

April 16, 2013

Honorable John A. Boehner
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 16, 2013

Honorable Joseph R. Biden, Jr.
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 16, 2013

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 13, 14, 24, 28, and 28.1, and to Form 4.

[See infra, pp. — — —.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2013, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

**AMENDMENTS TO THE FEDERAL RULES OF
APPELLATE PROCEDURE**

**TITLE III. APPEALS FROM THE UNITED STATES TAX
COURT**

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

**(1) How Obtained; Time for Filing a Notice of
Appeal.**

(A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any

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other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(2) **Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(3) **Contents of the Notice of Appeal; Service;**

Effect of Filing and Service. Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(4) **The Record on Appeal; Forwarding; Filing.**

(A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the appeal is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals.

(B) If an appeal is taken to more than one court of appeals, the original record must be sent

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to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(b) Appeal by Permission. An appeal by permission is governed by Rule 5.

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Rule 14. Applicability of Other Rules to Appeals from the Tax Court

All provisions of these rules, except Rules 4, 6-9, 15-20, and 22-23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

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Rule 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) **Motion in the District Court.** Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) **Action on the Motion.** If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for

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fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) **Prior Approval.** A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) **Notice of District Court's Denial.** The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) **Motion in the Court of Appeals.** A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy

of the affidavit filed in the district court and the district court's statement of reasons for its action.

If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding.

A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

- (1) in an appeal from the United States Tax Court;
and
- (2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

- (c) **Leave to Use Original Record.** A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

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Rule 28. Briefs

- (a) **Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:
- (1) a corporate disclosure statement if required by Rule 26.1;
 - (2) a table of contents, with page references;
 - (3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

- (4) a jurisdictional statement, including:
 - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (C) the filing dates establishing the timeliness of the appeal or petition for review; and
 - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

- (5) a statement of the issues presented for review;
- (6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));
- (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
- (8) the argument, which must contain:
 - (A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant

relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

- (2) the statement of the issues;
- (3) the statement of the case; and
- (4) the statement of the standard of review.

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Rule 28.1. Cross-Appeals

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(c) **Briefs.** In a case involving a cross-appeal:

- (1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).
- (2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case

unless the appellee is dissatisfied with the appellant's statement.

- (3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:
- (A) the jurisdictional statement;
 - (B) the statement of the issues;
 - (C) the statement of the case; and
 - (D) the statement of the standard of review.

- (4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (10) and must be limited to the issues presented by the cross-appeal.

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