

CIVIL APPEALS MANAGEMENT PLAN

1. Notice of Appeal, Transmission of Copy and Entry by Court of Appeals.

Upon the filing of a notice of appeal in a civil case, the Clerk of the District Court shall forthwith transmit a copy of the notice of appeal to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of the Court of Appeals.

2. Appointment of Counsel for Indigent, Advice by District Court Judge.

If the appeal is in an action in which the appellant may be entitled to the discretionary appointment of counsel under 18 U.S.C. § 3006A(g) but has not had such counsel in the district court and there has been an indication that the appellant may be indigent, the judge who heard the case shall advise the Clerk of the Court of Appeals whether in the judge's judgment such appointment would be in the interests of justice.

3. Docketing the Appeal; Filing Pre-Argument Statement; Ordering Transcript.

Within ten calendar days (see FRAP 26(a)) after filing the notice of appeal, the appellant shall cause the appeal to be docketed by taking the following actions:

- (a) filing with the Clerk of the Court of Appeals an original and one copy of, and serving on other parties a pre-argument statement (Form C or Form C-A, in the case of a petition for review or enforcement of an agency decision, with such changes as the Chief Judge of this Court may from time to time direct) detailing information needed for the prompt disposition of an appeal;
- (b) ordering from the court reporter on a form to be provided by the Clerk of the Court of Appeals (Form D), a transcript of the proceedings pursuant to FRAP 10(b). If desirable the transcript production schedule and the portions of the proceedings to be transcribed shall be subject to determination at the pre-argument conference, if one should be held, unless the appellant directs the court reporter to begin transcribing the proceedings immediately;
- (c) certifying that satisfactory arrangements have been or will be made with the court reporter for payment of the cost of the transcript;
- (d) paying the docket fee fixed by the Judicial Conference of the United States

pursuant to 28 U.S.C. § 1913 (except when the appellant is authorized to prosecute the appeal without payment of fees).

- (e) at the time of filing Form C or Form C-A in the case of a petition for review or enforcement of an agency decision and Form D, the appellant shall also file:
 - (i) a copy of each of the judgments, orders and/or decisions of the U.S. District Court or agency from which review is sought,
 - (ii) a copy of each written or transcribed oral opinion rendered in the proceeding from which the review is sought addressing the issues raised on appeal,
 - (iii) in those cases where a decision is initially reviewed in the U.S. District Court, e.g., bankruptcy, social security, etc., a copy of all judgments, decisions, orders and opinions reviewed by the U.S. District Court which address the issues raised on appeal.

4. Scheduling Order; Contents.

- (a) In all civil appeals the staff counsel of the Court of Appeals shall issue a scheduling order as soon as practicable after the pre-argument statement has been filed unless a pre-argument conference has been directed in which event the scheduling order may be deferred until the time of the conference in which case the scheduling order may be entered as part of the pre-argument conference order.
- (b) The scheduling order shall set forth the dates on or before which the record on appeal, the brief and appendix of the appellant, and the brief of the appellee shall be filed and also shall designate the week during which argument of the appeal shall be ready to be heard.

5. Pre-Argument Conference; Pre-Argument Conference Order.

- (a) In cases where staff counsel may deem this desirable, the staff counsel may direct the attorneys to attend a pre-argument conference to be held as soon as practicable before staff counsel or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues, and any other matters which the staff counsel determines may aid in the handling or the disposition of the proceeding.

- (b) At the conclusion of the conference the staff counsel shall enter a pre-argument conference order which shall control the subsequent course of the proceeding.

6. **Non-Compliance Sanctions.**

- (a) If the appellant has not taken each of the actions set forth in paragraphs 3(a), (b), (c), and (d) of this Plan within the time therein specified, the appeal may be dismissed by the Clerk without further notice.
- (b) With respect to docketed appeals in which a scheduling order has been entered, the Clerk shall dismiss the appeal upon default of the appellant regarding any provision of the schedule calling for action on the appellant's part, unless extended by the Court. An appellee who fails to file an appellee's brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraphs 6 or 8, within the time as so extended, will be subjected to such sanctions as the Court may deem appropriate, including those provided in FRAP 31(c) or FRAP 39(a) or Rule 38 of the Local Rules of this Court supplementing FRAP or the imposition of a fine.
- (c) In the event of default in any action required by a pre-argument conference order not the subject of the scheduling order, the Clerk shall issue a notice to the appellant that the appeal will be dismissed unless, within ten days thereafter, the appellant shall file an affidavit showing good cause for the default and indicating when the required action will be taken. The staff counsel shall thereupon prepare a recommendation on the basis of which the Chief Judge or any other judge of this Court designated by the Chief Judge shall take appropriate action.

7. **Motions**

Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, shall be accompanied by an affidavit or other statement and shall be made not later than two weeks before the brief is due or the argument is scheduled unless exceptional circumstances exist. Motions not conforming to this requirement will be denied.

Motions to alter the date of arguments placed on the calendar are not viewed with favor and will be granted only under extraordinary circumstances.

8. **Submission on Briefs; Assignment to Panel.**

When the parties agree to submit the appeal on briefs, they shall promptly notify the Clerk, who will cause the appeal to be assigned to the first panel available after the time fixed for the filing of all briefs.

9. **Other Proceedings.**

(a) **Review of Administrative Agency Orders; Applications for Enforcement.**

In a review of an order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency,

- (i) The Staff Counsel of the Court of Appeals shall issue a scheduling order as soon as practicable setting forth the dates on or before which the record or authorized substitute, the petitioner's brief and the appendix and the brief of the respondent shall be filed and also shall designate the week during which argument of the proceeding shall be ready to be heard;
- (ii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences, and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

(b) **Appeals from the Tax Court.**

In a review of a decision of the Tax Court,

- (i) Paragraphs 3(a) and 3(d) of this Plan, pertaining to filing pre-argument statements and payment of the docket fee, shall be applicable to this subparagraph. If the appellant has not taken each of the actions set forth in those paragraphs within the time specified in Paragraph 3, the appeal from the tax court may be dismissed by the Clerk of the Court without further notice.
- (ii) Paragraph 4 of this Plan, pertaining to scheduling orders, shall also be applicable hereto.
- (iii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.