefs.

A party who fails to file a brief will not be heard at oral argument except by permission of the court. *See* Rule 31(c).

8) Appendices and Addenda.

No appendix is required, unless directed by the court. Appendices may be required in complex cases.<sup>12</sup> *But see* Rule 28(f) requiring copies of statutes, rules, and regulations in an appendix or separate pamphlet.

9) List and Copies of Transcript.

In an appeal where a reporter's transcript of 200 or more pages is included in the record, counsel must include in their briefs three copies of a list of the pertinent pages in the transcript that counsel deem necessary for the court to read in conjunction with their briefs.

D. Amicus Curiae: Brief and Oral Argument. *See generally* Rule 29.

1) Filing of Brief: Permission.

A brief of an amicus curiae may only be accepted by the court in one of three ways:

- a) By written consent of all the parties attached to the brief;
- b) By motion for leave of court, granted; or
- c) By request of the court.

However, the United States, the District of Columbia, or an officer or agency thereof, and a State, Territory, Commonwealth, or political subdivision thereof may as a matter of right file a brief amicus curiae and need not do so by consent or leave of court.

2) Copies and Time for Filing.

- a) Amici must file four copies with the clerk at the time of filing the motion.

3) Oral Argument by Amicus Curiae.

a) Extraordinary Reasons.

Only for extraordinary reasons will an amicus curiae be permitted oral argument, either by motion granted by the court or by request of the court. When the permission to file a brief of an amicus curiae is by consent, the motion for leave to argue must accompany the brief.

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12. *See Hoffman & Nettler, supra* note 4, at 40.

- b) Oral Argument of the Government.  
Though the United States, District of Columbia, or an officer or agency thereof, or a state, Territory or Commonwealth, or political subdivision may file a brief as an amicus curiae by right, they must seek permission to participate in oral argument by motion for leave to argue, which must accompany their brief.
- E. Form of Briefs. *See generally* Rule 32.
- 1) Form.  
Briefs must be printed, typed or mimeographed on legal size paper, unfolded, without back or cover, fastened at the top left corner with pages numbered at the bottom of each page. The left margin should be 1-<sup>1</sup>/<sub>4</sub> inches, and the right margin should be <sup>1</sup>/<sub>2</sub> inches, double-spaced type, except for footnotes and quotations which may be indented.  
Printed records and briefs must not be less than eleven-point type, pages not less than 6-<sup>1</sup>/<sub>2</sub> inches by 9-<sup>1</sup>/<sub>4</sub> inches and type matter 4-<sup>1</sup>/<sub>6</sub> inches by 7-<sup>1</sup>/<sub>6</sub> inches.
  - 2) Covers.  
Not required unless the brief is printed.
  - 3) Colors of Covers.  
Appellant—Blue  
Appellee—Red  
Intervenor or Amicus Curiae—Green  
Reply—Gray
  - 4) Contents of Cover.
    - a) Name of the court and number of the case;
    - b) Caption of the case;
    - c) Nature of the proceeding in the court below and the name of the court below;
    - d) Title of the brief;
    - e) Names, addresses, and telephone numbers of counsel representing the party on whose behalf the brief is filed.
  - 5) Clerk May Refuse to File Briefs.  
If a brief does not conform to the rules of the court or is not legible, the clerk may refuse to file it.
- F. Calendaring of Cases. *See generally* Rule 34.
- 1) Regular Calendar.  
The clerk will give notice by mail to counsel for each party of the cases to be argued in the following month, or if the party is without counsel, the notice will be mailed to the



party's address. The rule explicitly states that because the notice will be posted in the clerk's office and published in the Daily Washington Law Reporter, failure of counsel or a party to receive the notice is not an excuse for failure to appear for oral argument.

2) Summary Calendar.

If the court places a case on the summary calendar, counsel must request oral argument and the court must grant the argument before argument will be heard.

3) Postponement or Advancement of Oral Argument.

To postpone or advance oral argument, counsel or an unrepresented party must promptly file a motion with the clerk of the court, which may be granted only for good cause shown. Scheduled trials are not ordinarily deemed good cause for postponement, except that a case may be set first or last to accommodate a trial judge. *See* Rule 34(c).

G. Oral Argument. *See generally* Rule 35.

1) Appellant.

The appellant will open the argument and have opportunity to give rebuttal. In cross-appeals the plaintiff in the action below will be entitled to open and close unless the court otherwise directs.

2) Number of Counsel.

Normally, not more than two attorneys will be heard for each side, except that more may appear by leave of court.

3) Intervenor.

The counsel on whose side the intervenor has intervened may grant the intervenor time to argue during his or her allotted time.

4) Special Admission for Argument.

An attorney qualified to practice before the highest court of any State, Territory, or Commonwealth may be specially admitted before the Court of Appeals to argue a particular case.

5) Time Allocated for Each Side.

a) Regular Calendar.

Thirty minutes for each side unless the time is extended by the court.

b) Summary Calendar and Motions Argument.

Fifteen minutes for each side in cases on the summary calendar when the court has authorized argument, and

for motions scheduled for argument, unless the time is extended by the court.

c) En Banc Argument.

Forty-five minutes, unless the time is extended by the court.

6) Motion for Additional Time.

The parties may file a motion for additional time for argument, but the motion must be filed not later than ten days after the appellee's brief has been filed. *See* Rule 35(f)(5).

7) Submission on the Briefs.

Any case may be submitted on the briefs, unless the court directs argument. *See* Rule 35(f)(6).

8) Nonappearance of Appellant or Appellee or Both.

If the appellee fails to appear for scheduled oral argument, and if the appellant is present and has filed a brief, the court will hear the argument of appellant. If the appellant fails to appear, and if the appellee is present and has filed a brief, the court *may* hear the argument of appellee. If neither appears, the case will be decided on the merits unless the court otherwise directs. *See* Rule 35(f)(7).

H. Judgments and Opinions. *See generally* Rule 36.

1) The Decision.

The clerk will mail to each party a copy of the order or judgment of the court and an opinion if one accompanies the order or judgment.

2) Motion to Publish Opinions.

Any party or interested person may file a motion to publish an unpublished opinion within thirty days after issuance of the opinion and state why publication is merited. A motion by a nonparty will not be granted except for good cause shown, and the court may *sua sponte* decide to publish at any time an unpublished opinion. *See* Rule 36(c).

3) Petition for Rehearing. *See generally* Rule 40.

a) Time for Filing.

A petition for rehearing or rehearing en banc may be filed within fourteen days after entry of judgment unless the time is shortened or extended by order.

b) Length.

Maximum of ten pages. The petitioner must file an original and three copies.

c) Contents of Petition.

The petition must state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended. It must contain the argument or arguments in support. Oral argument is not ordinarily allowed.

- d) Answer.  
An answer will not be received unless requested by the court. Any member of the division that decided the case may request an answer.
  - e) Grant of Petition.  
When granted, the court may decide the case without reargument, restore it to the calendar for reargument, or make disposition as it deems appropriate. Even if the petition is not granted, the court may amend the original opinion, or withdraw it and issue a new opinion.<sup>13</sup>
- 4) Petition for Rehearing En Banc.
- a) Purpose.  
En banc consideration is required to overrule a previous decision of the court or when the court declines to follow a pending decision of the United States Court of Appeals for the District of Columbia Circuit.<sup>14</sup>
  - b) Time for Filing.  
Within fourteen days after entry of judgment unless the time is shortened or extended by court order. *See* Rule 40(a).
  - c) Length and Number of Copies.  
Maximum of ten pages. An original and nine copies must be filed. *See* Rule 40(d).
  - d) Contents and Answer.  
Same as for petition for rehearing. *See* Rule 3(c).
  - e) No Effect on Judgment or Stay.  
Unlike the petition for rehearing, the en banc petition does not affect the finality of a judgment of the Court of Appeals or stay the issuance of a mandate.
  - f) When Rehearing Will Be Ordered.  
Rehearing will be ordered only on a favorable vote of a majority of judges in active service when 1) consideration by the full court is necessary to secure or maintain

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13. *See* District of Columbia Court of Appeals, Internal Operating Procedures § X(C), at 13 (available from the District of Columbia Court of Appeals).

14. *Id.* § VII(H), at 11, 12.

uniformity of its decisions, or 2) the proceeding involves a question of exceptional importance. A rehearing is not favored and will ordinarily not be granted except for the above considerations. *See* Rule 40(e).<sup>15</sup>

g) Procedure for Granting Rehearing.

No vote will be taken to determine whether the case shall be reheard en banc unless a judge in active service or a retired judge who was a member of the division which rendered the decision calls for a vote. However, the division which decided the case may, on its own, grant rehearing without action by the full court.<sup>16</sup> To call for a vote, any active judge or member of the division that issued the opinion must within thirty days of receipt of the petition request that the clerk take an en banc poll. If there is no request, the petition will be denied. A majority of votes in favor will grant rehearing of the petition.<sup>17</sup>

I. Interest on Judgments. *See* Rule 37.

If interest is allowed by law on a money judgment granted in the Superior Court or agency proceeding, and the Court of Appeals affirms the judgment, interest is payable from the date of that judgment. If the Court of Appeals modifies or reverses a judgment and directs that a judgment for money be entered in the Superior Court, the prevailing party by motion filed with the clerk of the Court of Appeals within ten days after judgment may request an allowance of interest.

J. Costs. *See* Rule 39.

- 1) Unless otherwise provided by law, costs are taxed against:
  - a) Appellant, when the case is dismissed, unless otherwise agreed by the parties;
  - b) Appellant when the case is affirmed;
  - c) Appellee when the judgment is reversed;
  - d) If the judgment is affirmed in part and reversed in part, or vacated, then costs are assessed as ordered by the court.
- 2) Costs against the United States and District of Columbia.  
Costs are allowed against the United States in accordance with 28 U.S.C. § 2412 (1982 & Supp. II 1984) and against

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15. *Id.* § XI, at 13-16.

16. *Id.* § XI(A), at 14.

17. *Id.* § XI(E), at 15.

the District of Columbia in accordance with 28 U.S.C. § 1920 (1982 & Supp. II 1984) and D.C. Code Ann. § 11-743 (1981), and section A above, but neither is required to prepay costs. *See* Rule 39(c).

3) Costs in Agency Cases.

Costs of the type allowed in the Superior Court incurred in appeals from administrative agencies are assessed and taxed in the Court of Appeals. *See* Rule 34(f).

K. Damages. *See* Rule 38.

If the court determines an appeal frivolous in its discretion it may award damages and single or double costs to the appellee.

L. The Mandate. *See* Rule 41.

1) Issue.

The court's mandate will issue twenty-one days after the entry of judgment, unless the time is shortened or extended by order. The mandate consists of a certified copy of the judgment, a copy of the opinion of the court, if any, and any directions as to costs unless the court issues a formal mandate.

2) Stay Pending Disposition of Rehearing Petition.

The mandate is stayed by the timely filing of a petition for rehearing, but it is not stayed by the filing of a petition for rehearing en banc. In consolidated cases, a petition filed by one party does not stay the mandate as to any other party. If the petition is denied, the mandate will issue seven days after entry of the order denying the petition unless the time is shortened or extended by order.

3) Stay Pending Application for Certiorari.

A stay of the mandate pending application to the United States Supreme Court for a writ of certiorari may be granted upon motion. The stay will not exceed thirty days from the date on which the mandate would have originally issued, unless extended for cause shown. If before issuance of the mandate or during the period of the stay, a petition for writ of certiorari is filed in the Supreme Court, the mandate will not issue until the Supreme Court decides the petition. On denial of the petition, the clerk will issue the mandate immediately. *See* Rule 41(b).

4) Recall of Mandate.

In an appeal from a judgment of criminal conviction, a party may file a motion based on the asserted failure of

counsel to represent the appellant effectively on appeal to recall the mandate which, if granted, restores jurisdiction in the Court of Appeals. The motion must be filed within 180 days from the issuance of the mandate.

**M. Voluntary Dismissal. See Rule 42.**

**1) Prior to Docketing.**

An appeal may be dismissed by the Superior Court prior to docketing by filing with the clerks of both courts two copies of a stipulation of dismissal signed by all parties or a motion and notice by appellant.

**2) After Docketing.**

After docketing, the clerk of the Court of Appeals will dismiss the appeal if the parties sign and file with the clerk of the Court of Appeals two copies of an agreement that the appeal be dismissed specifying the terms as to payment of costs and any fees due. Alternatively, an appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

**N. Substitution of Parties. See Rule 43.**

If a party dies pending appeal, the personal representative may be substituted on motion filed with the clerk by the representative or by any other party.

DISTRICT OF COLUMBIA COURT OF APPEALS  
CITATION GUIDANCE MEMORANDUM

[Revised December 1982; effective January 1, 1983]

1. Unless in conflict with anything in this memorandum, follow "A Uniform System of Citation" (commonly known as the Blue Book). Citations to the Blue Book in this memorandum refer to the thirteenth edition, published in 1981.

2. Underline all names of cases, including "v.", in both text and footnotes.

3. Cite all cases from this court and its predecessor, the Municipal Court of Appeals, as follows:

Doe v. Roe, 408 A.2d 1234 (D.C. 1982).

4. Cite the District of Columbia Code as follows:

D.C. Code § 22-2901 (1981)

or  
D.C. Code § 33-541 (1982 Supp.)

5. In string citations for a single proposition, cite this court's decisions ahead of the D.C. Circuit's, irrespective of the year decided. For example:

Smith v. Jones, 342 A.2d 987 (D.C. 1975);  
Brown v. Green, 194 U.S. App. D.C. 456,  
598 F.2d 321 (1978).

6. Do not capitalize the word "government," irrespective of whether the reference is to the United States or District of Columbia government.

7. When citing slip opinions which are not reported officially by the time a galley proof is returned to the printer:

(a) Give our court's number and date of decision. For example: Doe v. Roe, No. 82-1876 (D.C. July 31, 1982).

(b) When referring to a specific page of a slip opinion, cite: Doe v. Roe, No. 82-1876, slip op. at 4 (D.C. July 31, 1982).

(c) Cite D.C. Circuit slip opinions as follows: United States v. Jones, No. 81-2345 (D.C. Cir. April 24, 1982).

8. If a D.C. Circuit case is reported in U.S. App. D.C., always give that citation in addition to F.2d. If the case is reported in F.2d but not yet in U.S. App. D.C., cite as follows: United States v. Jones, \_\_\_ U.S. App. D.C. \_\_\_, 618 F.2d 543 (1982).

9. When two or more single letters are used in an abbreviation, there should be no space between them. For this purpose an ordinal number such as 2d, 3d, 4th is treated as a single letter. For example:

U.S., D.C., A.2d, F.2d, S.D.N.Y., A.L.R.3d

However, when an abbreviation contains more than one letter, it should be preceded and followed by a space. For example:

U.S. App. D.C., Cal. App. 2d, Ill. 2d, So. 2d

N.D.W. Va., U. Pa. L. Rev., A.L.R. Fed.

10. When a case is cited for the first time in an opinion (text or footnote), give its complete citation. If it is cited again after that point, use "supra" if the original citation was in the text, or "supra note --" if the original citation was in a footnote. To refer to a specific page in the cited case when using the supra form, cite as follows:

Smith v. Jones, supra, 342 A.2d at 991.

Smith v. Jones, supra note 6, 342 A.2d at 991.

Doe v. Roe, supra, slip op. at 4.

However, if you are not referring to a specific page, and if the case you are citing for the second time was originally cited so far back in the opinion that the original citation may be difficult to find, you may wish to give the full citation again for the convenience of the reader.



11. Opinions by Superior Court judges should be cited to the Washington Daily Law Reporter, if possible, giving the date of the opinion (not the date of publication):

Blue v. Gray, 110 Wash. D.L. Rptr. 2345  
(D.C. Super. Ct. Dec. 21, 1982).

If the opinion is not published, cite it like any other unpublished opinion:

Blue v. Gray, No. 81-765 (D.C. Super. Ct.  
Dec. 21, 1982).

12. "In the Matter of", "Matter of", and "Petition of" should always be abbreviated "In re".

13. When quoted material is set off by being indented in an opinion, do not use quotation marks. The source of the quotation should not be enclosed in brackets, nor should it be indented. Instead, it should appear at the left margin on the line immediately following the quotation. For an illustration see page 25 of the Blue Book.

14. In case headings prior to the actual text of an opinion:

(a) Underline the titles of the judges:

Before HOLMES, BRANDEIS, and CARDOZO, Associate Judges.

or

Before STONE, Chief Judge, and BLACK and HARLAN, Associate Judges.

(b) Be careful to indicate whether the case was "Argued" or "Submitted" on the date stated.

(c) If there is only one attorney for a party and that attorney is retained, not appointed, do not use a comma: John Doe for appellee.

(d) If counsel has been appointed by this court, set that fact off by commas rather than parentheses.

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(e) If an attorney filed a praecipe or otherwise entered an appearance, but was not on the brief and did not argue, state: John Doe also entered an appearance for appellee.

(f) If a party has been represented by a law student, state: John Doe, law student counsel, for appellant.

(g) For opinion purposes use the term "en banc" (not italicized), even though a statute or rule may say "in banc."

(h) If a case has multiple appellants and only one appellee, or one appellant and multiple appellees, consider writing the caption as follows:

JOHN DOE (No. 82-621),  
 RICHARD ROE (No. 82-638),  
 PETER POE (No. 82-654),  
                   and  
 MICHAEL MOE (No. 82-655), Appellants,

v.

UNITED STATES, Appellee.

15. Cite our court's rules as: D.C. App. R. 26 (c). Leave spaces as indicated.

16. Cite the Superior Court's various sets of rules as follows:

Civil: Super. Ct. Civ. R. 4.  
 Criminal: Super. Ct. Crim. R. 4.  
 Small Claims: Super. Ct. Sm. Cl. R. 4.  
 Landlord and Tenant: Super. Ct. L&T R. 4.  
 General Family Division: Super. Ct. Gen. Fam. R. 4.  
 Domestic Relations: Super. Ct. Dom. Rel. R. 4.  
 Intra-Family: Super. Ct. I-F R. 4.  
 Juvenile: Super. Ct. Juv. R. 4.  
 Mental Health: Super. Ct. Ment. H. R. 4.  
 Neglect: Super. Ct. Neg. R. 4.  
 Probate: Super. Ct. Prob. R. 4.  
 Tax: Super. Ct. Tax R. 4.

17. Since "R." in these citations refers to "Rules," it should be used in citing multiple rules as well as single ones. For example: D.C. App. R. 26 (c), 31 (a)(5).

18. The following special citation forms should be used:

District of Columbia Rules and Regulations:  
\_\_\_ DCRR § \_\_\_

District of Columbia Highway and Traffic Regulations:  
D.C. Highway & Traffic Regs., Pt. \_\_\_,  
§ \_\_\_ (1971) [hereinafter Traffic Regs.]

District of Columbia Police Regulations:  
D.C. Pol. Regs. Art. \_\_\_, § \_\_\_

Standardized Civil Jury Instructions:  
Standardized Civil Jury Instructions for the  
District of Columbia, No. \_\_\_ (1981)

Standardized Criminal Jury Instructions (the "red  
book"):  
Criminal Jury Instructions for the District  
of Columbia, No. \_\_\_ (3d ed. 1978)

Washington Daily Law Reporter:  
\_\_\_ Wash. D.L. Rptr. \_\_\_ (date)

The District of Columbia Administrative Procedure Act, after its full name has been given once, should be abbreviated "DCAPA".

19. Be particularly careful to know the Supreme Court status of our cases. The granting or denial of a petition for a writ of certiorari should always be reflected in the citation. Since denials of certiorari take several months to get into Shepard's Citations, each judge's chambers should maintain its own internal record-keeping system for Supreme Court actions in our cases.

20. A denial of rehearing by any court, including the Supreme Court, should not be reflected in the citation unless it is accompanied by an opinion, or unless the denial is relevant to the point for which the case is cited.

21. When you are citing a case in which certiorari has been denied and wish to add something parenthetically about the case, the parenthetical comment should precede the "cert. denied". For example:

Doe v. Roe, 408 A.2d 1234 (D.C. 1982) (plaintiff held liable), cert. denied, 462 U.S. 987 (1983).

22. For guidance on the use of "sub nom." see pages 51-52 of the Blue Book. Note that "sub nom." is not used when the reference is merely to the denial of certiorari.

