Undestanding the United States Court of Appeals for the Tenth Circuit: A Guide for the Practicioner

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UNDERSTANDING THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT: A GUIDE FOR THE PRACTITIONER

BY JANE MICHAELS TALESNICK*

CONTENTS

I. JURISDICTION OF THE TENTH CIRCUIT ................ 376
A. A Constitutional and Historical Perspective .... 376
B. Cases Appealable to the Tenth Circuit .... 378

II. ADMINISTRATIVE OPERATIONS OF THE TENTH CIRCUIT .................................................. 381
A. Personnel ........................................ 381
1. The Judges .................................... 381
2. The Circuit Executive ......................... 383
3. The Clerk of the Tenth Circuit ............... 384
4. Staff Attorneys ............................... 385
B. Admission to Practice Before the Tenth Circuit . 386

III. PROCEDURAL STEPS IN APPEALING A CASE TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT .................................................. 386
A. An Overview ................................ 386
B. Step by Step Analysis ......................... 387
1. Filing the Notice of Appeal .................. 387
2. Filing Bond for Costs on Appeal ............ 389
3. Ordering the Transcripts ..................... 390
4. Filing a Docketing Statement ............... 390
5. Filing the Record on Appeal ................ 391
6. Calendar Assignment and Docketing the Appeal ................................................. 392
7. Filing Motions ................................ 394
8. Writing and Filing Briefs ................. 396
9. Oral Argument ................................ 398

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I. JURISDICTION OF THE TENTH CIRCUIT

A. A Constitutional and Historical Perspective

The judicial branch of the Federal Government was created by article III, section 1 of the United States Constitution, wherein the framers provided that:

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Under the Judiciary Act of 1789, Congress established a system of federal courts subordinate to the U.S. Supreme Court. This judicial network consisted of 13 districts, each comprised of one district court presided over by a district judge. These 13 districts were divided into 3 circuits, to be called the eastern, middle, and southern circuits. The circuit courts were convened annually in each district and were presided over by any two Justices of the Supreme Court in addition to the district judge of that district. Any two of the three judges constituted a quorum, except that no district judge could sit in a case of appeal or error from his own decision.

The Judiciary Act of 1789 empowered the circuit courts with: (1) original jurisdiction in specified cases, concurrent with that

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1 Ch. 20, 1 Stat. 73 (1789).
2 The original 13 districts were designated as follows: Maine District, New Hampshire District, Massachusetts District, Connecticut District, New York District, New Jersey District, Pennsylvania District, Delaware District, Maryland District, Virginia District, Kentucky District, South Carolina District, and Georgia District. Id. § 2.
3 The eastern circuit consisted of the districts of New Hampshire, Massachusetts, Connecticut, and New York. The middle circuit consisted of the districts of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The southern circuit consisted of the South Carolina and Georgia Districts. The districts of Maine and Kentucky were excluded from these circuit designations. Id. § 4.
4 Id.
of the state courts; (2) exclusive original jurisdiction in cases involving offenses cognizable under the authority of the United States; and (3) appellate jurisdiction over final judgments entered in the district courts. Although the Judiciary Act gave the circuit courts appellate jurisdiction, the Supreme Court actually heard most of the appeals pursuant to its authority under article III, section 2 of the United States Constitution.

In 1891 Congress passed the Evarts Act, which changed the structure and responsibilities of the circuit courts. This enactment created nine circuit courts of appeals, each presided over by three judges. The circuit courts of appeals were granted appellate jurisdiction to review all final decisions of the district courts if such appeals were brought within 6 months after the entry of the order, judgment, or decree sought to be reviewed.

The circuit courts of appeals were vested with the power to issue writs and to entertain timely appeals from interlocutory orders. In certain cases, the decisions rendered by the circuit courts of appeals were deemed to be “final.” Such finality existed in diversity cases, admiralty cases, cases arising under the patent laws, cases involving revenue matters, and cases arising under the criminal laws. However, the Supreme Court could review such final decisions of the circuit courts of appeals by means of certiorari to the Supreme Court.

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1 Id. §§ 11, 21, 22.
2 In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
U.S. Const. art. III § 2.
3 Ch. 517, 26 Stat. 826 (1891).
4 The nine circuits and their official seats of court were established as follows:

<table>
<thead>
<tr>
<th>First Circuit</th>
<th>Second Circuit</th>
<th>Third Circuit</th>
<th>Fourth Circuit</th>
<th>Fifth Circuit</th>
<th>Sixth Circuit</th>
<th>Seventh Circuit</th>
<th>Eighth Circuit</th>
<th>Ninth Circuit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>New York City</td>
<td>Philadelphia</td>
<td>Richmond</td>
<td>New Orleans</td>
<td>Cincinnati</td>
<td>Chicago</td>
<td>St. Louis</td>
<td>San Francisco</td>
</tr>
</tbody>
</table>

Id. § 3.
5 Id. § 2.
6 Id. §§ 6, 11.
7 Id. § 12.
8 Id. § 7.
9 Id. § 6.
10 Id.
The United States Court of Appeals for the Tenth Circuit was created by statute in 1929 and was allotted four judgeships. It included the States of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. Additional judgeships for the Tenth Circuit were authorized in 1949, 1961, and 1968, thereby bringing the total current complement of the court to seven active judges.

At the present time, there are 11 judicial circuits and 97 authorized circuit judgeships in the United States. Several circuits, including the Tenth, have requested Congress to authorize additional circuit judgeships because of the increasing appellate case load. In addition, committees and study groups have been established to analyze the existing appellate court system and to recommend feasible structural changes. If viable recommendations are derived from these committees, this could result in significant legislative changes in the structure of the judiciary.

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19 The six states now comprising the Tenth Circuit were originally designated as part of the Eighth Circuit under the Evarts Act of 1891, ch. 517, 26 Stat. 826.
17 The 11 judicial circuits of the United States are constituted as follows:

District of Columbia .... District of Columbia
First .......... Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
Second .......... Connecticut, New York, Vermont
Third .......... Delaware, New Jersey, Pennsylvania, Virgin Islands
Fourth .......... Maryland, North Carolina, South Carolina, Virginia, West Virginia
Fifth .......... Alabama, Canal Zone, Florida, Georgia, Louisiana, Mississippi, Texas
Sixth .......... Kentucky, Michigan, Ohio, Tennessee
Seventh .......... Illinois, Indiana, Wisconsin
Eighth .......... Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Tenth .......... Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming

18 See Appendix B infra for relevant statistical data.
19 The Commission on Revision of the Federal Court Appellate System was established by Congress in 1973 and composed of 16 members appointed by the President, the Chief Justice, and members of Congress. It is chaired by Senator Roman L. Hruska of Nebraska, with Professor A. Leo Levin as staff director. The Commission was charged with the responsibility of recommending appropriate geographic and procedural changes to meet the Court's increasing demands. Upon completion of its assignment, the Commission recommended dividing the Fifth and Ninth Circuits to relieve those courts of their heavy caseloads. Pub. L. No. 92-489, § 1 (Oct. 13, 1972).
20 A Study Group on the Caseload of the Supreme Court, chaired by Professor Paul Freund, has investigated and recommended the creation of a National Court of Appeals, which would function as an intermediate court between the 11 circuit courts and the Supreme Court of the United States. Study Group on the Caseload of the Supreme Court, Creation of New National Court of Appeals Is Proposed by Blue-Ribbon Study Group, 59 A.B.A.J. 139 (1973)(excerpts from the report and recommendations of the study group).
system. These innovations are possible because article III of the Constitution authorizes Congress to vest judicial power in such inferior courts "as the Congress may from time to time ordain and establish."21

B. Cases Appealable to the Tenth Circuit

Federal appellate courts are, necessarily, courts of limited jurisdiction. Therefore, the appellant must show that his case satisfies the statutory jurisdictional requirements before the Tenth Circuit will entertain his appeal.

The vast majority of cases appealable to the Tenth Circuit are those in which a final decision has been rendered in one of the eight federal district courts22 within the territorial jurisdiction of the Tenth Circuit.23

In addition, every circuit has exclusive jurisdiction to entertain appeals from all final and reviewable administrative orders issued by such governmental agencies as the Federal Communications Commission, the Federal Maritime Commission, the Atomic Energy Commission, the Interstate Commerce Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, the Federal Power Commission, the National Labor Relations Board, and the Securities and Exchange Commission.24

Generally, a case is appealable to the Tenth Circuit only when the decision rendered by the district court or administrative agency is a final one. However, the courts of appeals have appellate jurisdiction over the following interlocutory orders:25

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21 Several judges and scholars have objected to the creation of such a mini-Supreme Court, arguing that it would be in derogation of Article III of the Constitution. For an indication of the conflicting contentions on this subject see Note, The National Court of Appeals: A Qualified Concurrence, 62 Geo. L.J. 881 (1974); Stokes, National Court of Appeals: An Alternative Proposal, 60 A.B.A.J. 179 (1974); Study Group on the Caseload of the Supreme Court, Creation of New National Court of Appeals Is Proposed by Blue-Ribbon Study Group, 59 A.B.A.J. 139 (1973) (excerpts from the report and recommendations of the study group); Brennan, The National Court of Appeals: Another Dissent, 40 U. Chi. L. Rev. 473 (1973).

22 Colorado, Kansas, New Mexico, Utah, and Wyoming each have one district court, whereas Oklahoma has three district courts.


24 In appeals from administrative agencies, the jurisdiction of the Tenth Circuit depends in part upon whether the appellant resides within, maintains his principal place of business within, or does business within, the circuit. Other important factors relating to judicial review of agency determinations are contained within the statutes governing each agency's operations. See, e.g., 5 U.S.C. § 1033 (1970); 15 U.S.C. §§ 45(c), 771 (1970); 26 U.S.C. § 7482(b) (1970).

(1) Those granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;
(2) Those appointing receivers, or referring orders to wind up receiverships or to take steps to accomplish such purposes, by directing sales or other disposals of property;
(3) Those determining the rights and liabilities of the parties to admiralty cases in which appeals from final decisions are allowed; and
(4) Judgments in civil actions for patent infringements which are final except for an accounting.

Under section 1292(b), when a district judge within the circuit has issued an interlocutory order which is not otherwise appealable, he may, within 10 days after entry of the order, certify in writing to the court of appeals that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order would materially advance the ultimate termination of the litigation. The court of appeals will then determine whether to permit the interlocutory appeal.

In addition to its jurisdiction to hear appeals from all final civil and criminal decisions and from specific interlocutory orders entered in the district courts, the Tenth Circuit has jurisdiction to entertain appeals from decisions rendered in the U.S. Tax Court and from proceedings in bankruptcy. The Tenth Circuit also retains original jurisdiction under the All Writs Statute, which enables it to entertain petitions for writs of mandamus or prohibition.

The Tenth Circuit has no power to directly review decisions of state courts. Unless a case enters the federal judicial system at the trial court level, either by an original proceeding or by removal to federal court, it stays within the state court system. Therefore, except for habeas corpus relief in federal court, the Supreme Court presents the only possibility for substantive federal review of a final state court decision.

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\(^{21}\) Id. § 1292(b) [hereinafter cited as § 1292(b)].
\(^{22}\) See id. § 1651 [hereinafter cited as All Writs Statute].
\(^{23}\) See id. § 1441.
\(^{24}\) Indirectly, the Tenth Circuit reviews state criminal cases by review of habeas corpus proceedings brought in federal district courts.
II. Administrative Operations of the Tenth Circuit

A. Personnel

1. The Judges

Article III, section 1 of the United States Constitution provides that:

The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Pursuant to its article III powers, Congress has enacted legislation providing for the appointment, tenure, residence, and salary of circuit judges.

By and with the advice and consent of the Senate, the President of the United States has the power to appoint all circuit judges. Each circuit judge remains in office for life ("during good Behavior") and, throughout all of his active service, must reside within the territory of the circuit for which he was appointed.

The circuit judges hear cases in such order and at such times as the court directs. Most cases heard by the Tenth Circuit are determined by three-judge panels, over which the judge with the greatest seniority presides. The circuit judge in regular active service who is senior in commission and under 70 years of age is designated the chief judge of the circuit. The chief judge oversees the administrative operations of the circuit and presides over any panel on which he sits.

* There are a total of 97 active judges on the 11 circuit courts of appeal. The allocation of these judges is as follows:

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<th>District of Columbia</th>
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<td>Second</td>
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<td>Third</td>
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<td>Ninth</td>
<td>13</td>
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<tr>
<td>Tenth</td>
<td>7</td>
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</table>


Id. § 46.

Id. § 42. Each circuit is also allotted an Associate Justice of the Supreme Court who serves as "Circuit Justice" on an ad hoc basis. At the present time, Justice Byron White is the Circuit Justice for the Tenth Circuit.

Id. § 45. Chief Judge David T. Lewis is presently serving in that capacity.
A circuit judge may become a "senior circuit judge" when he retains his office while retiring from regular active service. Any circuit judge holding office during good behavior may elect senior status after attaining the age of 70, having served as a federal judge for at least 10 consecutive years, or after attaining the age of 65, having served as a federal judge for at least 15 consecutive years.3

The Judicial Council of the Tenth Circuit is comprised of the seven judges in regular active service.3 The chief judge of the circuit presides over the Judicial Council and calls at least two meetings of the Council each year in order to discuss the internal operations of the court and to render all necessary orders for the expeditious administration of judicial business within the circuit.3

To ease the case load of the judges on the Tenth Circuit, the Judiciary Code allows the chief judge to designate a "visiting" judge from another circuit,3 a senior circuit judge,3 or a district court judge to sit on a three-judge panel with members of the Tenth Circuit. In addition, each of the active circuit judges is authorized to hire a secretary and two law clerks to assist him in carrying out his responsibilities.3

To facilitate the effective administration of justice in the Tenth Circuit, the Judicial Council has established nine committees, each comprised of two or three Tenth Circuit judges in regular active service. The names and functions of these committees are as follows: (1) the Calendar Committee, which determines the terms of court and the composition of each panel; (2) the Clerk’s Committee, which considers all substantive motions filed with

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3 Id. § 371. At the present time, there are three Senior Judges serving on the Tenth Circuit. They are Judge Alfred P. Murrah, Judge John C. Pickett, and Judge Jean S. Breitenstein.
3 Id. § 332. The seven active judges currently serving on the U.S. Court of Appeals for the Tenth Circuit are Chief Judge David T. Lewis, Judge Delmas C. Hill, Judge Oliver Seth, Judge William J. Holloway, Judge Robert H. McWilliams, Judge William E. Doyle, and Judge James E. Barrett.
37 The Chief Justice of the Supreme Court, the Chief Judge of each circuit, and one District Judge appointed from each circuit comprise the Judicial Conference of the United States. The Judicial Conference conducts a continuous study of the effectiveness of the Federal Rules of Civil Procedure and prepares a comprehensive survey of the case load and operations of the federal courts. Id. § 331.
38 Id. § 291.
39 Id. § 294.
40 Id. § 292.
41 Id. § 712.
the Clerk of the Court; (3) the Bail Panel, which passes upon bail orders under the Bail Bond Act; (4) the Emergency Hearings and Stays Panel, which considers the appropriateness of temporary injunctions or stays pending appeal; (5) the Interlocutory Appeals and Writs Panel, which determines whether to review an interlocutory appeal and whether to grant a petition under the All Writs Statute; (6) the Direct Criminal Appeals on Briefs Committee, which writes the opinions in those criminal cases in which oral argument is considered unnecessary; (7) the Direct Civil Appeals on Briefs Committee, which decides those civil cases in which oral argument is considered unnecessary; (8) the Environmental Agency Panel, which hears preliminary motions in environmental cases; and (9) the Rule 8 Committee, which determines all matters assigned to the summary calendar, including motions to affirm the judgment below or to dismiss the appeal, as well as miscellaneous motions for leave to proceed on appeal in forma pauperis or for certificates of probable cause.\footnote{For a further understanding of the role of these judicial committees in the context of the appellate process, see Section III. \textit{infra}.}

2. The Circuit Executive

When the Judiciary Act of 1789 was enacted, the individual judges were the sole administrators of the judicial system. It was not until 1939 that Congress created the Administrative Office, which was designated to coordinate all aspects of court management under a centralized authority located in Washington, D.C.\footnote{28 U.S.C. §§ 601-11 (1970).} The Administrative Office aided in the development of a more administratively sophisticated judicial system. However, its location in Washington, D.C. created a geographic and implementation gap between the centralized managerial function of the Administrative Office and the actual daily operations of the federal courts. Congress closed this gap by enacting the Circuit Executive Act on January 5, 1971.\footnote{Id. \textsection 332.}

This recent legislation entitles every circuit court to appoint a "circuit executive," an individual empowered to exercise administrative control over all nonjudicial activities of the circuit court of appeals in the circuit to which he is appointed.\footnote{The Tenth Circuit appointed its first circuit executive, Mr. Emory Hatcher, in August of 1972. See 28 U.S.C. \textsection 332(f) for the qualifications necessary to become a circuit executive.} The circuit executive's statutory duties include: (1) planning, organiz-
ing, and administering a personnel system for all parajudicial personnel in the court of appeals (with the exception of the judges' immediate staffs); (2) procuring, maintaining, and disposing of furniture and furnishings of the court; (3) maintaining a modern accounting system for the receipt, custody, deposit, and disbursement of all monies received by the clerk in his official capacity; (4) conducting studies relative to the business and administration of the court, and making recommendations to the chief judge and circuit council for procedural improvements; (5) acting as liaison officer between the court of appeals and the General Services Administration with regard to the budget and making budgetary requests; (6) compiling statistics and analyzing statistical data prepared by the Administrative Office on the business operations of the court of appeals; (7) evaluating all forms used by the court and making recommendations for new or revised forms; and (8) assisting the court in maintaining good public relations.

3. The Clerk of the Tenth Circuit

The clerk of the court is appointed by the circuit judges pursuant to federal statute. With the approval of the court, the clerk may appoint necessary deputy clerks and clerical assistants to aid in the effective administration of justice. The clerk and his staff are responsible for the processing of an appeal, which includes docketing the case, assigning it to a calendar, considering simple procedural motions, providing for oral argument, publishing the court's final opinion, and issuing the court's mandate.

In accordance with the Federal Rules of Appellate Procedure, the clerk of the court maintains a Docket Book in which he enters all cases under their consecutive file numbers. In addition, all papers filed with the clerk and all orders and judgments are entered chronologically on the docket, showing the date each entry

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44 The Federal Judicial Center, created by Congress pursuant to 28 U.S.C. §§ 620-29 (1970), is the main body responsible for conducting research and making studies of the operations of the federal courts. At the present time, the Director of the Federal Judicial Center is Judge Alfred P. Murrah, Senior Judge of the U.S. Court of Appeals for the Tenth Circuit. For an example of the comprehensive booklets prepared by the Federal Judicial Center, see "Comparative Report on Internal Operating Procedures of the United States Courts of Appeals," written by James E. Langner and Steven Flanders under the auspices of the Federal Judicial Center.

4a Id. § 711. Howard K. Phillips is the present Clerk of the Tenth Circuit. The Chief Deputy Clerk is Robert L. Hoecker.

4b For an understanding of the clerk's functions in the context of an actual appeal, see Section III. infra.
is made. Since the clerk has custody of all court records and papers, he must preserve a copy of every brief, appendix, and printed paper which is filed with the court of appeals.

The clerk is also responsible for preparing a calendar of cases awaiting argument and, in placing cases on the calendar, he must give preference to criminal appeals. After the order or judgment of the court has been entered, the clerk serves notice of such entry by mailing the opinion and order to all parties who participated in the proceeding.

4. Staff Attorneys

Staff attorneys are the professional staff for the court of appeals. Their duties differ from those of the law clerks to individual judges and from those of the clerk of the court. The Tenth Circuit currently has four staff attorneys. Their primary responsibilities are: (1) reviewing all docketing statements and making recommendations as to the calendar assignment for each case; (2) researching and making recommendations as to the validity and merit of petitions for writs of mandamus, petitions for interlocutory appeals, motions for stays, and motions to affirm or dismiss; (3) preparing memoranda and drafting proposed per curiam opinions in Calendar D cases; (4) responding to letters and requests from prisoners; (5) reviewing and recommending disposition of petitions for rehearing in Calendar D appeals; (6) serving as courtroom deputies; and (7) performing any additional duties assigned by the chief judge of the court.

Not all of the circuits have staff attorneys and, even among those which do, their role varies greatly from circuit to circuit. The Tenth Circuit is probably in the forefront in having delegated a broad range of duties and responsibilities to the staff attorneys, thereby facilitating the expeditious disposition of the court's caseload.

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\footnote{4}{Fed. R. App. P. 45(b).}
\footnote{5}{Id. 45(d).}
\footnote{6}{Id. 45(b).}
\footnote{7}{Id. 45(c).}

Summary appeals are assigned to Calendar D. The various Calendar designations are explained in Section III. B. 6. infra.

Further explanation of the role of the staff attorneys in the context of the appellate process is contained in Section III. infra.

The First Circuit has no staff attorneys. The Third Circuit has only one, and the Second, Eighth, and D.C. Circuits have only two staff attorneys.
B. Admission to Practice Before the Tenth Circuit

An attorney arguing an appeal must be a member of the bar of the Tenth Circuit. To be eligible for admission, the attorney must be of good moral and professional character and must have been admitted to practice before the Supreme Court of the United States, the highest court of a state, another U.S. Court of Appeals, or a U.S. District Court.  

Admission is dependent upon filing an application which contains the attorney's personal statement showing his eligibility for membership. Thereafter, the Tenth Circuit will act upon the application if it is presented by written or oral motion of a member of the bar of the Tenth Circuit.

Upon admission to practice before the Tenth Circuit, the attorney must pay a $15 fee to the clerk of the court. All admission fees received are held in trust by the clerk, who disburses them in accordance with the directions of the chief judge for such uses and purposes as will benefit the bench and the bar.

Every member of the bar of the Tenth Circuit Court of Appeals who is in good standing and who declares his intention in writing is eligible to become a member of the Judicial Conference of the Tenth Circuit. Membership in the Judicial Conference entitles an individual to attend the circuit's annual meeting, which is held for the dual purposes of considering the business of the courts and recommending ways to improve the administration of justice within the circuit.

III. Procedural Steps in Appealing a Case to the United States Court of Appeals for the Tenth Circuit

A. An Overview

The Judicial Code authorizes the Supreme Court and each of the circuit and district courts to prescribe rules for the conduct of its business. In addition, the Federal Rules of Appellate Procedure, promulgated by the Supreme Court pursuant to express statutory authorization, specify that each court of appeals "may from time to time make and amend rules governing its prac-

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56 28 U.S.C. § 333 (1970); 10th Cir. R. 19. A registration fee of $25 to defray expenses is collected from every member attending any session of the Conference.
58 Id. § 2072.
In accordance with this authorization, the U.S. Court of Appeals for the Tenth Circuit has promulgated its own Rules of Court. These rules, as amended through October 24, 1974, are set out in full in Appendix C to this article. The Tenth Circuit's Rules of Court, together with the Federal Rules of Appellate Procedure, provide the procedural apparatus for appealing a case to the U.S. Court of Appeals for the Tenth Circuit.

A brief outline of each procedural step in the appellate process, including the requirements of the applicable Federal and Tenth Circuit Rules, can be found in the columnar chart appended to this article and designated Appendix A.

B. Step by Step Analysis

1. Filing the Notice of Appeal

When an appeal is permitted as of right from a district court to a court of appeals, the appellant must file a notice of appeal with the clerk of the district court. The notice of appeal must designate the party (or parties) taking the appeal, the judgment or order appealed from, and the court to which the appeal is taken.

In a civil appeal permitted as of right, the notice of appeal must be filed within 30 days from the date of entry of the order or judgment from which the appeal is taken. If the United States or a federal officer is a party, the notice of appeal may be filed by any party within 60 days of such entry. Assuming that a party has filed a timely notice of appeal, any other party to the action desiring to appeal has 14 days from the date of the original notice within which to file a notice of appeal.

In criminal cases the notice of appeal must be filed within 10 days from the entry of the district court's order or judgment. When the government is authorized by statute to appeal in a criminal case, it has 30 days after entry of judgment in which to file a notice of appeal.

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42 The local Rules are available at the Clerk's Office, Room 469, in the Federal Court House in Denver. The Tenth Circuit is planning to publish a handbook as a guide for lawyers practicing in the Tenth Circuit. The handbook should be available by the summer or fall of 1975.
43 In general, the district court's decision must be final before an appeal can be taken. For other prerequisites to appealability, see Section I. B. supra.
44 Fed. R. App. P. 3(a), (c).
45 Id. 4(a).
In all cases, the clerk of the district court will notify opposing counsel that an appeal has been taken by mailing a copy of the notice of appeal to counsel of record for each party to the litigation. In addition, the Tenth Circuit Rules require the clerk of the district court to mail a copy of the notice of appeal, along with the docket sheet, to the clerk of the court of appeals.66

It is important to remember that filing the notice of appeal is a jurisdictional requirement. Thus, an appellant's failure to file a timely notice of appeal affects the validity of the substantive appeal. Although the court of appeals, upon good cause shown, may extend the time period for performing a procedural act, it generally will not enlarge the time prescribed for filing a notice of appeal.67

If there is no appeal as of right, a party may nevertheless seek appellate review by filing a petition for permission to appeal. The petition must be filed with the clerk of the court of appeals within 10 days after entry of the district court's order and it must include proof of service on all other parties to the action in the district court.68 Appeals by permission are authorized for appeals from interlocutory orders in which the district court has certified that an immediate appeal would materially advance the ultimate termination of the litigation. The petition for permission to appeal must contain: (a) a statement of the reasons why there is a substantial basis for difference of opinion on the questions presented; (b) a statement of the reasons why an immediate appeal is imperative; and (c) a copy of the order from which the appeal is sought.69 Within 7 days after service of the petition, an adverse party may file an answer in opposition. The petition and answer are referred to the Interlocutory Appeals and Writs Panel, a committee composed of three circuit judges who review the conflicting arguments and determine whether an immediate appeal would be expeditious.

There is a similar procedure for appeals by allowance in bankruptcy proceedings.70 The appellant must file a petition for allowance with the clerk of the court of appeals within the time

66 10TH CIR. R. 5.
67 FED. R. APP. P. 26(b). Note, however, that the district court may extend the time for filing the notice of appeal (for a period not to exceed 30 days) if a party is able to show "excusable neglect." Id. 4(a), (b).
68 Id. 5(a).
69 See 28 U.S.C. § 1292(b) (1970) and Section I. B. supra.
prescribed for filing a notice of appeal. An adverse party may file an answer in opposition within 7 days after service of the petition.\textsuperscript{71}

To obtain appellate review of a tax court decision, appellant must file a notice of appeal with the clerk of the tax court within 90 days after entry of the tax court’s decision. If a timely appeal has been filed by one party, any other party to the proceeding may file a notice of appeal within 120 days after the decision of the tax court has been rendered.\textsuperscript{72}

An appellant may seek review or enforcement of an agency order by filing a petition for review of such order with the clerk of the court of appeals within the time period prescribed by the applicable statutes. The petition must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the particular relief requested. After appellant’s application has been filed, a respondent has 20 days within which to file an answer in opposition to the petition. If the petition seeks to enforce an agency order and the respondent fails to file an answer within the prescribed 20-day period, judgment will be awarded for the relief prayed.\textsuperscript{73}

2. Filing Bond for Costs on Appeal

In all civil cases, unless exempted by law, the appellant must file with the clerk of the district court either a $250 bond for costs on appeal, cash, or other equivalent security. The purpose of the bond is to secure the payment of costs if the appeal is ultimately dismissed or the judgment of the lower court is affirmed. Such bond or equivalent security must be filed by appellant at the time he files his notice of appeal.\textsuperscript{74}

In a case where appellant has petitioned the court of appeals for permission to appeal, a bond for costs must be filed within 10 days after the order granting permission to appeal.\textsuperscript{75} Similarly, when the circuit court grants an appellant’s application for a stay pending appeal, it may condition such grant upon the appellant’s filing a bond or other appropriate security in the district court.\textsuperscript{76}

\textsuperscript{71} Fed. R. App. P. 5(b), (c).
\textsuperscript{72} Id. 13.
\textsuperscript{73} Id. 15.
\textsuperscript{74} Id. 7.
\textsuperscript{75} Id. 5(d), 6(d).
\textsuperscript{76} Id. 8.
3. Ordering the Transcripts

Within 10 days after filing the notice of appeal, appellant must order from the court reporter a transcript of those parts of the proceedings which he deems necessary for inclusion in the record. If the entire transcript is not to be included, appellant must file and serve on the appellee a statement of the issues which he intends to present on appeal and a description of the parts of the transcript which he intends to include in the record. If the appellee wishes to designate other parts of the transcript for inclusion in the record, he must file (within 10 days after receiving appellant's designations) a statement of the additional parts of the transcript which he wishes to include. At the time of ordering, the parties must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

The court urges the parties to order the necessary parts of the transcript immediately after filing the notice of appeal and, if at all possible, to enter into stipulations that will avoid or reduce the size of the transcript on appeal. Court reporters are required to give preference to the preparation of transcripts in criminal cases. However, in any case, if a party files a motion for extension of time to file the record based on the ground that the reporter's transcript has not been completed, the court of appeals will not entertain the motion unless it is supported by an affidavit by the reporter setting forth the pending cases in which other transcripts have been ordered from the reporter, the estimated dates on which such transcripts will be completed, and the reasons why an immediate extension is imperative. The affidavit must also include a statement that the district judge who tried the case has approved the granting of such an extension.

4. Filing a Docketing Statement

Within 30 days after appellant has filed a notice of appeal, he is required to file a docketing statement with the clerk of the court of appeals. The docketing statement must contain the following: (1) a statement of the nature of the proceeding; (2) the date of the judgment or order sought to be reviewed and the date of filing of the notice of appeal; (3) a concise statement of the relevant facts of the case; (4) the questions presented on appeal;

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77 Id. 10(b).
78 Id. See Rules 10(c) and (d) for the requisite procedures to follow when a transcript is either unavailable or deemed to be unnecessary by the parties.
79 10TH CIR. R. 12.
(5) a list of authorities in support of appellant's contention (but no argument on the law); and (6) a statement as to whether appellant desires oral argument. Appellant should attach to his docketing statement a copy of the judgment or order sought to be reviewed, a copy of any opinion or findings, a copy of the docket sheet from the lower court, and a copy of the notice of appeal. The docketing statement should be submitted along with the $50 filing fee required by the Rules of Court.

The Tenth Circuit is presently the only federal appellate court which requires submission of a docketing statement in advance of the filing of briefs. The docketing statement has been effective in enabling the court to maintain control over all pending cases and to identify at the initial stages of the appellate process which cases involve complex or multiple issues and which merit less of the court's time and attention. In addition, the docketing statement facilitates early identification of appeals involving jurisdictional defects such as non-appealable orders, untimely notices of appeal, or lack of statutory jurisdiction in the trial court.

5. Filing the Record on Appeal

The record on appeal is comprised of the original papers and exhibits filed in the district court, the transcript of the trial court proceedings, and a certified copy of all docket entries in the case. These papers and documents are compiled by the clerk of the district court and then transmitted to the clerk of the court of appeals. Transmission of the original record is effected when the clerk of the district court forwards the record to the court of appeals with a notation of the date of transmittal and an inscription on the record of the word "original."81

The record on appeal must be transmitted within 40 days after the filing of the notice of appeal. For good cause shown, the district court may extend the time for transmission of the record if the request for extension is made within the time originally prescribed. However, the district court may not enlarge the transmittal time more than 90 days beyond the filing of the notice of appeal.82

If the appellant fails to cause timely transmission of the record, an appellee may file a motion in the circuit court to dismiss

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80 Id.
81 FED. R. APP. P. 10, 11.
82 Id. 11.
the appeal. Such motion must be accompanied by a certificate of the clerk of the district court showing the date and substance of the judgment or order appealed from, the date on which the notice of appeal was filed, and the expiration date for transmission of the record.\textsuperscript{83}

The Rules of Court for the Tenth Circuit require each volume of the record to provide an index of the documents contained therein. However, the record on appeal should not include preliminary papers such as notices of hearings, summonses, notices to take depositions, subpoenas, trial briefs, or certificates of service, unless such documents are in issue.\textsuperscript{84}

6. Calendar Assignment and Docketing the Appeal

Immediately after the docketing statements have been filed, they are reviewed by the staff attorneys for calendar assignment. After individually considering the depth and complexity of the issues presented, the staff attorneys confer with the clerk of the court and, under the supervision of the chief judge, assign each case to the appropriate calendar.\textsuperscript{85}

Although the criteria used in making calendar assignments are necessarily somewhat subjective, the following factors are generally taken into consideration: (a) the complexity and number of issues presented; (b) the novelty of the issues presented (\textit{i.e.}, whether the case is one of first impression in the Tenth Circuit); (c) the length of the record on appeal; (d) the number of parties and cross-appeals involved; and (e) the applicability of recent Supreme Court decisions.

Rule 9 of the Tenth Circuit Rules provides for four calendars, designated A, B, C, and D. The A Calendar is the court's general calendar. Appeals assigned to it generally proceed in accordance with the Federal Rules of Appellate Procedure. In general, Calendar A cases involve either multiple parties, multiple issues, or complex questions of law.

Calendar B is the court's accelerated calendar. In general, criminal appeals as well as civil appeals involving fewer or less complex issues are assigned to Calendar B. It should be emphasized, however, that the assignment of a particular case to the A or B Calendar is a procedural classification only and does not

\textsuperscript{83} Id. 12(c).
\textsuperscript{84} 10th Cir. R. 6.
\textsuperscript{85} See id. 9.
reflect an opinion by the court as to the importance or substantive merit of the issues raised.

If a particular case initially assigned to Calendar A or B appears to be appropriate for disposition on the briefs alone, the docket sheet is marked with a blue tag and, as soon as the briefs are filed, they are carefully examined in order to determine whether the case should be reassigned to Calendar C for submission without oral argument. The C Calendar is utilized for cases involving clear-cut issues for which oral argument would be superfluous. Cases initially assigned to Calendar C are submitted to a three-judge panel for a determination as to whether the Calendar C assignment was appropriate. The two Tenth Circuit panels which decide all Calendar C cases are the Direct Criminal Appeals on Briefs Panel and the Direct Civil Appeals on Briefs Panel. If the panel agrees with the Calendar C assignment, it then decides the case and issues a per curiam opinion.

Calendar D is the court's summary calendar. Cases are assigned to Calendar D if it appears from the docketing statement that the court lacks jurisdiction to entertain the appeal or if the issues raised are manifestly insubstantial. Appeals by state and federal prisoners from denials of post-conviction relief are generally assigned to Calendar D if summary affirmance or dismissal appears warranted. Each case assigned to Calendar D is reviewed by a staff attorney who prepares a memorandum setting forth the factual background, the issues, and a recommendation for disposition of the case. This memorandum, along with the record on appeal, any papers or motions filed, and a proposed per curiam opinion or order, are forwarded to the Rule 8 Panel, the three-judge committee which decides all Calendar D cases. After reading the record and the staff attorney's memorandum, the Rule 8 Panel may decide either that summary affirmance or reversal is appropriate, whereupon a per curiam opinion is filed or an order entered, or that the parties should prepare briefs and oral arguments, whereupon the case is reassigned to the A or B Calendar.

Certain types of matters are assigned to the "Miscellaneous Calendar." These include: (1) original petitions for extraordinary relief filed by prisoners (e.g., habeas corpus, mandamus); (2) petitions for review of interlocutory orders pursuant to section 1292(b); (3) cases in which the notice of appeal was not timely filed; and (4) bail or bond motions in cases which have not been docketed. Prisoner appeal cases which are manifestly defective are also assigned to the "Miscellaneous Calendar." These defects
generally involve either the absence of a certificate of probable cause, which is a condition precedent to an appeal by a state prisoner, or a denial of leave to proceed on appeal in forma pauperis or a certification by the district court that a federal prisoner's appeal is not taken in good faith. If the Rule 8 Panel determines that the substance of the prisoner's appeal is lacking in merit, then a staff attorney prepares an order denying the prisoner relief. However, if any member of the Rule 8 Panel determines that relief should not be summarily denied, the prisoner's case is transferred to the D Calendar.

As soon as a case has been assigned to any calendar, the parties are notified of the assignment by a letter from the clerk of the court. In Calendar A and B cases, the clerk's letter advises counsel of the applicable time periods for filing briefs, reproducing the record, and, in some Calendar A cases, preparing an appendix. In cases assigned to Calendar D, counsel are advised by letter that the court is considering summary affirmance or dismissal and that the parties have been given 15 days within which to file a memorandum in support of or in opposition to such summary action.

After the docketing statement has been reviewed, the record on appeal has been filed, and the docket fee ($50) has been paid, an appeal is docketed under the title given to the action in the district court, with the name of the appellant identified as such. A case may be docketed promptly upon receipt of the record from the district court even though the clerk has not yet received either the docket fee or the docketing statement. In these cases, the parties are so notified and, if the docket fee and docketing statement are not received within 40 days from the filing of the notice of appeal, the clerk may dismiss the cause without further notice.

7. Filing Motions

Within 10 days after appellant has filed the record on appeal, under Rule 8 an appellee may file a motion to dismiss or a motion to affirm, supported by appropriate argument and authorities.
A successful motion to dismiss must show that the circuit court lacks jurisdiction to entertain the appeal. Because its purpose is to indicate jurisdictional defects, a motion to dismiss may be filed at any time. However, a motion to affirm must be filed within the 10-day period. To be successful, it must show that the question raised on appeal is so manifestly insubstantial that further argument is unwarranted. The appellant has 15 days after receipt of appellee's motion within which to file a response. All of the moving papers are reviewed by the Rule 8 Panel, which enters an order either granting or denying the requested motion.

Motions for a stay or injunction pending appeal must ordinarily be made in the first instance in the district court. If relief in the district court is not practicable or if the district court has denied the application for stay, a motion for such relief may be filed with the clerk of the court of appeals. The motion must include the relevant parts of the record as well as a statement of the facts relied upon, the specific relief requested, and the reasons for such request. If the facts are subject to dispute, the motion must be accompanied by supporting affidavits. A response may be filed in opposition within 7 days after service of the motion.

The motion and response will be considered by the Emergency Hearings and Stays Panel, a committee composed of three circuit judges who determine whether injunctive relief pending appeal is appropriate. If an injunction is granted, the panel may condition such relief upon the filing of a bond or equivalent security.

In criminal cases, a convicted defendant may file a motion for release pending appeal. Again, the motion must be made in the first instance in the district court. If the district judge refuses to grant the release, he must state in writing the reasons for his decision. Thereupon, the court of appeals will consider the motion for release based upon the papers, affidavits, and portions of the record which the parties present. In these cases, however, the summary affirmance or dismissal. However, when a jurisdictional defect or a frivolous appeal is not apparent either from the docketing statement or from the record, a motion under Rule 8 can be used to identify such defects. It should be added though that, because of the initial screening procedure, the court rarely grants a Rule 8 motion to affirm in a Calendar A or B case and such motions are generally not viewed with favor.

1 10TH Cir. R. 8.
2 Id. 9. See the applicable procedure for cases assigned to Calendar D under Section III. B. 6. supra.
3 Fed. R. App. P. 8, 27. The court generally will not allow oral argument on a motion.
4 Id. 8, 18.
defendant bears the burden of establishing that he will not flee or pose a danger to the community.\textsuperscript{95}

Most other motions filed with the clerk of the court of appeals are reviewed by the Clerk’s Committee, which is comprised of two circuit judges. However, the clerk of the court is given discretionary authority to act upon unopposed procedural motions requesting (a) to extend the time for performing an act; (b) to make corrections in briefs or papers; (c) to supplement the record; (d) to consolidate appeals; (e) to extend the time for filing a petition for rehearing (not to exceed 15 days); (f) to file briefs in excess of the maximum number of pages permitted; and (g) to substitute parties. The clerk's action on such motions is subject to review by the circuit court.\textsuperscript{96} However, unless otherwise ordered by the court, routine procedural orders are deemed entered at the time that the nature of the order and the name of the clerk are written on the docket sheet.\textsuperscript{97}

8. Writing and Filing Briefs

In Calendar A cases appellant must serve and file his brief within 40 days after the filing of the record. The appellee then has 30 days after service of appellant's brief within which to serve and file his own brief. Appellant may serve and file a reply brief within 14 days after service of appellee's brief.\textsuperscript{98}

In Calendar B cases, the appellant must file his brief within 21 days after filing the record on appeal. The appellee has 21 days after service of the appellant's brief within which to file a brief. Appellant's reply brief may be filed within 15 days after service of the appellee's brief.\textsuperscript{99}

Since cases are not reassigned to Calendar C until after the briefs have been filed, counsel in these cases follow the briefing procedures applicable to Calendar B.

No briefs are filed in cases assigned to the D Calendar since these matters are subject to summary disposition. However, the parties are advised that, within 15 days, they may submit a memorandum addressing the merits either in favor of or in opposition to such summary action.\textsuperscript{100}

\textsuperscript{95} Id. 9.
\textsuperscript{96} 10TH CIR. R. 11.
\textsuperscript{97} Id. 13.
\textsuperscript{98} Id. 9. It should be noted here that, when service is by mail 3 days are added to the prescribed time periods. FED. R. APP. P. 26(c).
\textsuperscript{99} 10TH CIR. R. 9.
\textsuperscript{100} Id.
In the Tenth Circuit's Rules of Court, the parties filing briefs in A and B Calendar cases are advised that they should have the briefs typed on 8½" x 11" opaque, unglazed paper rather than produced by typographic printing. This reduces the parties’ costs without detracting from the substance of the appeal. The Federal Rules of Appellate Procedure require typed briefs to be double spaced and not to exceed 70 pages in length (35 pages for the reply brief). If covers are used on the briefs, the cover of the appellant’s brief should be blue; that of the appellee’s, red; that of an intervenor or amicus curiae, green; that of any reply brief, grey; and that of an appendix, white.

The Tenth Circuit requires the preparation of an appendix only in Calendar A cases in which the record on appeal exceeds 300 pages. The appendix is a condensation of the record. It must be filed simultaneously with appellant’s brief and should contain the following: (1) the docket entries in the proceedings below; (2) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order, or decision of the lower court; and (4) any other parts of the record to which the parties wish to direct the attention of the court. If the parties cannot agree as to the contents of the appendix, within 10 days after the date on which the record is filed, the appellant must serve on the appellee a designation of the parts of the record which he intends to include in the appendix along with a statement of the issues intended for review. If the appellee wishes to include other parts of the record in the appendix, he has an additional 10 days within which to serve his own designation upon the appellant. Unless the parties otherwise agree, the cost of producing the appendix is to be paid initially by the appellant unless the parts of the record designated for inclusion by the appellee are unnecessary for a determination of the issues presented.

Except in those Calendar A cases where the record exceeds 300 pages, appellant’s brief in all Calendar A and B cases is to be submitted solely with the record on appeal and the appellant is in fact prohibited from filing a condensed appendix except with the permission of the circuit court. This procedure should be

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101 Id.  
102 FED. R. APP. P. 28, 32.  
103 10TH CIR. R. 10(b).  
104 FED. R. APP. P. 30(a).  
105 Id. 30(b). If there is a dispute on this matter, it may be submitted to the Clerk's Committee for resolution.  
106 10TH CIR. R. 9, 10.
changed. Since reproduction of the record is unnecessarily costly, and since reading the record monopolizes an unwarranted amount of the judge's time, the Tenth Circuit should require the parties to condense the record to the bare minimum necessary for a complete understanding of the questions raised on appeal. This would serve two purposes: (1) narrowing the appeal to the essential issues, and (2) conserving a limited commodity—the judge's time.

The organization and contents of the briefs are of paramount importance since a good brief is potentially the most effective means of persuading the court. All briefs must contain a table of contents, a table of cases, a statement of the issues, a statement of the case, an argument, and a short conclusion stating the precise relief sought. To be effective, a good brief must also be persuasive and succinct, with an accurate and objective account of the relevant facts as well as a clear and well-reasoned discussion of each point of law, supported by appropriate references to the record. Only the cases which are clearly relevant should be cited in the brief. Reference to several good cases, including a discussion of the facts to show how they are analogous, is far more persuasive than a profusion of citations. Quotations should be used sparingly and only when both the quotation itself and the case from which it is taken are clearly on point. Except in unusually complicated cases, briefs which present numerous issues run the risk of becoming too diffuse. The brief writer should always aim for the jugular, seeking with clarity and simplicity the precise arguments which will be dispositive of the case.

9. Oral Argument

The Clerk of the Court of Appeals for the Tenth Circuit will notify the parties well in advance of the time and place for oral argument. Most oral arguments are heard in Denver, which is the seat of the Tenth Circuit. On occasion, however, the court convenes in other cities within the circuit, including Oklahoma City, Wichita, Cheyenne, and Santa Fe.107

In Calendar A cases, the appellant and the appellee are each allowed 30 minutes for oral argument.108 In Calendar B cases, each side is allowed 15 minutes for argument.109 No oral argument is allowed in either C or D Calendar cases.

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109 10th Cir. R. 9(b)(6).
The oral argument is an important part of the appellate process. Although it serves a somewhat different purpose, the oral argument should complement the written brief. The function of the brief is to provide a lucid and well-reasoned discussion of the facts and the law. The function of the oral argument is to demonstrate to the court that the outcome which counsel advocates is legally sound.

Appellant's opening statement should include the nature of the case, the crucial issue or issues on appeal, and the precise nature of the relief sought. The opening statement must strive to catch the judges' attention in the first few minutes so as to lay the groundwork for a persuasive presentation of the substantive argument. Appellant should then state the relevant facts objectively and succinctly, including only the evidence which specifically pertains to the issues to be argued. The points of law discussed should be narrowed to those which are essential to the questions presented or dispositive of the appeal.

The order and content of appellee's argument must be flexible since he does not know in advance what points the appellant will cover and what the reaction of the judges will be to appellant's argument. Appellee may wish to commence his argument by answering some questions which the court had addressed to the appellant and to which appellant's answers were at variance with appellee's views. In addition, appellee may wish to restate the important facts of the case if appellant's statement of the facts was inaccurate or distorted in any way.

In delivering an oral argument, counsel for both the appellant and the appellee should utilize the techniques of good public speaking, addressing the court clearly, loudly, and at an intelligible pace. Each lawyer should have such complete command of the facts, the record, and the law of the case that his presentation will allow him to maintain constant flexibility, depending upon the frequency and direction of the court's questioning.

10. The Court's Opinion

The court does not write an opinion in every case. Disposition without opinion does not mean that the case is considered unimportant. It does mean, however, that no new points of law were involved in making the decision.110

The Tenth Circuit writes nearly 700 opinions per year.111 Of

110 Id. 17(a).
111 See Appendix B infra.
these, the opinions selected for publication in the Federal Re-
porter are only those which involve: (a) cases of first impression;
(b) conflicts with the decisions rendered by other federal appel-
late courts; (c) interpretation of decisions of the Supreme Court
of the United States or the highest court of a state; (d) new
federal constitutional or statutory issues; or (e) diversity of citi-
zenship cases in which a new or unique proposition of state law
has been expounded.\textsuperscript{112}

The Tenth Circuit does not publish its opinions either when
the decision reached is dependent upon the particular facts pre-
sented and involves no legal issues not previously decided (by the
Tenth Circuit or the Supreme Court of the United States) or
when the outcome (in a diversity case) is based upon established
state law.\textsuperscript{113} The Tenth Circuit has made a concerted effort to
publish only those opinions which would make a contribution to
the vast expanse of legal literature. This is in accord with the 1972
recommendation of the Judicial Conference of the United States
which requested the circuit courts to establish narrow guidelines
for the selection of opinions warranting publication.\textsuperscript{114}

A recent amendment to the Tenth Circuit’s Rules of Court
provides for mandatory publication of the court’s opinions in
cases where an opinion has previously been published by a dis-
trict court, an administrative agency, or the tax court. However,
the judges have the discretionary authority in such cases to desig-
nate for publication only the court’s final judgment, without pub-
lishing the reasoning of the court.\textsuperscript{115}

The panel of judges which heard and decided a particular
case will determine whether the opinion written in that case is to
be designated “Not For Routine Publication.” Prior to the adop-
tion of a recent amendment to the Tenth Circuit Rules of Court,
unpublished opinions were not allowed to be cited or advanced
as precedent in any proceedings before the Tenth Circuit. How-
ever, the amendment to the Rules permits these unpublished
opinions to be cited as precedent, even though they are unre-
ported and therefore not uniformly available to all of the par-
ties.\textsuperscript{116}

\textsuperscript{112} 10TH CIR. R. 17(d).
\textsuperscript{113} Id. 17(e).
\textsuperscript{114} See charts reproduced in Appendix B infra showing the number of published and
unpublished opinions written by the Tenth Circuit.
\textsuperscript{115} 10TH CIR. R. 17(f), adopted by the court on October 24, 1974.
\textsuperscript{116} 10TH CIR. R. 17(c) was amended by the court on October 24, 1974.
In this author's opinion, the amendment to allow citation of unpublished opinions is commendable. However, it seems manifestly inequitable for certain parties (for example, United States attorneys) to have greater access to the increasing number of unpublished opinions decided every month by the Tenth Circuit. One proposal to correct this inequity and, at the same time, to maintain the Tenth Circuit's standards for publication would be to allow the judge or panel of judges that has written an opinion designated "Not For Routine Publication" to write a brief synopsis or syllabus of that decision. Only the synopsis would be sent to West Publishing Company for publication in the Federal Reporter. In this manner, the unpublished opinions would be indexed both by chronological order and by subject matter. Since the syllabus would occupy merely one-half or one-quarter of a page in the Federal Reporter, the circuit would be maintaining its policy of publishing only those opinions which the court considered necessary for publication while enabling counsel in subsequent lawsuits to find reference to all of the Tenth Circuit's decisions (including those with unpublished opinions) in the normal course of legal research. If the syllabus of a case appeared to be on point, an attorney could request the clerk of the court to send him a copy of the unpublished opinion.

If adopted, this proposal would serve (a) to equalize the access to this court's unpublished opinions; (b) to establish a logical system of indexing the court's unpublished opinions; and (c) to maintain the Tenth Circuit's philosophy of limiting the publication of opinions to those deserving the special attention of the Bench and Bar.

11. Entry of Judgment

Following receipt of the circuit court's opinion, the clerk prepares, signs, and enters the judgment in the docket. On the date judgment is entered, the clerk mails a copy of the opinion and judgment to all parties, with notices of the date on which the judgment was entered.117

Unless otherwise provided by law, if a money judgment in a civil case is affirmed, the interest allowed by law is payable from the date the judgment was entered in the district court. If the district court's decision is modified or reversed on appeal, the amount of interest allowed will be contained in the instructions.

to the district court at the time of the issuance of the mandate.\textsuperscript{118}

12. Bill of Costs

Except as otherwise provided by law, if an appeal is dismissed or the judgment is affirmed, costs are taxed against the appellant, unless otherwise agreed by the parties or ordered by the court. If the lower court's judgment is reversed, costs are taxed against the appellee unless otherwise ordered.\textsuperscript{119}

The costs of printing or producing necessary copies of briefs, records, and appendices are taxable at a rate equal to the actual cost, but not higher than $9.50 per page of standard typographic printing or $4.50 per page of offset printing or $.20 per page of xerox or similar process. Taxable costs are authorized for 15 copies of an appendix and 30 copies of any brief. If additional copies are needed to serve upon counsel, the cost of these additional copies will be taxed at $.05 per page.\textsuperscript{120}

A party desiring such costs to be taxed must file an itemized and verified bill of costs within 14 days after the entry of judgment. The bill of costs must contain a printer's itemized statement of charges, if any, as well as proof of service on opposing counsel.\textsuperscript{121}

13. Petition for Rehearing

Within 14 days after the entry of judgment, a party may file a petition for rehearing. The petition must state with particularity the points of law or fact overlooked or misapprehended by the circuit court.\textsuperscript{122}

No answer to a petition for rehearing will be received unless requested by the court. Oral argument in support of the petition is generally not permitted. If a petition for rehearing is granted, which is infrequent, the court may restore the case to the calendar for reargument or resubmission.\textsuperscript{123}

A petition for rehearing by the court en banc must also be made within 14 days after entry of judgment. The Tenth Circuit will not entertain a petition to hear the case en banc unless a judge in regular active service or a judge who was a member of

\textsuperscript{118} Id. 37.

\textsuperscript{119} Id. 39(a). Any dispute as to the payment of costs may be submitted to the panel of judges who heard oral argument in the case.

\textsuperscript{120} 10\textsuperscript{th} Cir. R. 18.

\textsuperscript{121} Fed. R. App. P. 39(c); 10\textsuperscript{th} Cir. R. 18.

\textsuperscript{122} Fed. R. App. P. 40(a).

\textsuperscript{123} Id.
the panel that rendered the decision requests the court to vote on whether to grant a hearing en banc.\textsuperscript{124}

A hearing en banc will be granted only when a majority of the circuit judges in regular active service desire to hold such a hearing. In general, hearings en banc are not favored and ordinarily will not be ordered except when consideration by the full court is necessary to maintain uniformity of its decisions or when the case involves a question of exceptional importance.\textsuperscript{125}

14. Issuance of Mandate

The appellate court's mandate issues \textit{21 days} after the entry of judgment. A timely petition for rehearing will stay the mandate until disposition of the petition. If the petition is denied, the mandate will issue \textit{7 days} after entry of the order denying the petition.\textsuperscript{128}

The mandate is essentially a transmittal letter sent from the Clerk of the Tenth Circuit to the clerk of the lower court, advising the lower court to carry out the instructions of the appellate court. The mandate contains a copy of the judgment entered, a copy of the Tenth Circuit's opinion, and any directions as to the payments of costs. The issuance of the mandate effectuates the judgment entered by the circuit court.

15. Motion for Stay of Mandate

In any case in which the circuit court's final judgment or decree is subject to review by the Supreme Court on writ of certiorari, a party may seek a stay of the mandate pending his petition for certiorari to the Supreme Court.\textsuperscript{127} The motion for stay may be granted by the circuit court or by a Justice of the Supreme Court, but the stay may be conditioned upon the giving of a bond or other security. If the aggrieved party fails to apply for a writ of certiorari or fails to obtain an order granting his application or fails to make his plea good in the Supreme Court, he may be answerable for all damages and costs sustained by the other party by reason of the stay.\textsuperscript{128}

Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the mandate will issue immediately.\textsuperscript{129}

\textsuperscript{124} Id. 35(b), (c).
\textsuperscript{125} Id. 35(a).
\textsuperscript{127} Id. 41(a).
\textsuperscript{129} Id.
\textsuperscript{129} Fed. R. App. P. 41(b).
Because of the increasingly large number of unsuccessful petitions for certiorari in criminal cases, the Tenth Circuit's Rules provide that the mandate will not be stayed in criminal cases unless the appellant makes a showing that his petition for certiorari is neither frivolous nor filed merely for a delay. The Tenth Circuit employs a similar presumption against the stay of mandate in connection with affirmed orders of the National Labor Relations Board and in other cases where the circuit court believes that the only effect of a petition for certiorari to the Supreme Court is pointless delay.  

16. Petition for Writ of Certiorari to the United States Supreme Court

A party to a civil case may file a petition for writ of certiorari with the Clerk of the U.S. Supreme Court at any time within 90 days after the entry of judgment. In criminal cases, the time period for filing the petition is 30 days after the entry of judgment.

For further information concerning the procedural requirements for appealing a case to the Supreme Court, the reader is referred to the Rules of Court of the Supreme Court of the United States, which is available at the Clerk's Office in Washington, D.C. as well as in many law libraries.

IV. CONCLUSION

As indicated in the foregoing pages of this article, an attorney appealing a case to the United States Court of Appeals for the Tenth Circuit must be familiar with the requirements of the Federal Rules of Appellate Procedure as well as the Rules of Court of the Tenth Circuit. The summarization and consolidation of the applicable federal and local rules contained herein as well as the procedural time chart (set out in Appendix A) are intended to serve as a workable guide for the practitioner.

128 10TH CIR. R. 16.
130 U.S. SUP. CT. R. 22.
131 Michael J. Rodak, Jr. is presently Clerk of the United States Supreme Court.
# Appendix A

## Outline of the Procedural Steps in Taking an Appeal to the United States Court of Appeals for the Tenth Circuit

<table>
<thead>
<tr>
<th>Procedural Steps</th>
<th>Applicable Facts</th>
<th>Time Limit</th>
<th>Number of Copies to File</th>
<th>Other Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Appeal</td>
<td>Civil Cases</td>
<td>30 days from entry of judgment</td>
<td>Original + necessary copies for mailing</td>
<td>File with Clerk of District Court</td>
</tr>
<tr>
<td></td>
<td>- When federal government is not a party</td>
<td>60 days from entry of judgment</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>- When federal government is a party</td>
<td>14 days after filing of first notice of appeal</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>Criminal Cases</td>
<td>10 days from entry of judgment</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>- Appeal by defendant</td>
<td>30 days from entry of judgment</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>- Appeal by U.S. when authorized by statute</td>
<td>14 days after filing of first notice of appeal</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>Tax Court Cases</td>
<td>90 days from entry of decision</td>
<td>&quot;</td>
<td>File with Clerk of Tax Court</td>
</tr>
<tr>
<td></td>
<td>- Appellant</td>
<td>120 days from entry of decision</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>- Appeal by another party</td>
<td>90 days from entry of decision</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Petition for Review</td>
<td>Seeking Reversal or Enforcement of Agency Orders</td>
<td>Within time prescribed by law</td>
<td>Original copies for all respondents (to be served by clerk)</td>
<td>File with Clerk of Court of Appeals with proof of service</td>
</tr>
<tr>
<td></td>
<td>- Response to Petition</td>
<td>20 days after filing petition</td>
<td>Original + necessary copies</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>Motion for Leave to Intervene</td>
<td>30 days after filing of petition</td>
<td>&quot;</td>
<td>&quot; Must contain concise statement of interest of moving party</td>
</tr>
<tr>
<td><strong>PETITION FOR PERMISSION TO APPEAL</strong></td>
<td>Appeal from an Interlocutory Order Under 28 U.S.C. § 1292(b)</td>
<td>10 days from entry of order</td>
<td>Original + 3 copies (Court may require additional copies)</td>
<td>Append copy of order</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-----------------------------------------------------------</td>
<td>----------------------------</td>
<td>----------------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td><strong>PETITION FOR ALLOWANCE</strong></td>
<td>Appeal from Bankruptcy Proceedings</td>
<td>30 days from entry of order</td>
<td>&quot;&quot;</td>
<td>&quot;&quot;</td>
</tr>
<tr>
<td><strong>BOND FOR CASES ON APPEAL</strong></td>
<td>Civil Cases</td>
<td>30 days from entry of judgment</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ORDERING A TRANSCRIPT</strong></td>
<td>Interlocutory and Bankruptcy Appeal</td>
<td>10 days after granting permission to appeal</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DOCKETING STATEMENT</strong></td>
<td>All Civil and Criminal Cases</td>
<td>Within 10 days after filing notice of appeal</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>RECORD ON APPEAL</strong></td>
<td>All Cases</td>
<td>Original filed 40 days after filing of notice of appeal; 3 copies of record to be filed with appellant’s brief</td>
<td>Original + 3 copies (should contain original papers, exhibits, transcript and docket entries)</td>
<td>Original record transmitted by Clerk of the District Court to Clerk of Court of Appeals (Clerk reproduces record in forma pauperis appeals.)</td>
</tr>
<tr>
<td><strong>CALENDER ASSIGNMENTS</strong></td>
<td>Calendar A: Involves numerous and/or complex issues and/or parties</td>
<td></td>
<td></td>
<td>[Clerk of Court of Appeals sends notifications of Calendar assignment to all parties]</td>
</tr>
</tbody>
</table>

Note: Parties are urged to order a transcript immediately after filing the notice of appeal.
### MOTIONS

**Calendar B:** Accelerated calendar (for direct criminal appeals and less complex civil cases)

**Calendar C:** Submission on briefs without oral argument

**Calendar D:** Summary disposition

#### MOTIONS (10th Cir. R. 8)

- **Motion to Affirm or Dismiss**
  - 10 days after record on appeal filed
  - Original + 4 copies
  - Proof of service on 8-1/2" x 11" unglazed paper

- **Response in opposition to motion to affirm or dismiss**
  - 15 days from receipt of motion
  - "
  - "

#### (F.R.A.P. 8, 27)

- **Motion for Stay Pending Appeal**
  - Within a reasonable time
  - Must first request relief in District Court (Also attach parts of record plus affidavits if necy.)

- **Response to motion for stay**
  - 7 days after service of motion (may be shortened or extended by Court)
  - "
  - "

#### (F.R.A.P. 9)

- **Motion for Release Pending Appeal**
  - Within a reasonable time
  - [May be decided by Clerk of Court of Appeals, if unopposed]

- **Procedural Motions** (to substitute parties, correct briefs, supplement record, extend time, etc.)
  - "
  - "
  - "
  - [May be decided by Clerk of Court of Appeals, if unopposed]

### BRIEFS

**Calendar A:**

- **Appellant**
  - 40 days after filing of record
  - Original + 14 copies (+ 3 copies of record or 10 copies of appendix)
  - Need appendix if over 300 pages
  - Brief not to exceed 70 pages on 8-1/2 x 11 paper—Proof of service
    - "
- **Appellee**
  - 30 days after service of appellant’s brief
  - "
- **Reply**
  - 14 days after service of appellee’s brief
  - 8-1/2 x 11 paper—proof of service—not to exceed 35 pages

**Calendar B and C:**

- **Appellant**
  - 21 days after filing of record
  - Original + 9 copies (+ 3 copies of record)
  - Not to exceed 70 pages
- **Appellee**
  - 21 days after service of appellant’s brief
  - "
- **Reply**
  - 15 days after service of appellee’s brief
  - Not to exceed 35 pages

---

*Proof of service on 8-1/2" x 11" unglazed paper.*
Calendar D:
- Appellant (memorandum opposing summary action)
- Appellee (memorandum in support of summary action)

ORAL ARGUMENT
(F.R.A.P. 34)
(10th Cir. R. 9)

Calendar A 30 minutes per side for argument
Calendar B 15 minutes per side for argument

OPINION AND ENTRY
All Cases
(10th Cir. R. 17)
(F.R.A.P. 36)

VERIFIED BILL
All Civil Cases
OF COSTS
Filed by successful party
Same no. as no. of briefs filed

PETITION FOR
All Cases
REHEARING
(F.R.A.P. 40)

ISSUANCE OF
Cases in Which Petition
MANDATE
for Rehearing Denied

All Other Cases

MOTION FOR STAY
Civil Cases
OF MANDATE
(F.R.A.P. 41)
(10th Cir. R. 16)

Criminal Cases

PETITION FOR WRIT
Civil Cases
OF CERTIORARI IN
U.S. SUPREME COURT
(28 U.S.C., §2101)
(S.Ct. Rule 22)

Criminal Cases

8-1/2 x 11 paper—proof of service

Appellant may reserve part of time for rebuttal

[Clerk sends copy of opinion & notice of date of entry of judgment to all parties]

Must contain printer's itemized statement of charges + proof of service

Sent to Clerk of District Court with copy of judgment, Court's opinion and directive as to costs

Notice to all parties—must seek writ of certiorari in Supreme Court

Must show that petition for certiorari is not frivolous or filed merely for delay

File with Clerk of Supreme Court with proof of service
APPENDIX B

The charts and graphs printed below were prepared from statistical data compiled by the United States Administrative Office in accordance with its statutory duty to examine the dockets of the federal courts and to collate such statistical information.

I. TENTH CIRCUIT

CALENDAR YEAR FILING STATISTICS

<table>
<thead>
<tr>
<th>YEAR</th>
<th>APPEALS FILED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>729</td>
</tr>
<tr>
<td>1971</td>
<td>783</td>
</tr>
<tr>
<td>1972</td>
<td>900</td>
</tr>
<tr>
<td>1973</td>
<td>977</td>
</tr>
</tbody>
</table>

II. PERCENTAGE OF TOTAL TERMINATIONS DISPOSED OF AFTER HEARING OR SUBMISSION

FISCAL YEAR 1973

<table>
<thead>
<tr>
<th>CIRCUIT</th>
<th>TOTAL TERMINATIONS</th>
<th>DISPO AFTER HEARING OR SUBMISSION</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALL CIRCUITS</td>
<td>15,112</td>
<td>9,779</td>
<td>64.7</td>
</tr>
<tr>
<td>D.C.</td>
<td>1,288</td>
<td>601</td>
<td>46.6</td>
</tr>
<tr>
<td>FIRST</td>
<td>370</td>
<td>223</td>
<td>60.2</td>
</tr>
<tr>
<td>SECOND</td>
<td>1,462</td>
<td>958</td>
<td>65.5</td>
</tr>
<tr>
<td>THIRD</td>
<td>1,281</td>
<td>723</td>
<td>74.7</td>
</tr>
<tr>
<td>FOURTH</td>
<td>1,676</td>
<td>1,168</td>
<td>69.6</td>
</tr>
<tr>
<td>FIFTH</td>
<td>2,871</td>
<td>2,092</td>
<td>72.8</td>
</tr>
<tr>
<td>SIXTH</td>
<td>1,239</td>
<td>745</td>
<td>60.1</td>
</tr>
<tr>
<td>SEVENTH</td>
<td>1,088</td>
<td>630</td>
<td>57.9</td>
</tr>
<tr>
<td>EIGHTH</td>
<td>821</td>
<td>556</td>
<td>67.7</td>
</tr>
<tr>
<td>NINTH</td>
<td>2,140</td>
<td>1,347</td>
<td>62.9</td>
</tr>
<tr>
<td>TENTH</td>
<td>876</td>
<td>736</td>
<td>84.1</td>
</tr>
</tbody>
</table>
III. GROWTH OF APPEALS FILED

Source: Administrative Office of the United States Courts
TABLE IV
APPEALS COMMENCED, TERMINATED, AND PENDING IN THE U.S. COURTS OF APPEALS
FISCAL YEARS 1961 AND 1969 THROUGH 1974 BY CIRCUIT

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Fiscal Year</th>
<th>Percentage Change</th>
<th>1974 over 1961</th>
<th>1974 over 1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All circuits</td>
<td>4,204 10,248 11,662 12,700 14,535 15,629 16,436 291.0 5.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>577 1,094 1,127 1,205 1,168 1,360 1,743 159.9 -8.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>166 221 277 383 423 401 387 355.1 -3.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second</td>
<td>674 1,243 1,243 1,423 1,337 1,709 1,002 167.4 5.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third</td>
<td>334 671 1,053 1,100 1,179 1,197 1,216 264.3 1.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fourth</td>
<td>250 1,078 1,166 1,211 1,399 1,533 1,462 484.8 -7.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fifth</td>
<td>610 1,763 2,014 2,216 2,464 2,964 2,294 421.8 31.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sixth</td>
<td>340 866 911 1,015 1,248 1,261 1,335 292.6 5.9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seventh</td>
<td>328 712 954 902 999 1,157 1,096 331.1 -2.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eighth</td>
<td>246 440 589 713 796 821 955 304.5 21.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ninth</td>
<td>443 1,494 1,585 1,936 2,258 2,316 2,597 508.8 16.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenth</td>
<td>286 624 742 734 804 920 919 221.3 1.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terminated</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All circuits</td>
<td>2,375 7,849 10,599 12,360 13,828 15,112 15,422 300.5 2.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>510 896 1,025 1,013 1,001 1,280 1,319 152.9 1.7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>172 207 277 350 385 370 420 144.7 23.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second</td>
<td>663 932 1,177 1,127 1,057 1,482 1,189 293.5 -5.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third</td>
<td>309 596 702 1,105 1,201 1,281 1,216 293.5 -5.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fourth</td>
<td>242 1,092 1,127 1,050 1,391 1,676 1,701 398.0 -28.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fifth</td>
<td>509 1,506 1,891 2,289 2,662 2,871 2,713 433.0 -5.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sixth</td>
<td>324 947 1,004 1,001 1,098 1,239 1,207 272.5 -2.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seventh</td>
<td>220 593 806 792 882 1,086 1,110 246.9 1.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eighth</td>
<td>243 406 554 703 797 821 918 277.8 11.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ninth</td>
<td>470 1,016 1,534 1,735 1,968 2,160 2,552 442.8 19.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenth</td>
<td>279 621 812 759 850 876 957 243.0 9.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pending end of fiscal year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All circuits</td>
<td>3,237 11,138 10,612 9,937 9,074 10,505 10,670 362.9 9.7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>262 909 1,051 1,053 1,270 1,292 1,229 367.6 -5.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>51 97 97 130 166 197 194 221.6 -16.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second</td>
<td>306 916 1,105 997 601 928 911 136.0 -1.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third</td>
<td>169 513 866 861 839 755 755 346.7 -</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fourth</td>
<td>100 417 456 417 425 372 391 883.0 36.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fifth</td>
<td>400 1,284 1,407 1,434 1,636 1,728 1,730 473.5 31.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sixth</td>
<td>215 582 489 503 653 675 803 273.5 19.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seventh</td>
<td>188 612 665 775 892 921 957 506.1 -2.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eighth</td>
<td>130 369 404 414 415 415 492 270.5 18.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ninth</td>
<td>372 1,471 1,532 1,743 2,033 2,209 2,352 533.3 6.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenth</td>
<td>142 449 580 545 570 613 575 304.9 -6.7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### TABLE V

**CASES UNDER SUBMISSION MORE THAN THREE MONTHS AS OF JUNE 30, 1974**

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Total</th>
<th>More than 3 but less than 6 months</th>
<th>More than 6 but less than 9 months</th>
<th>More than 9 months but less than 1 year</th>
<th>More than 1 year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>291</td>
<td>175</td>
<td>80</td>
<td>22</td>
<td>14</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>58</td>
<td>30</td>
<td>21</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>First</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Second</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Third</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Fourth</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Fifth</td>
<td>74</td>
<td>52</td>
<td>18</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Sixth</td>
<td>22</td>
<td>11</td>
<td>11</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Seventh</td>
<td>57</td>
<td>39</td>
<td>8</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Eighth</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Ninth</td>
<td>62</td>
<td>28</td>
<td>19</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Tenth</td>
<td>3</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total as of March 31, 1974</strong></td>
<td>303</td>
<td>222</td>
<td>30</td>
<td>33</td>
<td>18</td>
</tr>
<tr>
<td>United States Court of Claims as of June 30, 1974</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>as of March 31, 1974</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
TABLE VI  
NATURE OF SUIT OR OFFENSE OF APPEALS FROM THE U.S. DISTRICT COURTS  
FIELD IN THE U.S. COURTS OF APPEALS  
DURING THE FISCAL YEARS 1969-1974  

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cases</td>
<td>9,528</td>
<td>9,661</td>
<td>10,190</td>
<td>12,379</td>
<td>11,379</td>
<td>13,691</td>
<td>+58.2 1.7</td>
</tr>
<tr>
<td>U. S. plaintiff cases</td>
<td>1,822</td>
<td>2,167</td>
<td>2,397</td>
<td>2,904</td>
<td>2,704</td>
<td>3,267</td>
<td>+79.2 20.8</td>
</tr>
<tr>
<td>Contract actions</td>
<td>351</td>
<td>337</td>
<td>363</td>
<td>359</td>
<td>388</td>
<td>510</td>
<td>+45.3 31.4</td>
</tr>
<tr>
<td>Real property actions</td>
<td>95</td>
<td>93</td>
<td>97</td>
<td>96</td>
<td>96</td>
<td>96</td>
<td>+5.3 47.9</td>
</tr>
<tr>
<td>Civil rights</td>
<td>38</td>
<td>36</td>
<td>34</td>
<td>38</td>
<td>22</td>
<td>62</td>
<td>+63.2 181.8</td>
</tr>
<tr>
<td>Labor laws</td>
<td>44</td>
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<td>100</td>
<td>96</td>
<td>56</td>
<td>-38.4 -15.3</td>
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<td>231</td>
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<td>77</td>
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<td>56</td>
<td>65</td>
<td>74</td>
<td>22</td>
<td>-56.0 -70.3</td>
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| Prisoner petitions        | 15   | 21   | 22   | 3    | 10   | 5    | -100 -
| All other                 | 101  | 95   | 96   | 146  | 23   | 13   | -87.1 -
| Total criminal cases      | 2,508| 2,660| 3,197| 3,980| 4,451| 4,067| +62.7 -8.3 |
| Homicide                  | 45   | 51   | 66   | 76   | 97   | 46   | +2.2 -52.6 |
| Robbery and burglary      | 406  | 452  | 500  | 515  | 518  | 435  | +12.7 -16.0 |
| Larceny                   | 377  | 170  | 160  | 261  | 246  | 223  | +20.0 -18.8 |
| Embezzlement and fraud    | 252  | 204  | 285  | 208  | 363  | 392  | +55.6 6.2  |
| Assualt                   | 208  | 254  | 292  | 180  | 178  | 184  | +21.1 -7.9  |
| Narcotics                 | 369  | 395  | 565  | 820  | 1,271| 1,328| +295.9 4.5  |
| Extortion, racketeering and threats | (*) | (*) | 78   | 162  | 165  | 145  | +85.9 -12.1 |
| Firearms                  | (*) | (*) | 173  | 246  | 311  | 276  | +45.1 20.0 |
| Selective Service Act     | 205  | 244  | 261  | 124  | 214  | 95   | -52.3 -55.6 |
| All other                 | 754  | 938  | 841  | 1,110| 1,158| 981  | +30.5 15.3 |

1Percent not calculated where base is 25 or less.
2Included in "other prisoner petitions.
3Percent change 1972 over 1970.
4Included in "all other".
### VII. Method of Disposition of Cases in the United States Courts of Appeals during the Eleven Months Ending November 30, 1973, by Circuit (Tentative Figures)

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<th>6th</th>
<th>7th</th>
<th>8th</th>
<th>9th</th>
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<td>222</td>
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<td>22</td>
<td>—</td>
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<td>Rule 21 (5th Cir.)</td>
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<td>—</td>
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<td>All other (motions, stipulations, etc.)</td>
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<td>509</td>
<td>106</td>
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*After hearing or submission
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<td>18</td>
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<td>Mar 73</td>
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44.3% Published and 55.7% Unpublished.
## TABLE IX
TREND OF HEARINGS HELD IN U.S. COURTS OF APPEALS
BY CIRCUIT 1970 TO 1974

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<tr>
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<td>675</td>
<td>774</td>
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<tr>
<td>Third</td>
<td>343</td>
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<tr>
<td>Fourth</td>
<td>322</td>
<td>331</td>
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<tr>
<td>Fifth</td>
<td>738</td>
<td>848</td>
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<tr>
<td>Sixth</td>
<td>633</td>
<td>624</td>
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<tr>
<td>Seventh</td>
<td>378</td>
<td>482</td>
</tr>
<tr>
<td>Eighth</td>
<td>351</td>
<td>405</td>
</tr>
<tr>
<td>Ninth</td>
<td>885</td>
<td>988</td>
</tr>
<tr>
<td>Tenth</td>
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## TABLE X
HEARINGS HELD IN THE U.S. COURT OF APPEALS, FISCAL YEARS 1973 and 1974

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<td>378</td>
<td>3</td>
</tr>
<tr>
<td>Eighth</td>
<td>351</td>
<td>5</td>
</tr>
<tr>
<td>Ninth</td>
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<tr>
<td>Tenth</td>
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## TABLE XI
IMPACT OF STATE PRISONER PETITIONS ON FILINGS IN U.S. COURTS OF APPEALS
BY CIRCUIT, FISCAL YEAR 1974

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<td>16,436</td>
<td>15,522</td>
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Percent change 1974 over 1962:
- 240.8
- 270.1
- 278.4
- 73.4
- 9.7
### TABLE XIII
FILINGS, TERMINATIONS, AND PENDING CASELOAD PER JUDGESHIP, FOR FISCAL YEARS 1961, 1966 AND 1974

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<tr>
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<td>Per</td>
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<td>J udges-</td>
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<td>797</td>
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<td>First.</td>
<td>146</td>
<td>49</td>
<td>399</td>
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<tr>
<td>Second.</td>
<td>674</td>
<td>75</td>
<td>876</td>
<td>9</td>
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<tr>
<td>Third.</td>
<td>334</td>
<td>42</td>
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<td>Fourth.</td>
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<td>612</td>
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<td>Sixth.</td>
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**Pending End of Fiscal Year**

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<td>400</td>
<td>6</td>
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</table>
APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE
TENTH CIRCUIT

RULES OF COURT

Adopted November 13, 1972
(As Amended Through October 24, 1974)

Table of Contents

RULE 1. NAME, SEAL AND PROCESS ................... 421
RULE 2. QUORUM AND PROCEDURAL ORDERS BY A SINGLE JUDGE .......... 422
RULE 3. CLERK ........................................ 422
RULE 4. ATTORNEYS AND COUNSELORS ............... 423
RULE 5. SERVICE OF THE NOTICE OF APPEAL .......... 423
RULE 6. RECORD ON APPEAL .......................... 423
RULE 7. DOCKETING STATEMENT ...................... 424
RULE 8. MOTIONS TO DISMISS OR AFFIRM .......... 425
RULE 9. CALENDARS .................................. 426
RULE 10. REPRODUCTION OF THE RECORD AND APPENDIX TO THE BRIEFS ...... 428
RULE 11. MOTIONS ..................................... 429
RULE 12. TRANSCRIPTS .................................. 429
RULE 13. ORDERS ...................................... 430
RULE 14. DISMISSALS FOR FAILURE TO PROSECUTE ... 430
RULE 15. FORMA PAUPERIS AND CRIMINAL APPEALS .. 431
RULE 16. STAY OF MANDATE ........................... 432
RULE 17. OPINIONS .................................... 433
RULE 18. PRINTING COSTS ............................... 434
RULE 19. JUDICIAL CONFERENCE ....................... 434
RULE 20. COURT LIBRARY ............................... 435
RULE 21. APPLICABILITY OF RULES ................... 435

RULE 1

NAME, SEAL AND PROCESS

(a) The name of the Court is, "United States Court of Appeals for the Tenth Circuit."

(b) The seal shall contain the words, "United States" on the upper part of the outer edge; and the words, "Court of Appeals", on the lower part of the outer edge, running from left to right; and the words, "Tenth Circuit", in two lines, in the center.

(c) Writs and process of this Court shall be under the seal of the Court and signed by the clerk.
RULE 2
QUORUM AND PROCEDURAL ORDERS BY A SINGLE JUDGE

(a) If at any time a quorum shall not attend on any day appointed for holding court, any judge who attends may adjourn the court from time to time, or if none of the judges attend, the clerk may adjourn the court from day to day. If, during a term after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without fixing a definite day.

(b) Pursuant to Rule 27(c), Federal Rules of Appellate Procedure, the Chief Judge may make any necessary interlocutory order relating to any unassigned case or proceeding pending in this court preparatory to the hearing or decision thereof and may act on any applications filed pursuant to Rules 8, 9(b), 22(a) and 22(b), Federal Rules of Appellate Procedure. In assigned cases, the active circuit judge of the panel present in the circuit having precedence as defined in 28 U.S.C. § 45(b) may make any such necessary interlocutory order and may act on any such applications filed pursuant to Rules 8, 9(b), 22(a) and 22(b), Federal Rules of Appellate Procedure.

RULE 3
CLERK

(a) The Clerk's Office shall be in the quarters provided for that purpose at 469 United States Courthouse, Denver, Colorado 80202. Telephone Number (303) 837-3157.

(b) The clerk shall, before he enters on the execution of his office, take an oath in the form prescribed by Section 951, Title 28, and Section 3331 of Title 5, United States Code. He shall account for all funds that may come into his hands as clerk, and he or his deputies shall attend the sessions of the court.

(c) See Rule 45, Federal Rules of Appellate Procedure for other duties of the clerk.

(d) The clerk may permit attorneys admitted to practice before this court to withdraw original records on appeal for a reasonable period.

(e) In case of the temporary absence of the clerk, the chief deputy clerk shall act in his stead.
RULE 4
ATTORNEYS AND COUNSELORS

(a) Admission to the Bar of this court shall be governed by the provisions of Rule 46, Federal Rules of Appellate Procedure. The fee for admission shall be $15.00, payable to the clerk as trustee. All funds received from such applications shall be held in trust by the clerk and disbursed by him at the direction of the Chief Judge for such uses and purposes as will benefit the bench and the Bar. The clerk shall render annually to the Judicial Council of the Circuit an accounting of all such funds held and disbursed by him.

(b) In cases appealed to this court in which an indigent party was represented by counsel appointed by order of the trial court, such appointment shall remain in full force and effect until appointed counsel is relieved of the duties of his appointment by order of this court.

(c) All attorneys, immediately upon filing a case in this court or entering an appearance in a case in this court, shall obtain from the clerk the necessary forms for admission upon written motion and shall promptly execute and return them so as to obtain admission to practice before this court. No attorney who has appeared in a case in this court may withdraw from it without consent of the court.

RULE 5
SERVICE OF THE NOTICE OF APPEAL

In every case appealed to this court the clerk of the district court shall promptly mail a copy of the notice of appeal to the clerk of this court, together with a copy of the docket containing all entries in the case through and including the notice of appeal.

RULE 6
RECORD ON APPEAL

(a) At or before the time the record on appeal is transmitted, as provided in Rule 11, Federal Rules of Appellate Procedure, it shall be fastened together securely in one or more volumes. Each volume shall have a cover page in the following form:
RULE 7
DOCKETING STATEMENT
(a) Within 30 days after filing the notice of appeal in the district court, the appellant shall file and serve on all other par-
ties to the appeal a docketing statement which shall contain:

1) A statement of the nature of the proceeding.

2) The date of the judgment or order sought to be reviewed; the date of any order respecting a motion pursuant to Rule 50(b), Rule 52(b), or Rule 59, Federal Rules of Civil Procedure; and the date the notice of appeal was filed.

3) A concise statement of the case containing the facts material to a consideration of the questions presented.

4) The questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions should be short and concise and should not be repetitious. General conclusory statements such as, "the judgment of the trial court is not supported by the law or the facts" will not be accepted.

5) A list of cases believed to support the contents of the appellant. Argument on the law shall not be included.

6) A statement as to whether or not counsel desires to orally argue the case.

(b) The appellant shall attach to his docketing statement a copy of the docket sheet of the court from which the appeal is taken, a copy of the judgment or order sought to be reviewed, a copy of any opinion or findings, and a copy of the notice of appeal.

(c) Ten copies of the docketing statement shall be filed, in typewritten form, accompanied by a docket fee of $50.00. (See Rule 14(b) of these Rules.)

(d) In administrative review and enforcement proceedings the docketing statement shall be filed and served in the manner set forth above within the time allowed for filing the record of administrative proceedings.

(e) Based upon the docketing statement, the case will be assigned to a calendar in accordance with Rule 9 of these Rules.

RULE 8

MOTIONS TO DISMISS OR AFFIRM

(a) Within ten days after the record on appeal has been filed in this court, the appellee may file a motion to dismiss or a
A motion to affirm, supported with appropriate argument and authorities. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss. The motion shall be filed together with three copies and proof of service. Motions to affirm will not be accepted if filed subsequent to the ten-day period, except by order of court for good cause shown.

(1) The court will receive a motion to dismiss any appeal on the ground that the appeal is not within the jurisdiction of this court.

(2) The court will receive a motion to affirm the judgment sought to be reviewed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

(b) A motion to dismiss or affirm shall be filed with the clerk in conformity with Rule 27(d) and Rule 32(b), Federal Rules of Appellate Procedure. The clerk shall give notice to the appellant of any motion filed pursuant to this Rule.

(c) The appellant shall have 15 days from the date of receipt of the motion to dismiss or affirm within which to file a response opposing the motion, addressing the merits. Such response, together with three copies and proof of service, shall be filed with the clerk. Upon the filing of such response, or the expiration of the time allowed therefor, the record on appeal, together with the motion and response, shall be distributed by the clerk to the court for its consideration. The time for filing briefs shall be tolled pending the disposition of the motion to dismiss or affirm.

(d) After consideration of the papers distributed pursuant to the foregoing paragraph, or on its own motion after notice to the parties, the court will enter an appropriate order.

Whenever the court, after reviewing an appeal, concludes that manifest error requires reversal or vacation of a judgment or order of the district court, or remand for additional proceedings, the court may enter an appropriate order after notice to the parties.

RULE 9
CALENDARS

The clerk shall maintain Calendars A, B, C and D and the Chief Judge shall assign each case to one of such calendars after
a review of the docketing statement submitted under Rule 7. The clerk shall promptly notify each party of the assignment made.

(a) Calendar A cases shall proceed in accordance with Rules 28, 30, 31, 32, 34 and 35, Federal Rules of Appellate Procedure, and Rule 10, or Rule 15 where applicable, of these Rules.

Only 14 copies of briefs are required to be filed with the clerk. The court prefers the alternative method of preparation of briefs on 8-1/2” x 11” opaque, unglazed paper as set forth in Rule 32, rather than typographic printing.

(b) Calendar B cases will be accelerated and shall proceed as follows:

(1) Within 21 days after filing the record on appeal the appellant shall file an original and nine copies of his brief, typewritten on letter-sized paper, and shall serve such brief on all other parties to the appeal.

(2) Within 21 days after service of the appellant’s brief the appellee shall file an original and nine copies of his brief, typewritten on letter-sized paper, and shall serve such brief on all other parties to the appeal.

(3) The appellant may file an original and nine copies of a reply brief and serve such brief on all other parties to the appeal within 15 days after service of the appellee’s brief.

(4) Except as stated herein, briefs shall be prepared in accordance with Rules 28 and 32, Federal Rules of Appellate Procedure.

(5) The appeal will be heard on the original record with copies supplied in accordance with Rule 10, or Rule 15 where applicable, of these Rules. A condensed record or appendix may be used only with the permission of the court.

(6) Each side will be allowed 15 minutes for oral argument. In all other respects oral argument shall be governed by Rule 34, Federal Rules of Appellate Procedure.

(c) Calendar C assignments will be made after the briefs of the appellant and appellee are filed. A special panel of the court will screen cases that have been assigned to Calendar B. If the panel is of the opinion that oral argument would not be of mate-
rial assistance to the court in its ultimate determination of the issues presented, it shall direct the clerk to inform the parties of the reassignment to Calendar C and that the case will be submitted to the court for disposition on the merits without oral argument.

(d) Calendar D cases shall consist of those cases in which a motion to affirm or dismiss has been filed pursuant to Rule 8(a) of these Rules and those in which notice has been given pursuant to Rule 8(d) of these Rules that the court is considering summary action on its own motion.

(1) Within 15 days after receiving notice that the court is considering summary action pursuant to Rule 8(d) on its own motion, the appellant may file in quadruplicate and serve on all parties to the appeal a memorandum addressing the merits, opposing such summary action.

(2) The appellee may simultaneously file in quadruplicate and serve on all parties to the appeal a memorandum addressing the merits supporting summary action.

(3) The same procedure and form as the preceding two paragraphs will be followed in those cases where manifest error is noted by the court pursuant to Rule 8(d), except that the appellee may oppose and the appellant may support summary action.

RULE 10

REPRODUCTION OF THE RECORD AND APPENDIX TO THE BRIEFS

(a) In all civil cases in which the record on appeal including portions of the trial transcript and exhibits shall contain 300 pages or less, except accelerated cases [See Rule 9(b)(5)], the appellant shall file at the time of filing his brief the original and three copies of the record on appeal in lieu of preparing an appendix (similar to Rules 6 and 15 of these Rules). Such copies may be reproduced by any duplicating or copying process capable of producing a clear black image on white paper.

(b) In civil cases in which the record on appeal exceeds 300 pages, the appellant will prepare an appendix in accordance with the provisions of Rule 30, Federal Rules of Appellate Procedure. Counsel are advised that the court prefers the appendix proce-
dure set forth in Rule 30(b), Federal Rules of Appellate Procedure to the deferred system set forth in Rule 30(c), Federal Rules of Appellate Procedure.

(c) All criminal appeals will be heard on the original record, regardless of the number of pages, with copies to be prepared in accordance with the applicable paragraphs of Rule 15 of these Rules.

(d) All references in the briefs shall be to the original record when the record is used in lieu of an appendix.

RULE 11
MOTIONS

The clerk of this court is authorized in his discretion and subject to review by the court to act for the court upon the following motions when unopposed:

(a) Any motion for extension of time to file a pleading or perform an act required by Rules 11, 12, 24, 29, 30, and 31, Federal Rules of Appellate Procedure, or Rules 6, 7, 8, 9, 10 and 12 of these Rules.

(b) Motions to make corrections in briefs or pleadings.

(c) Motions in civil cases to extend the time for filing petitions for rehearing for no longer than 15 days.

(d) Motions to supplement or correct records or to incorporate records on former appeals.

(e) Motions to consolidate appeals.

(f) Motions for leave to file briefs or petitions for rehearing in excess of the number of pages permitted by Rules 28(g) and 40(b), Federal Rules of Appellate Procedure.

(g) Motions for leave to file briefs and petitions for rehearing in typewritten form.

(h) Motions to substitute parties.

RULE 12
TRANSCRIPTS

(a) Notwithstanding the requirement of Rule 10(b), Federal Rules of Appellate Procedure, that transcripts of proceedings, if necessary, be ordered from the court reporter within ten days after filing the notice of appeal, parties are nevertheless urged to order, from the appropriate court reporter, any necessary transcript immediately after the filing of the notice of appeal or,
in criminal cases, immediately after the meeting between counsel on appeal and the clerk of the district court referred to in Rule 15(a) of these Rules. In many instances a transcript is unnecessary and contributes to delay and expense. Counsel shall endeavor to enter into stipulations that will avoid or reduce transcripts.

(b) Court reporters shall give preference to the preparation of transcripts in criminal cases for transmittal within the initial 40-day filing period of Rule 11, Federal Rules of Appellate Procedure. The transcript of criminal trials shall omit the examination of jurors and all opening and closing remarks unless their inclusion is specifically requested by counsel.

(c) No motion for extension of time to file the record on appeal on the ground that the reporter's transcript has not been completed will be entertained unless supported by an affidavit from the responsible reporter setting forth the pending cases in which such reporter has transcripts ordered, the estimated dates on which such transcripts will be completed, the reasons an extension is necessary in the case in which the request is made, a statement that the request for extension has been brought to the attention of, and approved by, the district judge who tried the case, and a statement of counsel that satisfactory arrangements have been made with the reporter for payment of the cost of the transcript.

RULE 13
ORDERS

Unless otherwise ordered by the court, routine procedural orders shall be deemed entered upon the making of an appropriate docket entry by the clerk describing briefly and succinctly the nature of the order and the name of the judge or judges directing its entry or, when entered pursuant to Rule 11 of these Rules, the name of the clerk.

RULE 14
DISMISSALS FOR FAILURE TO PROSECUTE

(a) When an appellant in either a docketed or non-docketed appeal fails to comply with the Federal Rules of Appellate Procedure and the Rules of this court, the clerk shall notify the appellant or his counsel that upon the expiration of ten (10) days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default.
Should the appellant fail to comply within said ten (10) day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to remedy his default after the same shall have been dismissed under this Rule, unless by order of this court.

(b) Notwithstanding Rule 12, Federal Rules of Appellate Procedure, the clerk is directed to docket every appeal promptly upon receipt of the record from the district court even though the docket fee has not been paid or a docketing statement has not been received. Notice of the filing shall be sent to all parties. If the docket fee and/or docketing statement referred to in Rule 7, have been requested and are not received within 40 days of the filing notice of appeal, or such further time as the court may order, the appeal may be dismissed immediately and without further notice.

RULE 15
FORMA PAUPERIS AND CRIMINAL APPEALS

(a) Each district court clerk, immediately after the filing of a notice of appeal in a criminal case, shall summon counsel for both parties to his office for the purpose of accomplishing the designation, as provided in Rules 10 and 11, Federal Rules of Appellate Procedure, of the record on appeal, including both the contents of the clerk's record and the reporter's transcript. If counsel reside at considerable distance from the clerk's office, the clerk, by form letter sent them immediately after the filing of a notice of appeal, shall urge them to promptly designate the record; and suggest the use of the telephone for a conference between them.

For the benefit of the reporter in preparing the transcript, designation should indicate whether or not—

1. proceedings on motions,
2. voir dire interrogation of prospective jurors,
3. opening statements,
4. closing arguments, and
5. instructions,

are to be included within the transcript.

(b) In forma pauperis appeals the clerk of the district court shall prepare an original and three copies of the record on appeal
in accordance with the provisions of Rule 6 of these Rules. Provided, however, that an original and one copy of any reporter's transcripts prepared at government expense will be transmitted to this court and in addition, the clerk of the district court will transmit the certified copy of the transcript filed by the reporter pursuant to 28 U.S.C. Section 753(b).

(c) All criminal appeals will be prepared in accordance with the preceding paragraph except that the appellant, rather than the clerk of the district court, shall be responsible for the filing of the appropriate copies of the record at the time of filing his brief.

(d) An original and nine copies of briefs and petitions for rehearing in typewritten form, on letter-sized paper, shall be filed and one copy shall be served on each party separately represented in all forma pauperis and criminal appeals.

(e) Except as stated herein, briefs shall be prepared in accordance with Rules 28 and 32, Federal Rules of Appellate Procedure.

(f) If, after an adverse decision by this court in a direct criminal appeal, a review is to be sought in the Supreme Court of the United States, the attorney shall promptly advise the appellant, in writing, of his right to seek review and, if requested in writing, shall prepare the Petition for Writ of Certiorari.

RULE 16
STAY OF MANDATE

Whereas an increasingly large percentage of unsuccessful petitions for certiorari have been filed in the circuit in criminal cases in recent years, in the interests of minimizing unnecessary delay in the administration of justice mandate will not be stayed hereafter in criminal cases following the affirmance of a conviction simply upon request. On the contrary, mandate will issue and bail will be revoked at such time as the court shall order except upon a showing, or an independent finding by the court, or by a judge of the hearing panel, of probable cause to believe that a petition would not be frivolous or filed merely for delay. See 18 U.S.C. § 3148. The court, or a judge of the hearing panel, may revoke bail before mandate is due.

A comparable principle will be applied in connection with affirmed orders of the N.L.R.B., and in other cases where the court believes that the only effect of a petition for certiorari would be pointless delay.
RULE 17

OPINIONS

(a) It is unnecessary for the court to write opinions in every case. The disposition without opinion does not mean that the case is considered unimportant. It does mean that no new points of law, making the decision of value as a precedent, are believed to be involved.

(b) After argument when the court determines that one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; and (4) that no error of law appears; the court may in its discretion and without written opinion enter either of the following orders: “AFFIRMED. See Rule 17(b)”, or “ENFORCED. See Rule 17(b)”.

(c) The court or a panel thereof will determine when an opinion shall be published and will direct the clerk accordingly. The direction will appear on the face of the opinion. Unpublished opinions, although unreported and not uniformly available to all of the parties, can nevertheless be cited, if relevant, in proceedings before this or any other court. Counsel citing same shall serve a copy of the unpublished opinion upon opposing counsel.

(d) Situations where publication shall occur include (1) conflicts with decisions of the Tenth Circuit or other federal appellate courts; the interpretation of decisions of the highest court of a state or the Supreme Court of the United States; (2) new federal constitutional or statutory issues; and (3) diversity cases in which a new or unique proposition of law is expounded.

(e) Situations where publication should not occur include (1) cases where the outcome depends on facts and presents no legal issues not previously decided by the Tenth Circuit or by the Supreme Court of the United States; and (2) diversity cases where the outcome depends on established state law.

(f) When an opinion has been previously published by a District Court, any administrative agency or the Tax Court, this Court’s opinion, memorandum, or order disposing of the appeal or petition shall be designated for publication. If a majority of a panel has written a disposition in such a case which would not
ordinarily be published, a separate page shall be added to the disposition designating for publication only the dispositive judgment or order of the court.

RULE 18
PRINTING COSTS

The cost of printing or otherwise producing necessary copies of briefs and appendices shall be taxable as costs at a rate equal to the actual costs, but not higher than $9.50 per page of standard typographic printing or $4.50 per page of offset or similar process, or 20 cents per page of Xerox or similar process.

Taxable costs will be authorized for 15 copies of an appendix and 30 copies of any brief. Where additional copies are needed to serve upon counsel, costs will be taxed for such additional copies at five cents per page. The rates specified will apply to the cover, index and body of briefs and appendices.

Verified bills of costs submitted to be taxed should contain the printer's itemized statement of charges.

RULE 19
JUDICIAL CONFERENCE

(a) Pursuant to Section 333, Title 28 U.S.C., there shall be held annually, at such time and place as the Chief Judge shall designate, a conference for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit.

(b) The Judicial Conference shall be composed of:

(1) All circuit and district judges of the Tenth Circuit.

(2) Every member of the Bar of the Court of Appeals for the Tenth Circuit who is in good standing and who shall declare in writing his intention to become a member of the Conference, provided that a member of the Bar who, after having become a member of the Conference, shall absent himself from two successive annual sessions of the Conference without leave of the Chief Judge shall cease to be a member of the Conference.

(c) The circuit executive shall be the secretary of the Conference, shall be responsible for all records and accounts of the Conference, and shall perform such other duties pertaining to the
Conference as the Chief Judge or the Judicial Council of the circuit shall require.

(d) The circuit executive shall provide a form for acceptance of membership in the Conference to all active members of the Bar of the Court of Appeals for the Tenth Circuit who reside within the circuit and shall maintain a list of membership in the Conference.

(e) During the Conference the circuit and district judges of the Tenth Circuit shall meet to discuss matters affecting the dockets and the administration of justice in each of the judicial districts of the circuit. The Chief Judge of each district shall report on the condition of judicial business in his district and shall make his recommendations with respect thereto. All other meetings of the Conference shall be open to all members of the Conference and shall be devoted to a program designed to improve the administration of justice in the Tenth Circuit. All members of the Conference may participate in the discussions and deliberations. The Conference may take appropriate action on any matter presented to it.

(f) A registration fee of $25.00 shall be collected from each member of the Conference attending any session of the Conference. The sum so collected shall be used under the direction of the Chief Judge to defray the expense of the Conference. The Circuit Executive shall keep an account of all collections and disbursements and shall make a report thereof to the Judicial Council for the Tenth Circuit at its first meeting following the Conference.

RULE 20
COURT LIBRARY

The law library of this court shall be open to all members of the Bar of this court but books and materials may not be removed from the library without permission of the librarian.

RULE 21
APPLICABILITY OF RULES

These Rules shall become effective November 13, 1972, and shall govern in all cases where the cause is docketed or petition for review or enforcement is filed November 13, 1972, or thereafter. The revised rules of this court effective January 1, 1970, shall remain in effect as to all cases where the cause is docketed or petition for review or enforcement is filed prior to November 13, 1972.