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A Few Highlights on Federal Appellate Practice

G. Walter Bowman

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A Few Highlights on Federal Appellate Practice

BY G. WALTER BOWMAN*

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*Of the Denver bar and clerk of the United States district court for the district of Colorado. This appendix of forms is supplemental to Mr. Bowman's article appearing in the September, 1942, issue of DICTA.

Notice of Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

Plaintiff,

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue for the District
of Colorado,

Defendants.

Civil No.

NOTICE OF APPEAL

Notice is hereby given that Blank Company, a corporation, plain-
tiff above named, hereby appeals to the Circuit Court of Appeals of
the United States for the Tenth Circuit, from the final judgment en-
tered in this action on May 1, 1942, in favor of the above named de-
fendant.

GEORGE MCGILLICUDDY,
Attorney for Plaintiff (Appellant).

ADDRESS: Equitable Building,
Denver, Colorado.

Notice of Plaintiff's Designation of Portion of Record on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue,

Plaintiff,

Defendants.

Civil No.

NOTICE OF PLAIN-
TIF'S DESIGNATION
OF PORTIONS OF
RECORD ON APPEAL

To Martin J. Stuart, Esq., Attorney for the above named defendants:

Notice is hereby given that in connection with the appeal of the above named plaintiff from the judgment of the court entered on May 1, 1942, notice of which appeal was filed in said court on July 25, 1942, the plaintiff on said day filed its designation of portions of record of proceedings and evidence to be contained in the record on such appeal pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, a copy of which designation is herewith served upon you pursuant to said rule.

Dated at Denver, Colorado, July 27, 1942.

GEORGE MCGILLICUDDY,

Attorney for Said Plaintiff (Appellant).

ADDRESS: Equitable Building,
Denver, Colorado.

Received a copy of the above notice and a copy of the praecipe therein referred to at Denver, Colorado, this 27th day of July, 1942.

MARTIN J. STUART,

Attorney for Defendants (Appellees).

Designation of Portions of Record on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

Plaintiff,

vs.

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue for the District
of Colorado,

Defendants.

Civil No.

DESIGNATION OF
PORTIONS OF
RECORD ON APPEAL

In connection with the appeal of the judgment in the above-entitled action to the United States Circuit Court of Appeals for the Tenth Circuit, the Clerk of the District Court shall prepare in accordance with the Rules of Civil Procedure for the District Court of the United States, and transmit to said Circuit Court of Appeals, the record composed of the following, as provided by Rule 75:

1. Complaint, filed March 20, 1941.
2. Answer of defendants, filed June 3, 1941.
3. Trial orders of November 24, 25 and 27, 1941. (Include statement "Entered on the docket" after each order.)
4. Transcript of testimony at the trial, filed herewith. (In lieu of making copies of the several exhibits offered or introduced in evidence, the plaintiff (appellant) requests that the original exhibits shall be transmitted to said Circuit Court of Appeals pursuant to Rule 75 (i) of said Rules of Civil Procedure.)
5. Memorandum Opinion of court, filed February 25, 1942. (Include statement "Entered on the docket" after this order.)

6. Court's findings of fact and conclusions of law, filed April 30, 1942. (Include statement "Entered on the docket" at end of said findings of fact and conclusions of law.)
7. Judgment entered May 1, 1942. (Include at end of order, statement "Entered on the docket May 1, 1942".)
8. Additional memorandum by the court, filed May 4, 1942. (Include statement "Entered on the docket", etc.)
9. Objections and exceptions to findings of fact and conclusions of law and judgment, filed May 11, 1942.
10. Plaintiff's motion for amendment of court's findings of fact and for additional findings and for amendment of its judgment accordingly, filed May 11, 1942.
11. Stipulation re hearing thereon, filed June 11, 1942.
12. Order overruling the aforesaid objections, exceptions and motion, entered June 17, 1942. (Include "Entered on the docket", etc.)
13. Notice of appeal, filed this date.
14. Bond for costs on appeal, filed this date.
15. Statement of points relied on by appellant.
16. This designation of portions of record on appeal.

GEORGE MCGILICUDDY,
Attorney for Plaintiff (Appellant).

ADDRESS: Equitable Building,
 Denver, Colorado.

Order Enlarging Time for Filing Record on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

Plaintiff,

vs.

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue for the District
of Colorado,

Defendants.

Civil No. -----

ORDER ENLARGING
TIME FOR FILING
RECORD ON APPEAL

At this day comes Blank Company, Plaintiff, by George McGilli-
cuddy, Esquire, its attorney,

And thereupon, on its motion and for good cause shown, it is
ordered by the court that the time for filing the record on appeal in
the United States Circuit Court of Appeals for the Tenth Circuit be,
and the same is hereby enlarged and extended to and including the
15th day of September, A. D. 1942.

J. FOSTER SYMES,

United States District Judge.

NOTE: This order should be prepared in duplicate, and the judge's signature ob-
tained on both copies, so that one copy may be filed in this court and one copy, or
duplicate original, may be filed in the office of the Clerk of the U. S. Circuit Court
of Appeals.

Civil Bond on Appeal.

DISTRICT COURT OF THE UNITED STATES
 DISTRICT OF COLORADO SITTING
 AT DENVER

Civil Case No.

KNOW ALL MEN BY THESE PRESENTS, That we, Blank Company, as principal, and Richard Roe Bonding and Insurance Company, as surety, are held and firmly bound unto Ralph Nicholas, individually and as Collector of Internal Revenue in and for the District of Colorado, in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, or his successors, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this second day of June in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the November term, A. D. 1941, of the District Court of the United States for the District of Colorado, sitting at Denver, in a suit pending in said Court between Blank Company, a corporation, Plaintiff, and Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, Defendant, judgment was rendered against the said Blank Company, and the said Blank Company having prayed and been allowed an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment in the aforesaid suit; and a citation directed to the said Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Blank Company shall prosecute said appeal to effect, and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

BLANK COMPANY (SEAL)

BY JOHN DOE, President,

RICHARD ROE BONDING AND
 INSURANCE COMPANY,

BY RICHARD ROE, Attorney-in-Fact.

(CORPORATE SEAL)

Approved: July 25, 1942

J. FOSTER SYMES,

United States District Judge.

NOTE: The approval of the trial judge need not be obtained on bonds for the sum of \$250.00 or less. Power of attorney of the person signing for the surety company must be filed in the court.

Supersedeas Bond on Appeal.

DISTRICT COURT OF THE UNITED STATES
 DISTRICT OF COLORADO
 SITTING AT DENVER
 Case No.

KNOW ALL MEN BY THESE PRESENTS, That we, Blank Company, as principal, and Richard Roe Fidelity and Guaranty Company, a Colorado corporation, as surety, are held and firmly bound unto Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, in the full and just sum of Five Thousand and No/100 Dollars (\$5,000.00), to be paid to the said Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, or his successor, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents. Sealed with our seals and dated this 1st day of August, in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the November term, A. D. 1941, of the District Court of the United States, for the District of Colorado, sitting at Denver, in a suit pending in said court between Blank Company, Plaintiff, and Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, Defendant, judgment was rendered against the said Blank Company, Plaintiff, and the said Blank Company has taken an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment in the aforesaid suit.

Now the condition of the above obligation is such, that if the said Blank Company shall prosecute said appeal to effect, and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

BLANK COMPANY (SEAL),
 By JOHN DOE, President.

(CORPORATE SEAL)

RICHARD ROE FIDELITY AND
 GUARANTY COMPANY,

By JOHN FINNICUM, Attorney-in-Fact.

Approved: August 5, 1942

J. FOSTER SYMES,
United States District Judge.

NOTE: If bond is in the amount of \$250.00 or less, the trial judge need not approve the same. Power of attorney must be filed along with bond, if not theretofore filed.

Criminal Bond on Appeal.

DISTRICT COURT OF THE UNITED STATES
 DISTRICT OF COLORADO
 SITTING AT DENVER
 Case No.

KNOW ALL MEN BY THESE PRESENTS, That we, Joe Doaks, as principal, and Mary Smith and Anna Jones, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Twenty-five Hundred Dollars (\$2500.00), to be paid to the said The United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 4th day of August, in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the May Term, A. D. 1942, of the District Court of the United States, for the District of Colorado, sitting at Denver, in a suit pending in said Court between The United States of America, Plaintiff, and Joe Doaks, Defendant, a judgment and sentence was rendered against the said Joe Doaks, and the said Joe Doaks has taken an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment and sentence in the aforesaid case.

Now the condition of the above obligation is such that if the said Joe Doaks shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Tenth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said appeal, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Tenth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed, or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the District of Colorado on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Tenth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

Approved: August 4, 1942.

J. FOSTER SYMES,
United States District Judge.

JOE DOAKS (SEAL)
Principal.
 MARY SMITH (SEAL)
 ANNA JONES (SEAL)

Justification of Surety.

UNITED STATES OF AMERICA }
 DISTRICT OF COLORADO } ss.

Mary Smith, surety on the within and foregoing bond, being first duly sworn upon oath deposes and says:

That she resides at 4320 Vallejo Street, Denver, Colorado; that she is a freeholder in the District of Colorado and that she is worth the sum of Five Thousand (\$5,000.00) Dollars over and above all her just debts and liabilities in property, subject to execution and sale and that her property consists of:

Lot 5 and South Half of Lot 4, Block 1, Van Camp's Addition, City and County of Denver, Colorado,

assessed valuation \$3,050.00, free and clear of encumbrances.

That she is not surety on more than two bail bonds in any Court.

MARY SMITH,
Surety.

Subscribed and sworn to before me this 4th day of August, A. D. 1942.

(U. S. COMMISSIONER'S
 SEAL)

HAROLD S. OAKES,
United States Commissioner.

NOTE: There should be one of these justifications for each of the sureties signing the bond.

Order Relative to Transmittal of Exhibits.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK. COMPANY,

Plaintiff,

vs.

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue for the District of
Colorado,

Defendants.

Civil No.
ORDER RELATIVE TO
TRANSMITTAL OF
EXHIBITS TO THE
UNITED STATES
CIRCUIT COURT OF
APPEALS FOR THE
TENTH CIRCUIT

The plaintiff above named, having appealed from this Court's judgment in the above entitled case, entered May 1, 1942, and the court being of opinion that the original exhibits introduced at the trial of this cause are not subject to reproduction and should be sent to the said Court of Appeals for inspection in lieu of copies, it is

ORDERED, That pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure, all original exhibits introduced at the trial of this cause shall be transmitted (in lieu of copies) by the Clerk of this court to said Court of Appeals as a part of the record on such appeal, and to be returned to this court upon final determination of such appeal.

BY THE COURT:

J. FOSTER SYMES,
United States District Judge.

Approved:

GEORGE MCGILLICUDDY,
Attorney for Plaintiff.

MARTIN J. STUART,
Attorney for Defendants.

Statement of Points Relied on on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

Plaintiff,

vs.

RALPH NICHOLAS, Individually and as Col-
lector of Internal Revenue for the District
of Colorado,

Defendants.

Civil No.

STATEMENT OF
POINTS RELIED ON
ON APPEAL

Plaintiff (appellant) believes that it has designated for inclusion the complete record of proceedings and evidence in the action, and therefore Rule 75 (d) of the Rules of Civil Procedure relative to a "Statement of Points" does not apply.

However, and without waiver of that question, it makes the following statement of points on which it will rely:

- (1)
- (2)
- (3)
- (4)

GEORGE MCGILLICUDDY,
Attorney for Plaintiff (Appellant).

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