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Appellate Procedure and the New Supreme Court Rules

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APPELLATE PROCEDURE AND THE NEW SUPREME COURT RULES

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On November 12, 1952 the Colorado Supreme Court adopted a number of amendments to the Rules of Civil Procedure which make radical changes in the rules relating to procedure in the Supreme Court. They become effective February 12, 1953. These amendments, together with other amendments adopted by the Court during the preceding year, make the following principal changes in procedure in the Supreme Court:

1. They reduce from twelve months to three months after the entry of judgment the time within which a writ of error may be issued.

2. They eliminate specifications of points and provide that in lieu thereof each party in his brief in his summary of the argument shall state clearly and briefly the grounds upon which he relies.

3. They eliminate the separate and particular statement of each point intended to be urged with appropriate references to the specification of points. The summary of the argument will perform its function.

4. They eliminate abstracts of record and provide that their place is to be taken by a concise statement of the case in the brief of plaintiff in error in an appendix thereto and, where required, by a supplemental statement of the case in the brief of defendant in error or in an appendix to it.

5. They require that, if previous extensions of time have been granted, a motion for further extension shall contain a statement setting forth all previous extensions and on whose application they were granted and they require that ten copies of each motion or other paper that is not printed is to be filed.

6. They permit any brief of 35 pages or less, double-spaced, including any appendix, whether filed separately or not, to be typewritten or mimeographed or reproduced in some other method approved by the Clerk, instead of being printed.

7. They give similar permission for petitions for rehearing to be typewritten or otherwise reproduced. But they further provide that petitions for rehearing shall not contain more than three pages without consent of the Court.

In addition to these changes in the rules governing procedure in the Supreme Court, the Court amended Rule 59 (b) so as to change the time during which a motion for a new trial on the ground of newly discovered evidence may be filed. Heretofore the Rule provided that the motion on that ground might be filed before the expiration of the time for appeal or writ of error. The amendment provides that it may be filed before the expiration of six months after the entry of the judgment.

Idea for Amendment Originated in the Court

The credit for the originating of these amendments belongs to the Justices of our Supreme Court. On May 2, 1952, the Court, without referring any of them to its Rules Committee, adopted amendments which amended Rules 115 (a), 115 (b) and 115 (c) so as to eliminate abstracts of record, specifications of points and separate and particular statements of each point intended to be urged. Thereafter the Court requested its Rules Committee (consisting of Jean S. Breitenstein, Chairman, Joseph G. Hodges, Thomas Keely and Percy S. Morris, all of Denver, and V. H. Johnson, of Cheyenne Wells) to draft and submit to the Court for its consideration refining amendments to said Rules 115 (a), 115 (b) and 115 (c), amendments to other rules to make their language conform to the elimination of abstracts of record and specifications of points and amendments reducing the time for issuance of writ of error, permitting short briefs to be typewritten, mimeographed or otherwise reproduced, fixing the number of copies of each paper that is not printed that shall be filed and requiring motions for extension of time to set forth all previous extensions. The Rules Committee submitted to the Court on October 27, 1952 its report setting out the amendments which it had drafted to effectuate the changes desired by the Justices. Less than three weeks thereafter the Court adopted all of the amendments submitted by the Rules Committee with only four slight changes.

Benefits Hoped To Be Achieved

In deciding upon the changes in procedure in the Supreme Court which are brought about by the amendments, the Justices desired and hoped to effectuate the following:

1. Saving of the money of the litigants. This will be accomplished by the elimination of the abstract of record, which had to be printed at very considerable expense; its place is to be taken by the statement of the case, which necessarily will be much more concise than the abstract of record and must contain only those matters which are deemed by counsel to be material to the consideration of the case; Rule 115 (c) (3), as it existed since the Rules were adopted in 1941, required that, in addition to the filing of the abstract of record, there be set out in the brief of plaintiff in error a "concise statement of the case containing all that is material to the consideration of the questions presented with appropriate folio references"; now only the "concise statement of the case * * * supported by specific references to folio numbers of the record" is required. Further saving of money of the litigants will be accomplished by briefs which contain not more than 35 pages being permitted to be typewritten or mimeographed or reproduced by some other method less expensive than printing.

2. Saving of the time of the attorneys. This will be accomplished by the elimination of the tedious and time-consuming task

of summarizing large portions of the record on error in the preparation of the abstract of record which are not material to the consideration of the case. Also, to a lesser degree, by eliminating the necessity of preparing the specification of points and eliminating the necessity of including in the brief the "separate and particular statement of each point intended to be urged with appropriate references to the 'Specification of Points'" which, in addition to the "concise summary of the argument," has heretofore been required by Rule 115 (c) (4) to be contained in the brief. Under the provisions of the Rules before these amendments were made, the same points intended to be argued were required to be set out in three different places, to-wit: in the specification of points; in the "separate and particular statement of each point intended to be urged"; and in the "concise summary of the argument." Now the first two of these are eliminated, leaving only the concise summary of the argument.

3. Saving of the time of the Justices, particularly of the Justices other than the one who prepares the opinion. When they examine the opinion which has been prepared, they need not pore through a lengthy abstract of record containing much that is actually irrelevant to the questions to be decided but need look only at the much more concise statement of the case in the brief of plaintiff in error and the supplemental statement of the case, if any, in the brief of defendant in error in order to ascertain the facts. Examination of the summary of the argument will in most cases quickly show the questions of law involved.

4. Shortening the litigation. The outstanding factor accomplishing this is the reduction of nine months in the time within which the writ of error must be issued. Also, the elimination of the necessity of the attorney for plaintiff in error, after the record on error has been prepared, spending a very considerable amount of time in the preparation of the abstract of record and the elimination of the thirty days after the filing of the record on error which heretofore have been allowed for the filing of the abstract of record and the requiring the brief of plaintiff in error to be filed within such thirty days will contribute to this result. Furthermore, the requirement that each motion for further extension of time for filing brief must set forth all previous extensions and state on whose application they were granted and the requiring of ten copies of each such motion to be filed, so that each of the Justices will have the history of the previous extensions before him at the conference table and can keep a close check on the delays that have already occurred in reaching the point where the case is submitted, will not only enable them to pass intelligently upon repeated applications for extensions but also will cause counsel to hesitate before requesting unnecessary extensions of time.

Whether These Benefits Can Be Achieved Will Depend Upon the Attorneys

The Court has, by these amendments, provided the means by

which these economies in expense, in the time of counsel and in the time of the Justices and the expediting of the termination of the litigation may be achieved. Whether these benefits will be realized depends entirely upon whether the attorneys, in the preparation of their briefs, will avail themselves of these amendments to the Rules. For example, if counsel incorporates in an appendix to his brief the same material that he would, under the former practice, have included in an abstract of record, he will have merely changed the name of his product from abstract of record to appendix of his brief; in such case he will have imposed much unnecessary expense upon his client, will have wasted much of his time and labor and will have imposed upon the Justices much unnecessary labor and required them to spend upon his case much time that otherwise might have been spent in working on other cases.

Don't Be Afraid to Limit Your Statement of the Case to What You Believe To Be the Essential Facts

It was only natural that, when one prepared an abstract of record under the previous practice, he felt obligated to at least summarize practically everything in the record on error, regardless of its materiality to the questions to be determined by the Supreme Court, lest he be open to the charge that he deliberately omitted from the abstract portions of the record which he should have included in it. However, under the new practice, he need not be influenced by any such feeling, because he is required to include in his statement of the case only those matters, both those which are favorable to his client and those which are favorable to his adversary, which he honestly deems to be material to the questions to be determined on the writ of error and, furthermore, he is expected, in the spirit in which the amendments were adopted, to cooperate with the Supreme Court by omitting all matters which are not material to the questions involved. If, in the exercise of his honest judgment, he should omit from his statement of the case any matters which opposing counsel claim are essential to the determination of the case, opposing counsel have the right and opportunity to supply such omission in a supplemental statement of the case contained in their brief.

Again, some attorneys have been prone to include in their abstracts of record and statements of the case much matter that is immaterial to the determination of the questions of law in an effort to gain for their clients the sympathies of the Court. This is especially true in a case where, upon conflicting evidence, the trial court or the jury has determined the facts adversely to his client and the attorney, nevertheless, sets out those portions of the evidence which support his client's version of those facts. Needless to say, such matters have no place in the statement of the case under the new practice.

But Include All That Is Essential

On the other hand, counsel should be careful to include in his statement of the case everything essential to the determination of the case which he wishes brought to the attention, not only of the Justice who will write the opinion, but also of all of the other Justices. He must bear in mind that there is no abstract of record and there is only one record on error and that all of the Justices cannot be expected to read through such record on error and that most of them must depend upon his statement of the case in his brief for their knowledge of the facts.

It will be imperative that the statement of the case contain references to the folio numbers of the record on error where the various facts set out in the statement of the case appear. Heretofore such references to the folio numbers were contained in the abstract of record but now, with the elimination of the abstract of record, the only place where they can be shown is in the statement of the case.

Don't Argue in Your Statement of the Case

The amendment of Rule 115 (a) included in the Rule a direction that the statement of the case shall consist only of the essential facts and shall not contain any argument relative to the evidence or law. This direction must be kept constantly in the mind of the attorney when he is preparing his statement of the case. The Justices will examine his statement of the case to ascertain the essential facts of the case; if his statement is a clear and concise setting out of the facts, without any attempt to do any more than state the facts, the attorney will be successful in what should be his first task, namely acquainting the Justices with the facts relating to the questions of law to be decided. But, on the other hand, if, through mistaken zeal, he mixes argument with facts in the preparation of his statement of the case, he confuses the Court, he buries the facts in a mass of argument, he makes it difficult for the Justices to ascertain the facts to which the law is to be applied and he does a great disservice to his client. After all, he has ample opportunity to set out his arguments to his heart's content in the proper place in that same brief (the portion designated in the Rule as "The Argument") and he must restrain his desire to argue the case until he reaches that place in his brief.

Make Your Summary of the Argument Actually a Summary

With the specifications of points and the separate and particular statement of each point intended to be urged eliminated by the amendment, the importance of the summary of the argument has been greatly increased, because it has become the only means by which are summarized the grounds relied upon for reversal, modification or affirmance of the judgment of the trial court. In

order that it may properly perform its function, such summary of the argument must be, in fact, a summary, leaving to the later portion of the brief the elaboration of the points relied upon. And it is very important that the argument, which follows the summary, be subdivided, with appropriate subject-headings, in the same order as the grounds are set out in the summary of the argument, so that any Justice can refer to the portion of the argument which relates to a point that he is particularly interested in. And, if this is done, the "subject index of the entire brief," when properly prepared, will be of great assistance.

The importance of a clear and concise summary of the argument can not be too strongly stressed. In commencing their study of a brief of plaintiff in error many Justices examine first the summary of the argument, even before they look at the statement of the facts, and cases are often won or lost by the impression made on the minds of the Justices by the summary of the argument. Counsel should strive to use clear, simple language in stating their summary of the grounds on which they rely for reversal or modification. They must have clearly in their own minds, before they commence the preparation of their summary of the argument, the grounds upon which they rely and they must express them in as clear and concise a manner as is possible.

Legibility of Typewritten and Mimeographed Papers

Too much emphasis can not be placed upon the necessity of typewritten briefs and other papers being clear, distinct and easily read. This is particularly true as to carbon copies. It is so easy to make the mistake of endeavoring to have too many carbon copies made at one writing or not insisting that your secretary start with new sheets of carbon paper and renew them as often as is necessary to secure good, clear-cut carbon copies. The carbon copies which you give to opposing counsel and keep for yourself should be the bottom ones, leaving the better ones for filing with the Court. The Clerk is directed by the Rule to refuse to accept for filing motions, petitions and briefs that are not "plainly and distinctly legible." Furthermore, even if the Clerk does permit to be filed carbon copies which are so indistinct and unclear as to impose a strain upon the eyes of the Justices who are to read them, the penalty may be that some of the Justices simply will not read them. The Court has given permission for the filing of typewritten briefs of 35 pages or less. The least that we attorneys can do in return for this is to cooperate by seeing that all carbon copies filed with the Court are clear and capable of being read easily and without eye-strain.

If briefs, motions and other papers are reproduced by some method other than typewriting or printing, care must be taken to see that the method of reproduction is one that produces copies that are clear-cut and distinct.

The text of the rules as they have been changed by the

amendments adopted November 12, 1952, effective February 12, 1953, appears in the same issue of DICTA in which this article is printed. However, such text does not on its face show what deletions from and additions to the previous language of the respective rules were made by such amendments. Therefore a summary of the changes made in each rule by the amendments will be helpful.

Rule 59 (b)—Time for Motion for New Trial

Previously, this Rule provided that a motion for new trial on the ground of newly discovered evidence might be made before the expiration of the time for appeal or writ of error. But, with the time for writ of error being cut down from one year to three months, the time for writ of error is too short to be of much value with respect to seeking new trial on the ground of newly discovered evidence and so the amendment permits the motion on that ground to be filed before the expiration of six months after the entry of the judgment. Such period of six months is the same period that is provided by Rule 60 (b) for filing a motion for relief from a judgment on the grounds of mistake, inadvertence, surprise or excusable neglect or of fraud, misrepresentation or other misconduct of an adverse party.

Rule 111 (b)—Limitation on Time of Issuance of Writ of Error

When, in 1940, the original Revision Committee submitted the Rules to the Supreme Court for its consideration and adoption, this Rule, as submitted and recommended by the Revision Committee, provided that no writ of error shall be issued after six months from the entry of the judgment complained of. The Supreme Court, as then constituted, saw fit, in adopting the Rules, to change such period to twelve months, which was the time allowed by the Code of Civil Procedure. The amendment adopted November 12, 1952 reduces to three months from the entry of the judgment complained of the time for the issuance of writ of error in cases within paragraphs (1) and (2) of subdivision (a) of Rule 111.

A study of the time within which a review of a judgment must be initiated by action taken in the appellate court in 39 states shows that, of such 39 states, only one, namely Colorado, provides as long a period as 12 months and that only one other state, namely, West Virginia, provides for a greater time than 6 months. Such study further shows that, of such 39 states, eight provide a limit of 6 months, one provides 4 months and four provide 90 days or 3 months. In one state the time is discretionary and in the remaining twenty-three states the time is less than 3 months or 90 days.

The amendment further provides that, as to judgments which were entered before the effective date of the amendment and as

to which the period for issuance of writ of error at the time they were entered was twelve months, the writ of error may be issued within twelve months after the entry of the judgment or within three months from the effective date of the amendment, whichever period expires first. Since the effective date of the amendment is February 12, 1953, the effect of this proviso is that, as to a judgment in a case within paragraph (1) or paragraph (2) of Rule 111 (a), the writ of error must be issued on or before May 12, 1953 if the judgment was entered on or after May 12, 1952 and prior to February 12, 1953, and that it must be issued before the expiration of twelve months after the entry of the judgment if the judgment was entered before May 12, 1952.

The amendment makes no substantial change in the provisions of this Rule relating to the period for issuance of writ of error to review judgments in special proceedings and therefore the decision of our Supreme Court in *Sitler v. Brians,* handed down October 6, 1952 and appearing in the Colorado Bar Association Advance Sheet for October 11, 1952 on pages 48 and 49, but not yet otherwise reported, is as applicable to the Rule as amended as it was to the Rule before it was amended. Therefore the Committee on Rules prepared a Committee Note to this amendment which, with reference to special proceedings, refers to Rule 81 (a) and to *Sitler v. Brians.*

If an attorney should be worried because the period of three months for entry of the judgment, or a large part of, has elapsed before a motion for new trial, seasonably filed, was denied, he should read the opinion in *Bankers Trust Company v. Hall,* 116 Colo. 566, 571-572; 183 P. 986, 989, and relax. In that case the Court, following previous decisions, held that until a motion for new trial is determined a judgment is not final so far as the prosecution of writ of error is concerned.

Rule 111 (c)—How Writ of Error Obtained

A change was made in the language of this Rule so as to require that the designation of parties be filed simultaneously with whichever one is filed first of the record on error and the praecipe. It was felt that, with the time for issuance of writ of error reduced to three months, there would be a greater use of the method of having the writ of error issued by the filing of a praecipe and that it is desirable to have certainty as to the alignment of the parties from the time of the issuance of the writ of error.

The second change in this rule was the addition of provisions that, in the event that the party filing the praecipe does not comply with the provisions of Rule 112 (which relate to the preparation and certification of the record on error and the advancement of the cost of same), the Clerk of the trial court shall certify that fact to the Supreme Court and shall give notice to all parties to the case of such certification in accordance with Rule 5 and that, upon receipt of such certification, the Supreme

Court shall make whatever disposition of the writ of error or take whatever other action it deems proper. The purpose of these provisions is to enable a defendant in error, who may wish to ask for reversal or modification of portions of the judgment of the trial court which are unfavorable to him, to ask the Supreme Court to take such action as the Supreme Court may see fit to preserve his rights to have reviewed such portions of the judgment and to enable the Supreme Court to grant such relief as it may see fit.

The Supreme Court adopted a Committee Note to the amendment of this Rule in which attention of the attorneys is called to the fact that, once the praecipe for writ of error is filed within the time allowed by Rule 111 (b), the period of sixty days allowed for the filing of the record on error may be enlarged or extended by the Supreme Court under the provisions of Rule 6 (b). Because of this, if the attorney for the party seeking review of the judgment is unable to secure the record on error in time to file it with the Clerk of the Supreme Court within the three months allowed for issuance of the writ of error, he may, within such three months, file the praecipe for writ of error without filing the record on error and then, if he will be unable to file the record on error within the sixty days allowed by this Rule for same, he may, with or without notice, ask during such sixty days the Supreme Court to extend the time for the filing of the record on error. The granting of such extension, however, will rest entirely within the discretion of the Court. See also Rule 115 (e).

Rule 111 (f)—Grounds for Reversal

This Rule was previously entitled "Specification of Points" and it has been rewritten entirely because of the elimination of the necessity of filing a Specification of Points and the use of the Summary of the Argument in its place. It provides that no assignments of error, assignments of cross error or formal joinder in error, nor any specification of points or cross specification of points shall be filed and that in lieu thereof each party in his brief; in his summary of the argument required by Rule 115 (c) shall state clearly and briefly the grounds upon which he relies in seeking a reversal or modification of the judgment or the correction of adverse findings, orders or rulings of the trial court and that he will be limited to the grounds so stated, although the Court may, in its discretion, notice any error appearing of record.

The amendment of this Rule also adds provisions that, when a writ of error has issued, it shall not be dismissed upon motion of a plaintiff in error without notice to all interested parties whose appearances have been entered in the Supreme Court and order of the Court permitting such dismissal and that, if dismissal is objected to by any such interested party, he may, in the Court's discretion, seek reversal, modification, or correction of the judgment. The purpose of these provisions is to enable a defendant

in error, who may wish to ask for reversal or modification of portions of the judgment which are unfavorable to him, to object to the dismissal of the writ of error and, in case of such an objection by him, to enable the Supreme Court to permit him to seek the reversal, modification or correction of the judgment. These provisions seemed desirable because of the shortening of the time within which writ of error may be issued. It is to be noted that the amendment requires notice of the proposed dismissal to be given to only those parties whose appearances had already been entered in the Supreme Court. This is in line with the provision already contained in Rule 111 (e) that, in default of a defendant in error appearing in the Supreme Court and paying the required docket fee, the plaintiff in error shall not be required to serve him with any papers required by the Rules and that the Court may proceed to a determination of the writ of error ex parte. Therefore, if an attorney who represents a defendant in error is desirous of asking the Supreme Court to reverse, modify or correct portions of the judgment which are unfavorable to his client, he should, as soon as possible after learning of the issuance of the writ of error, enter the appearance of his client in the Supreme Court and pay his docket fee in that Court.

In amending this Rule, the Court omitted the following language which had previously appeared in it: "No writ of error shall be dismissed and no specification of points shall be disregarded on account of any technical defect not affecting the substantial rights of the parties." The omission of this sentence was not recommended by the Rules Committee. It would seem that the omission was due to a feeling on the part of the Justices that what is a "technical defect not affecting the substantial rights of the parties" is so indefinite and uncertain that the hands of the Court should not be tied by such a provision.

Rule 112 (e)—Agreed Statement

The only change made by the amendment of this Rule was to substitute the word "grounds" for "points," in view of the elimination of the Specification of Points.

Rule 113 (a)—Application for Supersedeas

This Rule has already permitted briefs on application for supersedeas to be typewritten. The amendments made in it merely permit them to be typewritten or mimeographed or otherwise reproducd or, at the election of the party filing same, to be printed, all as provided by Rule 115 (h).

Rule 114 (b)—Costs in Proceeding by a Poor Person

The amendments made to this Rule consist only of changes required by the elimination of specifications of points and abstracts of record and the revision of Rule 115 (h) relating to the form of briefs.

Rule 114 (c)—Costs

This Rule was, by amendment adopted November 12, 1952, changed in two respects: The first was to limit the requirement for the payment, as part of the costs, of the expense incurred by the successful party for printing the abstract of record to cases where, at the time the printed abstract of record was filed, it was required by the Rules to be filed. The second was to increase in such cases the limitation upon the amount to be paid from $1.00 to $2.75 per page of the abstract of record and to increase the limitation on the amount of costs to be paid to cover the expenses of the successful party in procuring the record on writ of error from twenty cents to thirty cents per folio; these increases were made in order to furnish a payment of costs commensurate with the expense actually paid, in view of the increase which occurred in these items since the Rules were adopted.

Rule 115—Briefs, Motions and Withdrawal of Papers

The title of Rule 115 was changed to read as above, thereby eliminating the word "Abstracts."

Rule 115 (a)—Statement of Case

The heading of this Rule originally read "Abstract of Record; Contents." On May 2, 1952 the Court adopted an amendment by which such title was changed to "Statement of Case" and such amendment provided that no abstract of record is required and that the plaintiff in error shall set forth in his brief a concise statement of the case containing all that is material to the consideration of the questions presented with appropriate folio references to the record and permitting such statement to be set forth either in the brief or in an appendix thereto. The text of this amendment, as well of as the amendments of Rules 115 (b) and 115 (c) which the Court made at the same time, appeared on pages 215 and 216 of the June 1952 issue of *Dicta*.

Thereafter the Court requested its Rules Committee to prepare and submit for the consideration of the Court further amendments of this Rule and of Rules 105 (b) and (c) which might express in greater detail the purpose which the Court had in mind in making the amendment of May 2, 1952. The amendment of this Rule which was submitted by the Rules Committee was adopted by the Court on November 12, 1952 with one slight change.

The principal provisions of such amendment have been summarized and commented upon in the earlier portion of this article and for details of its provisions the reader is referred to its text which is set out in full elsewhere in this issue of *Dicta*.

Rule 115 (b)—Briefs; When Filed

This Rule was amended by the Court on May 2, 1952 to fix the time for the filing of the brief of plaintiff in error at thirty

days after filing the record or, where application for supersedeas is pending, within thirty days from the date of the determination thereof, unless the Court makes final determination of the case on such application for supersedeas. Theretofore that had been the time for filing the abstract of record, and the time for filing brief of plaintiff in error had been thirty days after the filing of the abstract of record. This amendment was made necessary by the elimination of the abstract of record.

On November 12, 1952 the Court adopted an amendment to this Rule which had been drafted by the Committee which made no further substantial change except to delete the provision that fifteen copies of every brief shall be filed. This change was made because the matter of the number of copies of briefs to be filed was covered by an amendment of Rule 115 (i) which was submitted by the Committee and adopted by the Court.

Rule 115 (c)—Briefs; Contents

The amendment of this Rule which was adopted by the Court on May 2, 1952 eliminated the requirement that every brief, except one filed in support of or in opposition to a motion, shall contain a separate and particular statement of each point intended to be urged with appropriate references to the specification of points and that it shall contain the specification of points unless it shall have been therefore filed separately. It added a sentence reading that each such brief shall contain such appendices as are proper under the Rules. And, in the place of the words "A concise summary of the argument," it used the phrase "A brief statement of the argument setting forth clearly and succinctly the points to be argued." This last phrase was, by the amendment adopted on November 12, 1952, replaced by "A concise summary of the argument setting forth clearly and succinctly the grounds relied on by the party presenting the brief as required by Rule 111 (f)." Such amendment also excepted from the operation of this Rule briefs filed in support of or in opposition to an application for supersedeas, in addition to the previous exception of briefs filed in support of or opposition to a motion. It also added a requirement that references in the argument to material appearing in an appendix shall be by appropriate page numbers. The reader is referred to the complete text of this Rule which appears elsewhere in this issue.

Rule 115 (d)—Failure to File Brief; Effect of

By amendment adopted November 12, 1952, it was provided that, if plaintiff in error neglects to file a brief as required, the writ of error may not be dismissed without notice but, instead, all interested parties whose appearances have been entered in the Supreme Court are to be given an opportunity to file objections to dismissal of the writ of error. The purpose of this amendment

is the same as is stated in the discussion herein of a somewhat similar amendment of Rule 111 (f) and reference is made to the comments therein contained. Such amendment also eliminated the reference to abstracts of record.

Rule 115 (e)—Time to File; Time for Filing May Be Extended or Abridged by Court Only

This Rule was amended on November 12, 1952 by the addition of a provision that, if previous extensions of time for the performance of any act have been granted by the Court, the party seeking a further extension shall include in his motion a statement setting forth all previous extensions and on whose application such extensions were granted. The purpose of the Court in adopting this amendment has already been explained herein. Such amendment also deletes the reference to the abstract of record.

Rule 115 (f)—Motions and Briefs Thereon

The only change made in this Rule was the addition of the words "or mimeographed or otherwise reproduced in conformity with the provisions of Rule 115 (h) with respect to briefs" after the requirement that "All motions shall be typewritten." This was to bring about conformity with the provisions of Rule 115 (h) as amended.

Rule 115 (h)—Form of Briefs, Petitions and Motions

The amendment adopted November 12, 1952 made a number of changes in this Rule. It included "Petitions" in the title of the Rule in addition to Briefs and Motions. It provided that all motions and petitions must bear on the front cover the matter which previously had been required to appear on the front cover of abstracts of record and briefs. It deleted the reference to abstracts of record. It added provisions that any brief of thirty-five pages or less in length, including any appendix, whether filed separately or not, and all briefs filed in support of or in opposition to an application for supersedeas, or a motion, or under Rule 114 (b) (proceeding by a poor person) or Rule 115 (k) (Industrial Commission cases), and all motions and petitions may be typewritten or mimeographed or reproduced by some other method approved by the Clerk of the Supreme Court, and that all such briefs shall be plainly and distinctly legible, double spaced, and upon good and durable paper eight and one-half inches by thirteen inches and shall be bound at the top. It also made some changes in the technical specifications for the printing of briefs. And it contained the provision which in 1948 was added to this Rule and which read that briefs not in conformity with the Rule shall not be accepted by the Clerk for filing except upon order of the Court.

Attorneys should bear in mind that, instead of having the option of using paper that is either thirteen or fourteen inches

long in briefs, motions and petitions that are not printed, they may, under this amendment, use only thirteen inch paper. The filing of these papers typewritten, mimeographed or otherwise reproduced on fourteen inch paper is prohibited.

Attention is called to the warning contained earlier in this article against filing carbon copies which are not clear and distinct.

Attention is also called to the fact that the thirty-five pages, which must not be exceeded in the length of a brief if it is to be typewritten or mimeographed or reproduced by some method other than printing, include any appendix to such brief, whether filed separately or not.

Rule 115 (i)—Number of Copies To Be Filed and Served

The amendments adopted on November 12, 1952 placed in this Rule all of the provisions governing the number of copies of all papers of every kind that are to be filed and that are to be served on parties. Previously the provisions as to the number of copies to be filed were scattered through a number of Rules. The amendment of this Rule provides that ten copies of each motion, petition, brief or other paper which is typewritten, mimeographed or reproduced by some method other than printing are to be filed and that fifteen copies of each thereof when printed shall be filed. It further provides that two copies of each motion, petition, brief or other paper shall be served upon all parties, except that in the case of typewritten motions, briefs or other papers only one copy need be served.

Rule 115 (j)—Withdrawal of Papers from Files

The amendment of this Rule merely, in conformity with the amendments of other rules, states the purpose of withdrawal of the record as being preparing briefs or appendices instead of making abstracts.

Rule 115 (k)—Industrial Commission

This amendment added, after the word "typewritten," the words "mimeographed or otherwise reproduced in conformity with the provisions of Rule 115 (h)," in order to bring about conformity with said Rule 115 (h). It eliminated the provision as to the number of copies of briefs in Industrial Commission cases that are to be filed because that point is covered by Rule 115 (i) as amended. And it deleted the provision that no abstract of record is required in Industrial Commission cases because abstracts of record have, by the amendments, been eliminated in all cases.

Rule 117—Oral Arguments

On December 13, 1951 the Supreme Court adopted an amendment, which was prepared by the Justices and which rewrote this

Rule almost in its entirety. As so amended, this Rule provides that, within fifteen days after an action becomes at issue in the Supreme Court, either party may, by separate document, with copy served on opposing party, request oral argument and that the same will be permitted only by order of the Supreme Court fixing the date thereof, of which counsel shall be notified by the Clerk. It further provides that the Court may, of its own motion, order oral argument at any time. And it then contains provisions which were in the Rule before its amendment to the effect that oral arguments will be limited to thirty minutes to a side unless the Court, by order, extends the time thereof and that the reading of written or printed arguments or lengthy citations will not be permitted. The full text of this Rule as so amended was published on page 39 of the January 1952 issue of *Dicta*. Such amendment became effective January 1, 1952.

Rule 118 (b)—Advancement on Docket

The only changes made in this Rule by the amendment adopted November 12, 1952 were to delete the reference to abstract of record and to add the words "mimeographed or otherwise reproduced" with reference to briefs, in order to secure conformity with the other amendments that were made at the same time.

Rule 118 (c)—Rehearings

The Supreme Court by an amendment drafted by the Justices and adopted November 15, 1951, applicable to all opinions announced on or after November 19, 1951, added four provisions to this Rule. The first permitted the petition for rehearing to be either printed or mimeographed or typewritten, instead of being required to be printed in all cases except where the decision was on application for supersedeas. The second was a prohibition of more than three pages being contained in the petition for rehearing without consent of the Court. The third was a requirement that seven legible copies thereof accompany the petition. And the fourth was a provision that in no case will any argument be permitted in support of such petition. The full text of this amendment appeared on page 460 of the December 1951 issue of *Dicta*.

The Rule was further amended by the adoption on November 12, 1952 of an amendment prepared by the Rules Committee which, consistent with the amendments of other Rules, added, after the words "or typewritten" the phrase "or otherwise reproduced in conformity with the provisions of Rule 115 (h) with respect to briefs" and, because Rule 115 (i), as amended at the same time, provided for the number of copies to be filed, it deleted the requirement that the petition for rehearing shall be accompanied by seven legible copies thereof. Under the provisions of Rule 115 (i), as now amended, ten copies of a petition for rehearing are required to be filed.