

# Index

## **ABSTENTION**

- Appealable as a stay, § 2:9
- Remand of removed action, review, § 1:11

## **ABUSE OF DISCRETION**

- Extending time to appeal, § 12:5
- Standard of review, § 31:4

## **ACTUAL NOTICE**

- Extending time to appeal, § 12:4

## **ADDENDUM**

- Briefs, § 32:4

## **ADDITIONAL PARTY APPEALS**

- Cross appeal, §§ 11:2, 11:3

## **ADEQUATE REMEDY AT LAW**

- Extraordinary writ review, §§ 6:3, 6:4

## **ADMINISTRATIVE CLOSURE**

- After plaintiff's failure to amend, § 2:3
- Effect on finality, §§ 2:3, 4:7
- Effect on finality of arbitration order, § 4:7
- Refusal to reopen as effective dismissal, § 2:3

## **ADMINISTRATIVE PROCEDURES ACT**

- See Administrative Review

## **ADMINISTRATIVE REVIEW**

- Generally, Ch. 17
- Accrual of review period, § 17:8
- Administrative Procedures Act, § 17:4
  - Standards of review, § 31:5
- Agency authority pending appeal, § 26:3
- Agency explanation required, § 31:5
- Agency inaction, § 17:3
- Agency non-acquiescence, § 17:17
- Agency reconsideration, § 17:10
- Answer to enforcement petition, § 17:18
- Appeal compared, § 17:17
- Brief drafting, § 17:19
- Chevron doctrine, § 31:5
- Commencement of review period, § 17:8
- Costs, taxation, § 34:3
- Deadlines, §§ 17:7, 17:8

**ADMINISTRATIVE REVIEW—Cont'd**

- District court or court of appeals, § 17:5
- Docketing, § 22:1
- Enforcement petition, § 17:18
- Explanation needed, § 31:5
- Extending review period, § 17:9
- Finality requirements, § 17:2
- In forma pauperis procedure, § 20:4
- Intervention, § 17:14
- Judicial review, meaningful basis, § 17:4
- Jurisdiction, § 17:1
- Major questions, § 31:5
- Multiple petitions extending review, § 17:9
- NLRB orders
  - Briefing sequence, § 32:1
  - Settlement of judgment, § 17:18
- Non-acquiescence by agency, § 17:17
- Pending review, agency authority, § 26:3
- Petition for enforcement, § 17:18
- Petition for review
  - Contents, § 17:11
  - Filing, § 17:12
  - Form, § 17:20
  - Multiple petitions, § 17:15
  - Other documents as petition, § 17:11
  - Service, § 17:12
  - Time to file, § 17:7
  - Transfer, § 17:15
- Preliminary agency action or inaction review, § 17:13
- Premature petition, § 17:8
- Preparing record on review, § 17:16
- Preserving issues, § 17:6
- Presumptions of regularity, § 31:5
- Reconsideration request, need, § 17:2
- Reconsideration request affecting review period, § 17:10
- Record, § 17:16
- Remand without vacatur, § 17:17
- Res judicata, §§ 17:17, 17:18
- Review limited or barred, § 17:4
- Review period, §§ 17:7-17:10
  - Extension, § 17:9
  - Reconsideration, effect, § 17:10
  - Start, § 17:8
- Sanctions against agency, § 35:1
- Sanctions by agency, § 17:2
- Settlement of judgment, §§ 17:18, 34:1
- Standards of review, § 31:5

## INDEX

### **ADMINISTRATIVE REVIEW—Cont'd**

- Standing, § 17:17
- Stare decisis, § 17:17
- Stay, §§ 17:13, 17:18
- Substitution of agency, § 17:11
- Timeliness, §§ 17:7-17:10
- Transfer to other court, § 17:15
- Uniform procedure, § 17:17
- Vacatur, § 17:7
- Venue, §§ 9:5, 17:15
- Voluntary dismissal, § 17:17
- Wrong circuit, §§ 9:5, 17:12, 17:15

### **ADMINISTRATIVE STAY**

- See Stay

### **ADMIRALTY**

- Appeal orders, § 4:6
- Seamen exemption from costs, § 20:3

### **ADMISSION TO PRACTICE**

- Briefs, § 32:4
- Docketing appeals, § 22:3
- Forms, §§ 22:4-22:6

### **ALL WRITS ACT**

- Bankruptcy, § 14:4
- Extraordinary writ review, § 6:1

### **AMENDMENT**

- Notice of appeal, § 10:9
- Post-judgment motion, § 10:5

### **AMICUS CURIAE**

- Briefs, § 32:14
- Certification to state court, § 23:2
- Costs, not entitled, § 34:3
- Intervenor, § 17:14
- Petition for rehearing, § 34:9

### **ANSWER**

- Administrative review, § 17:18
- Briefs, §§ 32:1, 32:12
- Extraordinary writ review, § 6:7

### **ANTI-SLAPP STATUTE**

- Appealability of denial, § 2:7

### **APPEAL**

- See also Appeal Period, Notice of Appeal
- Abortive, extraordinary writ as cure, § 6:9
- Administrative review, compared, § 17:1

**APPEAL—Cont'd**

- Discuss with client, § 1:13
- Likelihood of success, § 1:1
- Screening procedure, §§ 33:1, 33:5
- Statutory limits, § 1:12

**APPEALABILITY**

- See Finality

**APPEAL PERIOD**

- Generally, Ch. 7
- See also Extension of Time
- Additional appeals, Ch. 11
- Administrative review, § 17:7
- Bankruptcy, § 14:5
- Calculation, § 7:7
- Civil vs. criminal, § 7:8
- Class certification, § 5:7
- Clerk's office, closure, § 7:7
- Criminal
  - Length, § 15:5
  - Start, § 15:4
- Cross-appeal, § 11:4
- Discretionary interlocutory appeal, § 5:4
- Electric filing, § 7:7
- Extraordinary circumstances, § 12:4
- Extraordinary writs, § 6:7
- Federal Circuit, § 19:5
- Federal officer or agency, § 7:9
- Government involvement, effect, § 7:9
- Habeas and section 2255 proceeding, § 16:1
- Judgment vacating and re-entered, § 7:4
- Jurisdictional vs. non-jurisdictional, §§ 7:1, 7:3, 11:4, 14:5
- Late pro se appeal, § 24:1
- Length, §§ 7:7-7:9
- Motion to extend, form, § 12:6
- Oral ruling, § 7:2
- Re-opening, § 12:4
- Restart after denial, § 10:7
- Restart after grant of motion, § 10:8
- Restart with denial vs. amended judgment, § 7:2
- Separate document rule, § 7:3
- Start, §§ 7:1, 7:2, 7:14, 15:4
  - Criminal appeal, § 15:4
- Suspension, § Ch. 10, 15:6
- Suspension by motion, Ch. 10

**APPEARANCE**

- Docketing appeals, § 22:2

## INDEX

### APPELLANT

- Death, substitution, § 8:3
- Named in notice of appeal, § 8:3
- Non-intervening party, § 1:3
- Pro se, § 24:1
- Separate appeals by multiple appellants, § 11:1

### APPELLATE VENUE

- See Venue, appellate

### APPENDIX

- Generally, Ch. 29
- Abolished, where, § 29:5
- Addendum, compared, §§ 29:1, 32:4
- Brief, attachment to, generally, § 29:1
- Contents, § 29:4
- Criminal appeals, § 15:19
- Deadlines, § 29:3
- Deficiencies, effect, § 25:1
- Designation procedure, § 29:3
  - Appellants designation, form, § 29:6
- Excerpts in lieu of appendix, § 29:5
- Exhibits, stipulation, form, § 29:7
- Extra-record material, § 29:3
- Forms, §§ 29:6-29:7
- Joint vs. separate, § 29:3
- Mistakes, § 29:3
- Preparation, § 29:3
- Record compared, § 29:1
- Record excerpts, compared, § 29:5
- Requirement and exemptions, § 29:2
- Supplemental, § 29:4
- Timelines, § 29:2

### ARBITRATION

- Alternative dispute resolution, distinguished, § 4:7
- Appealability, § 4:7
- Appeal from orders, § 4:7
- Denied arbitration, late appeal as forum shopping, § 1:5
- Gateway issue, § 4:7
- State arbitration, appeal from denial, §§ 4:4, 4:7
- Stay pending appeal, § 2:10
- Transportation exemption, § 4:7

### ARGUMENT

- See Oral Argument

### ASSIGNMENT TO PANEL

- Argument, § 33:5

**ATTORNEY-CLIENT**

- Client attendance at oral argument, § 33:10
- Discuss appeal, § 1:13
- Privilege - denial not a collateral order, § 2:6
- Pro se filing by represented party, §§ 10:5, 24:2
- Sanctions, attorney vs. client, § 35:2

**ATTORNEYS**

- Admission, § 22:3
  - Application, form, § 22:5
- Advising pro se opponent, § 24:1
- Advising pro se party, § 24:2
- Appearance, § 22:2
- Appellant, as, § 8:3
- Appointment
  - Criminal appeal, § 15:28
- Briefs showing admission, § 32:4
  - Communications with court, § 30:1
- Contempt appeals, § 2:8
- Pro hac vice admissions, § 22:6
  - Motion for leave, form, § 22:6
- Representation Statement, form, § 22:4
- Sanctions against, **Ch. 35**
- Trial vs. appellate counsel to handle appeal, § 1:14
- Withdrawal
  - Criminal appeal, §§ 15:25, 15:26

**ATTORNEYS FEES**

- Appealability, §§ 10:9-10:11
- Application, contents and procedure, § 34:4
- Award after appeal, § 34:16
- Award as sanctions, § 35:1
  - Procedure, § 35:2
- Award pending appeal, § 26:1
- Costs, fees as, § 20:1
- Court of appeals review in direct review case, § 9:2
- Entitlement, § 34:5
- Motion for fees
  - Effect, § 10:12
  - Form, § 10:14
- Post-judgment motions, §§ 10:11, 10:13
- Pro se recovery, § 24:1
- Remand of calculation, §§ 34:16, 35:2
- Review included in review of ruling on post-judgment motion, § 10:9
- Sanctions, §§ 35:1, 35:2
- Security to cover costs and fees, § 20:1
- Third party appeals in criminal cases, § 15:32

## INDEX

### **BAIL OR RECOGNIZANCE**

Criminal appeals, § 15:30

### **BANKRUPTCY APPEALS**

Generally, **Ch. 14**

Adversary proceeding, normal finality rule, § 14:2

Agreement for direct appeal, form, § 14:8

All Writs Act, § 14:4

Appeal options, § 14:1

Collateral orders, § 14:4

Core proceedings, § 14:1

Designation on appeal, § 14:2

Direct appeals to court of appeals, § 14:1

Direct court appeals, § 14:1

Dismissal, § 14:5

District court appeals, § 14:1

Election of remedies, § 14:1

Extraordinary writ review, § 14:4

Finality of decisions, § 14:2

Injunctions, § 14:4

Interlocutory appeal, §§ 14:1, 14:4

Jurisdiction, § 14:1

Multiple claims or parties, § 14:4

Non-core proceedings, § 14:1

Notice of appeal, forms, §§ 14:6-14:8

Permissive appeals, § 14:4

Procedure, § 14:5

Remand order finality, § 14:3

Writ review, § 14:4

### **BILL OF COSTS**

Form, § 34:18

Procedure, § 34:3

### **BOND**

See also Costs, In Forma Pauperis, Judgment, Stay

Administrative review, § 17:12

Cost bond

Exempt parties, § 20:3

Failure to file, § 20:2

Liability absent bond, § 34:3

Motion, form, § 20:6

Obtaining, § 20:2

Procedure, § 20:2

Stipulation in lieu of bond, form, § 20:7

When required, § 20:1

Effect of cross-appeal, § 11:2

Effect of partial remand, § 26:2

Enforcement, § 21:8

**BOND—Cont'd**

- Execution on judgment, § 21:1
- Effect of bond, § 21:2
- Exempt parties, § 21:3
- Motion to increase, § 21:4
- Procedure, § 21:4
- Security for injunction pending appeal, § 21:6
- Security for stay pending appeal, § 21:5
- Security in lieu of bond, § 21:4
- Stipulation for demand in lieu of bond, § 21:7

**BRIEFS**

- Generally, **Ch. 32**
- Acronyms and abbreviations, § 32:8
- Addendum, § 32:4
- Administrative review, § 17:19
- Admission to bar, § 32:4
- Adopting arguments, § 32:10
- Alternative arguments, minimizing, § 32:10
- Amicus curiae briefs, §§ 32:14, 34:9
- Answering brief, §§ 32:1, 32:12
- Anticipating arguments, § 32:10
- Appellee's brief, § 32:12
- Attorney admitted, § 32:4
- Authority, citing, §§ 32:4, 32:10, 32:15
- Back cover, § 32:4
- Bar membership certificate, § 32:4
- Cases
  - Citing, §§ 32:4, 32:10, 32:15
  - Form, § 32:17
  - Related cases statement, § 32:4
  - Statement of case, § 32:4
  - Supplemental authority, § 32:15
- CD-ROM brief, §§ 30:3, 32:1
- Certificates
  - Bar admission, § 32:4
  - Compliance, § 32:4
  - Length, § 32:4
  - Rulings, § 32:4
  - Rulings and related cases, § 32:4
  - Type fonts, § 32:4
- Citations, unpublished decisions, § 32:10
- Committee briefs, § 32:5
- Compliance certificate, § 32:4
- Conclusion, §§ 32:4, 32:11
- Contents, § 32:4
  - Criminal appeals, § 15:20
- Contrary authority, § 32:10



## INDEX

### **BRIEFS—Cont'd**

- Cover, § 32:4
- Criminal appeals
  - Contents, § 15:20
  - Timeliness, § 15:21
- Cross appeal, §§ 11:48, 32:1
- Date, § 32:4
- Deadlines, § 32:3
  - Extension, § 32:3
  - Suspension pending dispositive motion, § 32:3
- Disclosure statement, § 32:4
- Disposition below, § 32:4
- Drafting brief, §§ 17:19, 32:5, 32:6, 32:8-32:11
- Expedite, motion to, § 32:3
- Extension procedure, § 32:3
- Failure to file, § 32:1
- Federal Circuit deadlines, § 19:5
- Fonts, § 32:4
- Format, § 32:1
- Front cover, § 32:4
- Glossary, § 32:4
- Issues statement, §§ 32:4, 32:6
- Joint vs. separate, §§ 32:1, 32:2
- Judicial notice, material subject to, § 28:20
- Jurisdictional statement, § 32:4
- Length limits, § 32:2
  - Certificate of compliance, form, § 32:17
  - Motion for extra length, § 32:2
- Multiple party appeals, § 32:1
- New issues
  - First time on appeal, § 32:7
  - Reply brief, § 32:13
  - Supplemental authorities, § 32:15
- NLRB orders, sequence of briefs, § 32:1
- Opening brief, § 32:1
- Oral argument statement regarding, § 32:4
  - Illustration, § 32:15
- Parties, § 32:1
- PDF format, § 32:1
- Preserving error, § 32:6
- Protective orders, § 32:9
- References to record, §§ 32:8, 32:10
- Related cases, § 32:4
- Reply brief
  - After notice of no oral argument, § 33:1
  - Joint vs. separate opening briefs, § 32:1
  - New issues, § 32:13

**BRIEFS—Cont'd**

- Reply brief—Cont'd
  - Strategy, § 32:13
- Rule 28(i) filings, § 32:15
- Rulings certificate, § 32:4
- Sealed or sensitive documents, references to, § 28:13
- Service, proof, § 32:4
- Signature, § 32:4
- Size limits, § 32:2
- Standard of review, statement, §§ 31:1, 32:4, 32:10
- Statutes and regs, § 32:4
- Subheadings, § 32:10
- Summary of argument, §§ 32:4, 32:10
- Supplemental authorities, § 32:15
  - Citation, form, § 32:16
- Table of authorities, § 32:4
- Table of contents, § 32:4
- Timeliness
  - Generally, § 32:3
  - Criminal appeals, § 15:21
  - Extending time, § 32:3
  - Shortening time, § 32:3
- Waiver of issues not raised, § 32:12
- Writing, §§ 32:5-32:11

**CAPITAL CASES**

- Criminal appeals, § 15:27
- Habeas corpus and 2255 relief, § 16:7

**CD-ROM**

- Briefs, §§ 30:3, 32:1

**CERTIFICATE OF APPEALABILITY**

- See Habeas Corpus and Section 2255 Proceedings

**CERTIFICATION**

- See also Class Actions, District Court Reasons
- Bankruptcy direct appeal, §§ 14:1, 14:4, 14:5
- Controlling question, Ch. 5
- Denial, § 5:3
- Finality in multiple claim or party case, Ch. 3
- Frivolous appeal, §§ 2:7, 20:1, 26:2
- Legal questions
  - Generally, Ch. 23
  - Court of appeals to state court, § 23:3
  - Court of appeals to Supreme Court, § 23:2
  - District court to court of appeals, § 23:1
  - Motion to certify state law question, form, § 23:4
- Motion to certify - form, § 3:10
- Multiple claims or parties, Ch. 3

## INDEX

### **CERTIFICATION—Cont'd**

- Pending appeal, § 26:1
- Review of certification on appeal, § 3:8
- Sentencing appeals, § 20:5
- State law question, § 23:3
  - Motion to certify, form, § 23:4
- Stay of execution on judgment, § 21:3

### **CERTIORARI REVIEW**

- See Supreme Court

### **CHANGE IN LAW**

- After mandate, § 34:14
- Before mandate, § 34:12

### **CHOICE OF LAW**

- See also Transfer
- Federal circuit
  - Regional law, § 19:6
- Transferred appeal, § 9:1

### **CLAIMS**

- Separateness for appeal purposes, § 3:4

### **CLASS ACTION FAIRNESS ACT**

- See Class Actions, Remand of Removed Actions

### **CLASS ACTIONS**

- Appellants, § 8:3
  - Certification appeals, §§ 2:4, 5:7
- Certification orders, § 5:7
- Class representative, notice of appeal, § 8:3
- Collateral order appeals, § 5:7
- Correct appellant, § 8:3
- Creating finality, § 2:12
- Intervention motion to appeal, § 1:3
- Non-certification appeals, § 5:7
- Remand of removed action, appeal, § 1:31
- Settlement, appeal, § 20:1
- Standing of class representative, § 1:4
- Voluntary dismissal, special procedures, § 25:7

### **CLEARLY ERRONEOUS**

- Standard of review, § 31:2

### **CLERK**

- Argument calendar, §§ 33:3, 33:4
- Authority pending appeal, Ch. 26
- Bond to stay execution, § 21:1
- Communications, § 30:1
- Costs, taxation, § 34:3
- Dismissal, § 25:1

**CLERK—Cont'd**

Docketing, **Ch. 22**

Entry of judgment

Court of appeals, § **34:1**

District court, § **7:2**

Failure to prosecute, § **25:1**

Fees, this index

Filing

Notice of appeal, §§ **8:13, 15:8**

Post-judgment motion, § **10:5**

Interest on judgment, § **34:4**

Motions

Ruling on procedural motions, § **30:2**

Status quo order, § **21:6**

Notice of entry, §§ **12:3, 12:4**

Record on appeal

Preparation, §§ **28:1-28:3**

Transmittal, § **28:13**

**CLOSED CASE**

See Administrative Closure

**COLLATERAL ORDERS**

Anti-SLAAP denial, § **2:7**

Bankruptcy, § **14:4**

Class notice issues, § **5:7**

Contempt, § **2:8**

Criminal appeals, limited, § **15:11**

Criteria, § **2:5**

Cross-appeals, §§ **2:5, 11:3**

Denied immunity, § **2:7**

Pendent appellate jurisdiction, §§ **2:5, 2:7**

Separate document not required, § **7:3**

Stay, grant or denial, § **2:9**

Third party orders, § **2:6**

**COMPLAINT**

Dismissal as final judgment, § **2:3**

**CONDITIONAL RELEASE**

Criminal cases, §§ **15:30, 15:31**

**CONFERENCES**

Procedure, § **30:4**

**CONSENT JUDGMENT**

Reserving right to appeal, § **2:12**

Waiver of appeal, § **1:4**

**CONSENT TO APPEAL**

See Discretionary Interlocutory Appeals

## INDEX

### **CONSOLIDATED CASES**

- Certification under Rule 54(b) not required, § 3:3
- Effect on appeal, §§ 3:3, 7:5, 10:4, 11:1
- Government as party, effect on appeal period, § 7:9
- Post-judgment motions, effect, § 10:4
- Time for additional appeals, § 11:1

### **CONSTITUTIONAL CHALLENGE**

- Notice requirement, § 28:13
- Standard of review, § 31:2

### **CONTEMPT**

- Appealability, § 2:8
- Appeal period, § 7:9
- Criminal, §§ 15:2, 15:11
- Stay pending appeal, § 21:2

### **CONTRARY CIRCUIT AUTHORITY**

- Basis for en banc hearing, § 33:2
- Discussion in brief, § 32:10
- Initial en banc hearing, § 33:2
- Petition for rehearing en banc, basis for, § 34:8

### **CONTROLLING QUESTION**

- Discretionary appeals, § 5:3

### **CORRECTION OF SENTENCE**

- Habeas Corpus and 2255 Relief, this index

### **COSTS**

- See also Bond
- Attorneys fees
  - As costs, § 20:1
- Authority to award
  - Court of appeals costs by district court, § 34:3
  - Supreme Court costs by court of appeals, § 34:3
- Bill, procedure, § 34:3
  - Bill of costs, form, § 34:18
- Class action settlement, § 20:1
  - Court of appeals award added to district court judgment, § 34:3
- Government entitlement and liability, § 34:3
- Liability vs. security, § 34:3
- Loss after remand, effect on award, § 34:1
- Mandate, omitted determination, § 34:14
- Motion for costs, effect, § 10:11
- Recoverable items, § 34:3
- Refusal, grounds, § 34:3
- Retax motion, § 34:4
- Sanctions, double costs, § 35:2
- Sanctions distinguished, §§ 35:1, 35:2

**COSTS—Cont'd**

Security for costs, **Ch. 20**

Taxation, § **34:3**

**COVER**

Briefs, § **32:4**

**CREDIBILITY OF WITNESSES**

Standard of review, § **31:2**

**CRIMINAL APPEALS**

Generally, **Ch. 15**

Accrual of appeal period, § **15:4**

Ancillary issues considered by court of appeals, § **15:14**

Anders brief, §§ **15:16, 15:26**

Appealable orders, § **15:2**

Appeal period extension assumed, § **12:5**

Appeal period start, § **15:4**

2255 appeals. Habeas Corpus and 2255 Relief, this index

Appendix to record, § **15:19**

Bail or recognizance, § **15:30**

Briefs

Contents, § **15:20**

Timeliness, § **15:21**

Capital cases, §§ **15:27, 16:7**

Commencement of appeal period, § **15:4**

Comparison with civil appeals, § **15:1**

Conditional release, §§ **15:30, 15:31**

Criminal Justice Act, § **15:28**

Death penalty appeals, §§ **15:27, 16:7**

Dismissal

Failure to prosecute, § **15:15**

Government motion, § **15:16**

Special procedure, § **15:16**

Voluntary dismissal, §§ **15:17, 25:7**

Disposition options, § **15:23**

District court authority pending appeal, §§ **15:13, 26:1**

Double jeopardy denied, § **15:11**

Duration of appeal period, § **15:5**

Expediting agent, § **15:22**

Extending time to appeal, § **15:10**

Extraordinary writ review, § **15:12**

Failure to prosecute, dismissal, § **15:15**

Forfeiture appeals, § **15:3**

Government appeal, § **15:20**

Interlocutory appeals, § **15:11**

Mandate, stay, § **15:24**

Media appeals, § **15:32**

## INDEX

### **CRIMINAL APPEALS—Cont'd**

#### Motions

Dismissal, § 15:16

Release pending appeal, form, § 15:35

Suspending appeal period, § 15:6

#### Notice of appeal

Contents, § 15:74

Form, § 15:33

Service, § 15:8

#### Plea bargain, § 15:3

#### Post-judgment motions, § 15:6

#### Post-remand procedure, § 14:16

#### Pre-conviction appeal notice, form, § 15:34

#### Preference for criminal cases, § 15:22

#### Premature appeal, § 15:9

#### Record on appeal, §§ 15:18-15:19

#### Release

Pending appeal, § 15:31

Habeas, § 16:5

Motion, form, § 15:35

Pending trial, appeal, § 15:30

Notice of appeal, form, § 15:34

#### Relief in district court while appeal pending, § 15:13

#### Standard of review

Closer scrutiny, § 31:2

#### Stay of mandate, § 15:24

#### Supreme Court review, § 15:25

#### Suspending appeal period, § 15:6

#### Third party appeals, § 15:32

#### Timeliness

Accrual of appeal period, § 15:4

Briefs, § 15:21

Duration of appeal period, § 15:5

Extending time to appeal, § 15:10

Premature appeal, § 15:9

Separate document rule, § 15:5

Tolling appeal period, § 15:6

#### Tolling appeal period, § 15:6

#### Unwaivable claims, § 15:3

#### Voluntary dismissal, § 15:17

#### Waiver of appeal, § 15:3

#### Withdrawal of counsel, § 15:26

#### Writ review, § 15:12

### **CROSS APPEALS**

Generally, §§ 11:2-11:4

Briefs, § 32:1

Collateral order appeals, § 2:5

**CROSS APPEALS—Cont'd**

- Conditional, § 11:2
- Criminal, §§ 15:2, 15:3
- Cross-petition, agency enforcement, § 17:18
- Discretionary interlocutory appeal, §§ 5:5, 11:3
- Extension of appeal period, § 12:1
- Government criminal appeals, § 15:29
- Interlocutory appeals, § 11:3
- Judgment execution, effect of cross-appeal, § 21:3
- Multiple claim or party case, § 3:7
- Need, § 11:2
- Notice of appeal, form, § 11:5
- Procedure, § 11:4
- Waiver for failure to cross-appeal, § 11:2

**CUMULATIVE FINALITY**

- Appeal without certification, § 3:9
- Dismissal without prejudice, § 2:12
- Premature appeal, § 7:6

**DEATH KNEEL FINALITY**

- Obsolete, §§ 2:4, 5:7

**DEATH OF APPELLANT**

- Class representative, § 8:3
- Criminal appeal, § 15:23
- Mootness, § 25:5
- Substitution, § 8:3
- Tax Court appeal, § 18:2

**DEATH PENALTY**

- Criminal appeals, § 15:27
- Habeas corpus and 2255 relief, § 16:7
- Procedure, § 15:27
- Stay treated as injunction, § 4:3

**DEFAULT JUDGMENT**

- Finality of order sustaining, § 2:3

**DELAY**

- See also Later Appeal
- Court's ruling, § 30:5
- Effect on writ application, § 6:7
- Failure to prosecute, § 25:1
- Mootness, § 25:5
- Notice of delay, form, § 30:65
- Record in appeal, correcting errors and omissions, §§ 28:18, 28:19
- Request for certification of legal question, § 23:3
- Response to delayed ruling, § 30:5



## INDEX

### **DE NOVO REVIEW**

Standard of review, § 31:3

### **DESIGNATING TRANSCRIPT**

See Record

### **DILIGENT INQUIRY**

Extending time to appeal, § 12:5

### **DIRECT APPEALS TO COURT OF APPEALS**

Bankruptcy, § 14:1

Form, § 14:8

### **DISCLOSURE STATEMENT**

Briefs, § 32:4

Motions, § 30:2

Petition for rehearing en banc, § 34:8

Petition for review, not required, § 17:11

Requirement, § 22:2

### **DISCOVERY**

Final judgment rule, § 2:3

### **DISCRETIONARY INTERLOCUTORY APPEAL**

Generally, Ch. 5

Bankruptcy direct appeal, §§ 14:1, 14:4-14:5

Certification criteria and procedure, § 5:3

Class certification, § 5:7

Compared to

Bankruptcy direct appeals, § 14:1

Conventional appeal, § 5:6

Rule 54(b) certification, § 3:2

Complex litigation, § 5:2

Controlling question, §§ 5:3, 5:6

Costs of action, § 5:6

Criminal appeals, § 15:11

Cross appeal, §§ 5:5, 11:3

Denied certification, § 5:3

Dismissal, § 5:6

Docketing, § 5:6

Extension of petition period, § 5:4

Extraordinary writ review

Filing simultaneously, § 6:7

No prerequisite to writ, § 6:4

Factual issues, resolving, § 5:3

Federal Circuit, § 19:3

Fees and costs, § 5:6

Magistrate, certification by, § 13:3

Motion to certify orders for immediate appeal, form, § 5:9

No notice of appeal, §§ 5:6, 8:1

**DISCRETIONARY INTERLOCUTORY APPEAL—Cont'd**

- Orders, not issues, § 5:6
- Petition
  - Generally, § 5:5
  - Extension of time, § 5:4
  - Procedure, generally, §§ 5:3 et seq.
- Questions of law, limited to, § 5:3
- Rule 54(b) and section 1292(b) compared, § 3:2
- Scope of review, § 5:6
- Stay pending appeal, § 5:6
- Strategy, § 5:2
- Summary judgment motion, § 5:3
- Tax Court, § 18:1
- Timeliness, §§ 5:3-5:5
- Vacating permission, § 5:6
- Voluntary dismissal, effect on later appeal, § 25:7

**DISCRETION OF COURT**

- Certification under Rule 54(b), § 3:8
- Extending time to appeal, § 12:5
- Re-entry of order to extend appeal period, § 5:4
- Standard of review, § 31:4

**DISMISSAL OF APPEAL**

- Generally, Ch. 25
- Affirm or dismiss motion, § 25:4
- Agreement to dismiss, form, § 25:10
- Death of appellant, § 25:5
- Failure to prosecute, § 25:1
- Moot appeal, § 25:5
- Motions
  - Affirm or dismiss, § 25:4
  - Denied dismissal, effect, § 25:6
- Motions to dismiss, § 25:1
  - Form, § 25:9
  - Lack of jurisdiction, § 25:3
  - Motions vs. merits panel, § 25:6
- Other grounds, § 25:4
- Reinstatement, § 25:2
- Summary disposition, § 25:4
- Vacating prior decision, § 25:8
- Venue error, § 9:5
- Voluntary dismissal, § 25:7
- Withdrawal of prior decision, § 25:8

**DISPENSING WITH ARGUMENT**

- Generally, § 33:1

**DISPOSITION OF APPEAL**

- Generally, Ch. 34

## INDEX

### **DISPOSITION OF APPEAL—Cont'd**

See also Costs, Mandate, Opinion, Supreme Court

### **DISQUALIFYING JUDGES**

Before argument, § 33:6

Extraordinary writ review, § 6:6

Remand to different district judge, § 34:15

### **DISTRICT COURT JURISDICTION**

See also Stay

Administrative review, § 17:5

Appellate leave, §§ 10:13, 26:1

Concurrent with Federal Circuit, § 19:1

Correct record errors, § 28:19

Correct sentence pending appeal, §§ 15:6, 26:1

Dual jurisdiction, criminal appeal, § 15:11

Motion during appeal, § 10:13

Criminal, §§ 15:6, 26:1

Pending appeal, generally, § 26:1

Pending collateral order appeal, §§ 2:7, 26:1

Pending contempt appeal, § 2:8

Pending double jeopardy appeal, § 15:11

Pending injunction appeal, § 26:2

Pending interlocutory appeal, § 26:2

Post-judgment motion, § 10:3

Revival with mandate, § 34:11

Sanctions on appeal, § 35:2

### **DISTRICT COURT ORDERS**

Effect of misleading, § 12:3

Magistrate orders and judgments, Ch. 13

Post-judgment motion, effect, § 10:7

Qualified or conditional terms discouraged, § 2:1

### **DISTRICT COURT REASONS, NEED FOR EXPLANATION**

Generally, § 1:2

Added to record after decision, § 28:18

Certification under F.R.C.P. Rule 54(b), §§ 3:7, 3:8

Certification under 28 U.S.C. § 1292(b), § 5:3

Criminal release orders, §§ 15:30, 15:31

Grant or denial of extension, § 12:5

### **DOCKETING**

Generally, Ch. 22

Administrative review, § 22:1

Admission to practice, § 22:3

Appearance, written, § 22:2

Attorney admission, § 22:3

Attorneys

Admission to practice, § 22:3

**DOCKETING—Cont'd**

Attorneys—Cont'd

Form, §§ 22:4, 22:5

Pro hac vice motion, form, § 22:6

Representation statement, § 22:2

Calendaring, § 22:2

Discretionary appeals, § 5:5

Incidental requirements, § 22:2

Local rules governing, § 22:2

Notice of appeal triggering, § 22:1

Procedure, § 22:1

Statement filing, § 22:2

Tax Court appeal, § 22:1

Timeliness, § 22:2

**DOUBLE COSTS**

Sanctions, motions, § 35:2

**DOUBLE JEOPARDY**

Appeal from denial, § 15:11

**DUE DILIGENCE**

Notice of judgment entry, lack, § 12:4

**ELECTRONIC FILING**

Generally, § 30:3

Briefs, § 32:1

Court of appeals, § 30:3

Deadlines, § 30:3

Exhibits and attachments, non-electronic, §§ 28:13, 30:3

Petition for review, § 17:12

PFD format, § 30:3

Procedure, § 30:3

Record, § 28:13

Registration, § 30:3

Service, § 30:3

Signature, § 30:3

Tax Court appeal, § 18:2

**EN BANC**

See also Oral Argument

Eligible judges, § 34:8

Initial hearing, § 33:2

Criteria, § 33:2

Petition for rehearing, § 34:8

Petition procedure, §§ 33:2, 34:8

Rehearing, § 34:8

Units to perform en banc function, § 34:8

**ENELOW-ETTELSON DOCTRINE**

Repudiation, § 2:9

## INDEX

### ENTRY OF JUDGMENT

- Administrative review, § 17:18
- Disposition of appeal, § 34:1
- Extending time to appeal, §§ 12:2, 12:4
- Post-judgment motions, § 10:2
- Separate document rule, § 7:3
- Time to appeal, § 7:2
- Unspecified amount, § 2:3

### EXCUSABLE NEGLECT

- Extension of appeal period, § 12:2
- Good cause, distinguished, § 12:2

### EXECUTION OF JUDGMENT

- See Bond

### EXHAUSTION OF REMEDIES

- See also Electronic Filing, Record
- Appendix, following, § 29:7
- Appendix to brief, § 32:3
- Extraordinary writ review, §§ 6:3, 6:4
- Finality element, § 17:2
- Preservation of issues, § 17:6

### EXHIBITS

- See also Electronic Filing, Record
- Appendix, following, § 29:7
- Appendix to brief, § 32:3

### EXPEDITING APPEAL OR HEARING

- Argument, § 33:3
- Criminal appeals, § 15:22
- In lieu of injunction pending appeal, § 21:6

### EXTENSION OF TIME

- Generally, Ch. 12
- Abuse of discretion, § 12:5
- Additional appeal, effect, § 11:1
- Administrative review, § 17:9
- Appeal period
  - Generally, Ch. 12
  - Bankruptcy, § 14:5
- Automatic stay, judgment execution, § 21:3
- Criminal appeals
  - Assumed extension, §§ 12:5, 15:10
  - Motion and order, § 15:10
- Cross appeals, §§ 11:1, 12:1
- Denial or grant reviewable, § 12:5
- Diligent inquiry duty, § 12:4
- Discretionary interlocutory appeal, § 5:4

**EXTENSION OF TIME—Cont'd**

- Discretion of court, § 12:5
- Entry of judgment, notice, §§ 12:2-12:4
- Excusable neglect and good cause examples, § 12:2
- Explicit request required, § 12:1
- Extraordinary circumstances, § 12:4
- Federal Circuit, § 19:5
- Good cause, §§ 12:1, 12:2
- Good faith reliance on court, § 12:3
- Length of extension, § 12:1
- Misleading by court, § 12:3
- Motion to extend
  - Generally, §§ 12:1 et seq.
  - Form, § 12:6
  - Reviewing grant or denial, § 12:5
  - Timeliness, § 12:1
- Petition for permission to appeal, § 5:5
- Petition for rehearing, §§ 34:7, 34:13
- Post-judgment motion, effect, §§ 10:2, 10:5
- Procedure, § 12:1
- Pro se appeal, § 24:1
- Reliance on district court, § 12:3
- Review of extension decision, § 12:5
- Standard of review, § 12:5
- Stay on execution of judgment, § 21:3
- Tax court appeals, § 18:2
- Who may request, § 12:1

**EXTRAORDINARY WRIT REVIEW**

- Generally, **Ch. 6**
- Adequate remedy at law, § 6:3
- All Writs Act, § 6:2
- Alternative to agency review, § 17:3
- Alternative writ petition, § 6:7
- Answer to petition, § 6:7
- Bankruptcy, § 14:4
- Criminal cases, § 15:12
- Criteria, §§ 6:3-6:6
- Curing defective appeal, § 6:9
- Defective appeal, cure, § 6:9
- Discretionary appeal alternatively, § 6:7
- District court transfer orders, § 9:4
- Docket preference, § 6:7
- Drafting petition, § 6:8
- Exhausting legal remedies, §§ 6:3, 6:7
- Federal Circuit, § 19:3
- Future jurisdiction, § 6:2
- Government criminal appeals, § 15:29

## INDEX

### **EXTRAORDINARY WRIT REVIEW—Cont'd**

- Interlocutory appeal not prerequisite, § 6:8
- Jurisdiction, § 6:2
- Mandamus, § 6:8
- Novel questions, § 6:6
- Original jurisdiction, § 6:2
- Petition, form, § 6:10
- Petition contents, § 6:8
- Petition procedure, § 6:7
- Preference on docket, § 6:7
- Prohibition, § 6:8
- Record in case, § 6:8
- Recurring questions, § 6:6
- Recusal of judge, § 6:6
- Rehearing petition, § 6:9
- Ripeness, § 6:2
- Service of petition, § 6:7
- Significant questions, § 6:6
- Standing, § 6:7
- Stay pending decision, § 6:7
- Timeliness, § 6:7
- Writ name, § 6:8

### **FAILURE TO PROSECUTE**

- Appealability of earlier rulings, § 8:4
- Criminal appeals, § 15:15
- Grounds for dismissal of appeal, § 25:1

### **FEDERAL CIRCUIT APPEALS**

- Generally, **Ch. 19**
- Address of clerk, § 19:5
- Appeal procedure, § 19:5
- Briefs, § 19:5
- Conflicts of law, § 19:6
- Customs appeals, § 19:1
- Exclusive jurisdiction, § 19:1
- Governing law, § 19:6
- Interlocutory appeals, § 19:3
  - Patent infringement, § 19:4
- Jurisdiction, §§ 9:3, 19:1
- Motions suspending appeal period, § 19:5
- Patent appeals, §§ 19:1, 19:4
- Regional law, § 19:6
- Summary affirmance, § 19:5
- Suspending appeal period, § 19:5
- Temporary Emergency Court of Appeals, §§ 19:1, 19:2
- Timeliness, § 19:5
- Transcript, § 19:5

**FEDERAL CIRCUIT APPEALS—Cont'd**

Transferring case, § 19:1  
Uniformity of procedure, § 19:6  
Vacating patent, § 19:5  
Venue, § 19:1

**FEDERAL RULES OF APPELLATE PROCEDURE**

Text of rules, Appx A

**FEES**

See also Attorneys Fees  
Administrative review, § 17:12  
Admission, § 23:3  
Appeal, § 8:14  
Criminal appeals, § 15:28  
Discretionary appeals, § 5:6  
Electronic filing, § 30:3  
Extraordinary writ review, § 6:7  
Forma pauperis appeals, §§ 20:3-20:5  
Forms, §§ 20:8-20:9  
Habeas corpus and 2255 proceedings, § 16:1  
Later appeal, § 27:1  
Payment, generally, § 8:14  
Petition for review, § 17:12  
Post-judgment motion, effect on prior payment, § 10:3  
Refund, § 8:14  
Seaman suits, § 20:3  
Separate appeals, § 11:1  
Tax Court appeals, § 18:2

**FILING**

Clerk, this index  
Electronic, § 30:3

**FINALITY**

Generally, Ch. 2  
Administrative review, § 17:2  
Amendment orders, § 4:7  
Arbitration orders, § 2:9  
Bankruptcy, §§ 14:2, 14:3  
Closure of case, effect on finality, § 4:7  
Collateral orders, §§ 2:5-2:9  
Competing considerations, § 2:3  
Complaint dismissal, § 2:3  
Consolidated actions, §§ 3:3, 7:5, 10:4, 11:1  
Contempt orders, § 2:8  
Counterclaims, effect on finality, § 3:4  
Creating finality, § 2:12  
Criminal orders, § 15:11  
Cumulative finality, §§ 2:12, 3:9, 7:6



## INDEX

### **FINALITY—Cont'd**

- Curing lack of finality, § 3:9
- Default judgment, § 2:3
- Discovery orders, third party, § 2:3
- Dismissal of claims, § 2:3
- Dismissal of complaint, but not expressly dismissing action or denying leave to amend, § 2:3
- Dismissal with and without prejudice, § 2:3
- Dismissal without prejudice, finality, §§ 2:1, 2:12
- District court statement re finality, effect, §§ 2:1, 2:12, 3:4
- Effectively final orders, § 2:3
- Entry of judgment, § 7:2
- Exceptions
  - Admiralty orders, § 4:6
  - Certified questions, Ch. 5
  - Criminal appeals, § 15:11
  - Injunctions, §§ 4:2, 4:3
  - Misc. statutory, § 2:1
  - Patent cases, § 19:4
  - Receiverships, § 4:5
- Extraordinary writ, cure for non-final appeal, § 6:9
  - Federal Circuit appeals, § 19:3
- Fewer than all defendants, §§ 2:3, 3:1 et seq.
- Finality tests, § 2:3
- Final judgment rule, § 8:4
- Flexible finality, bankruptcy, § 14:2
- Hypothetical jurisdiction, § 2:3
- Immunity denial, § 2:7
- Impairing plaintiff's ability to maintain action, orders, § 2:3
- Interim orders effectively final, § 2:3
- Interlocutory orders
  - Discretionary Interlocutory Appeal, this index
- Intervention denial, § 2:3
- Judgment against fewer than all defendants, Ch. 3, § 2:3
- Judgment in unspecified amount, § 2:3
- Judgment silent on some claims, § 2:3
- Manufactured, § 2:12
- Motions suspending finality, § 10:2
- Multiple claims or parties
  - Generally, Ch. 3
- Orders regarding property, § 2:3
- Post-judgment orders, § 2:3
- Practical, § 2:4

### **FINAL JUDGMENT RULE**

- See Finality
- Merger of prior rulings, § 8:4

**FINAL JUDGMENT RULE—Cont’d**

- Multiple claims or parties
  - Alternative theories, § 3:4
  - Appeal without certification, § 3:9
  - Bankruptcy, § 14:4
  - Certification, §§ 3:7-3:9
  - Consolidated actions, § 3:4
  - Counterclaims, § 3:4
  - Enforcement, separate, § 3:4
  - Finality, § 3:4
  - Late certification, § 3:9
  - Nominal parties, § 3:5
  - Nunc pro tunc certification, § 3:9
  - Peripheral parties, § 3:5
  - Pleadings affecting separateness, § 3:4
  - Procedure, certification, § 3:7
  - Relief requested, § 3:4
  - Res judicata, § 3:4
  - Reviewing certification, § 3:8
  - Same transaction or occurrence, § 3:4
  - Separate claims, § 3:4
  - Standing by third party, § 3:5
  - Tax Court, § 18:1
  - Theories, alternative, § 3:4
  - Timeliness of certification, § 3:9
- Multiple orders on same subject, § 2:3
- Partial judgments, §§ 2:3, 3:1 et seq.
- Pendent appellate jurisdiction, § 2:2
- Post-conviction orders, § 15:4
- Post-judgment motions, Ch. 10
- Post-judgment or decree orders, §§ 2:3, 8:4
- Post-settlement orders, § 2:3
- Practical finality, § 2:4
- Prior rulings, merger, § 8:4
- Property orders, §§ 2:3, 2:11
- Pro se appeals, § 26:1
- Quashed orders, § 2:3
- Remaining claims or parties, § 3:4
- Remand orders, §§ 2:3, 14:3
- Review of earlier rulings, § 8:4
- Sanction orders, §§ 2:3, 2:5, 2:6, 2:8
- Service, orders quashing, § 2:3
- “Springing finality,” § 2:3
- Stay orders, §§ 2:9, 2:10, 4:7
- Tests of finality, § 2:3
- Third parties, orders affecting, § 2:6
- Transfer of property, orders, § 2:11

## INDEX

### **FINAL JUDGMENT RULE—Cont'd**

Voluntary dismissal, order conditioning, § 2:3

Without prejudice dismissal - effect on finality, §§ 2:1, 2:12

### **FONTS**

Briefs, § 32:4

### **FORFEITURE**

Reviving forfeited argument, § 34:16

Third party appeals in criminal cases, § 15:32

Waiver, this index

Waiver distinguished, § 32:7

### **FORGAY RULE**

Finality of property transfer, § 2:11

### **FORMA PAUPERIS APPEAL**

See In Forma Pauperis

### **FORMS**

Administrative review petition, § 17:20

Admission, application, § 22:5

Agreed statement, § 28:26

Appendix, § 29:6

Argument, §§ 33:12-33:16

Bankruptcy appeal notices, §§ 14:6-14:8

Brief, § 32:16

Certificate of appealability, petition, §§ 16:3, 16:5

Certification of final judgment, motion, § 3:10

Certification of local law question, § 23:4

Certification of question for immediate appeal, motion, § 5:9

Citation of supplemental authority, § 32:17

Correction of record, motion, § 28:24

Cost bill, § 34:18

Cost bond

Motion, § 20:6

Stipulation in lieu of bond, § 20:7

Criminal appeals, §§ 15:33-15:35

Cross appeal notice, § 11:5

Delay, notice, § 30:6

Dismissal of appeal, §§ 25:9-25:10

Enforcement of judgment, motion, § 34:23

Exhibits, stipulation, § 29:7

Expedited hearing, motion, § 33:12

Extending time to appeal, motion, § 32:5

Extraordinary writ petition, § 6:10

Forma pauperis, motion and affidavit, §§ 20:8-20:9

Habeas corpus and 2255 relief, § 16:8

Injunction, stay pending appeal, motion, § 21:12

Interest, motion to add, § 34:19

**FORMS—Cont'd**

Intervention for purpose of appeal, motions, §§ 1:15, 17:21

Judgment enforcement, § 34:23

Judicial notice, motion, § 28:28

Limited remand, §§ 27:3-27:5

Magistrate, consent and order of reference, § 13:4

Mandamus, petition, § 6:10

Mandate

Stay motion, § 34:21

Vacate motion, § 34:22

Notice of appeal

Bankruptcy, §§ 14:6-14:8

Criminal appeal, § 15:33

Cross appeal, § 11:5

Final judgment, § 8:16

Part of judgment, § 8:17

Post-judgment order, § 10:14

Precautionary appeal, § 1:17

Protective appeal, § 1:16

Tax Court, § 18:4

Omissions from record, motion, § 28:27

Opinion, request to publish, § 34:17

Oral argument, motion, §§ 33:13-33:15

Partial remand, §§ 27:3-27:5

Permission to appeal, petition, § 5:10

Petition for permission to appeal, § 5:10

Precautionary appeal notice, § 1:17

Pro Hac Vice, motion, § 22:6

Protective appeal notice, § 1:16

Punitive damages, motion, § 35:3

Reassignment to panel, motion, § 33:16

Record on appeal, §§ 28:24-28:27

Rehearing, petition, § 34:20

Release pending appeal, motion, § 15:35

Release pending trial motion, § 15:34

Remand, limited, §§ 27:3-27:5

Representation statement, § 22:4

Sanctions, motion, § 35:3

Security for costs, § 20:7

Stay motion, §§ 21:9-21:10

Stay pending appeal, motion, § 21:12

Tax Court appeals, §§ 18:4-18:5

Transcript

Designation, § 28:22

Reporter's certificate, § 28:23

Venue stipulation, § 18:5

Voluntary dismissal, § 25:10

## INDEX

### **FORUM NON CONVENIENS**

See Transfer

### **FRIVOLOUS APPEAL**

See also Sanctions

District court certification, § 2:7

District court sanctions, not allowed, § 35:2

### **GILLESPIE DOCTRINE**

Practical finality, § 2:4

### **GLOSSARIES**

Briefs, § 32:4

### **GOOD CAUSE**

Discretionary appeals filing, late, § 5:4

Extending time to appeal, § 12:2

### **GOOD FAITH RELIANCE**

Extending time to appeal, § 12:3

### **GOVERNMENTAL APPEALS**

Appeal period, § 7:9

Criminal appeals, § 15:29

### **HABEAS CORPUS AND 2255 RELIEF**

Generally, Ch.16

Capital cases, § 16:7

Certificate of appealability

Limited or denied, § 16:4

Need, § 16:2

Not required by government, § 16:3, 16:4

Petition, form, § 16:8

Procedure, § 16:3

Civil vs. criminal remedy, § 16:1

Constitutional right denial, § 16:3

Deadlines, § 16:1

Death penalty cases, § 16:7

Federal prisoners, generally, § 16:1

Habeas and section 2255 compared, § 16:1

Interlocutory appeals, § 16:1

Non-habeas issues, § 16:1

Notice of appeal as request for certificate, §§ 16:3-16:4

Record on appeal, § 28:18

Release pending appeal, § 16:6

Second or successive applications, § 16:5

Section 2255 compared, § 16:1

State court record, § 28:18

Timeliness, § 16:1

### **HARMLESS ERROR**

Standard of review, § 31:7

**HIGHLY SENSITIVE DOCUMENTS**

Treatment in record, § 28:13

**HYPOTHETICAL JURISDICTION**

Criticism and use, § 2:1

**IMMUNITY**

Denial as collateral order, § 2:7

**INDICATIVE RULING**

See also Partial Remand

Civil appeal, § 26:1

Criminal appeal, § 15:13

District court motion pending appeal, §§ 10:3, 26:1

Partial remand, Ch. 27

Post-judgment motion, not needed, § 10:13

Procedure, § 27:2

**IN FORMA PAUPERIS**

See also Costs

Appeal process, § 20:5

Certification as frivolous, §§ 20:1, 20:4

Criminal Justice Act, compared, § 15:28

Exemption from security for costs, § 20:3

Motion for leave, form, § 20:8

Prior approval, § 20:4

Procedure, § 20:4

Tax Court procedure, § 20:4

Three strikes rule, inmate appeals, § 20:4

**INITIAL HEARING EN BANC**

See En Banc

**INJUNCTIONS**

Generally, §§ 4:2-4:3

Alternate means to obtain review, § 5:3

Bankruptcy appeal, § 14:4

Cross-appeal, § 11:3

Expedited appeal, § 21:5

Government appeal in criminal case, § 15:29

Injunctive effect, § 4:3

Modifying, § 4:2

Orders effective as injunctions, § 4:3

Pending appeal, § 21:6

Modifying or vacating, § 21:7

Stay compared, § 21:6

Pending rehearing, § 34:8

Preliminary injunction, § 4:2

Review of other issues, § 4:4

Separate document required, § 7:3

## INDEX

### **INJUNCTIONS—Cont'd**

- Stay Pending Appeal, this index
- Temporary restraining order, § 4:2

### **INTEREST ON JUDGMENT**

- Affirmed judgment, § 34:4
- Issues affecting mandate, § 34:13
- Motion for interest, effect, § 10:11
  - Form, § 34:19
- Omitted instructions, mandate recall, § 34:14
- Post-judgment motions, § 10:11

### **INTERLOCUTORY APPEALS**

- See also Admiralty, Bankruptcy, Discretionary Interlocutory Appeal, Extraordinary Writs, Injunction, Receivership
- Class certification, § 5:7
- Criminal cases, § 15:11
- Cross appeal, in, § 11:3
- Denied arbitration, § 4:7
- District court jurisdiction pending appeal, § 26:3
- Federal circuit appeals, § 19:3
- Habeas corpus and 2255 relief, § 16:1
- Magistrate orders and judgments, § 13:3
- Record on appeal, § 28:21
- Statutes authorizing, § 4:1
- Third parties, § 15:11

### **INTERVENTION**

- Administrative review, § 17:14
  - Motion, form, § 17:20
- Appeal before leave granted, § 1:3
- Appeal from denial, §§ 1:3, 2:3
- Appeal without intervening - unique interest required, § 1:3
- Denial as final judgment, § 2:3
- Discretionary interlocutory appeal, § 5:6
- Government as intervenor, effect on appeal period, § 7:9
- Intervenor standing, § 1:3
- Intervenor treated as party, § 3:5
- Limit on new issues, § 17:14
- On appeal, § 1:3
  - Motion - form, § 1:15
- Oral argument by intervenor, § 33:4
- Protective appeal, § 1:10

### **ISSUES, SCOPE**

- See also Notice of Appeal, Pendent Appellate Jurisdiction, Preservation of Issues, Scope of Review
- Class action certification, § 5:2
- Discretionary interlocutory appeal
  - Orders, not issues, § 5:6

**ISSUES, SCOPE—Cont'd**

- Intervention, § 17:12
- Post-judgment motion, designation of ruling in notice, § 10:9
- Raised first time on appeal
  - Generally, § 32:7
  - Criminal, § 15:20
- Statement in briefs, § 32:4
  - Drafting, § 32:6

**JUDGES**

- Assignment to panels, § 33:5
  - Come-back cases, § 33:5
- Disqualification, § 33:6
- District court, sitting by designation, § 33:5
- En banc units, § 34:8
- Familiarity with each other, § 33:9
- Internet research by judges, § 28:20
- Magistrates, **Ch. 13**
- Misconduct, § 33:6
- Motions vs. merits panel, dismissal motion, § 25:6
- Number per circuit, § 33:5
- Panel, merits
  - Composition, § 33:5
  - Quorum, § 33:5
- Qualification, § 33:5
- Reassignment on remand, § 34:15
- Recusal, § 33:6
- Retained jurisdiction for future appeals, § 34:11
- Senior status, § 33:5
- Sitting by designation, § 33:5
- Supreme Court justice on court of appeals, § 33:5

**JUDGMENT**

- See also Bond
- Amended, § 7:4
- Designation in notice of appeal, § 8:4
- Effect of post-judgment motion, § 10:2
- Enforcement after remand, § 34:1
  - Motion to enforce, form, § 34:23
- Entry and effect, Court of Appeals, § 34:1
- Entry and effect, District Court, § 7:2
- Execution, stay, § 21:1
  - Automatic stay, § 21:3
  - Extension, § 21:3
  - Exemption from bond requirement, § 21:3
  - Motion for additional security, form, § 21:10
  - Motion to stay, form, § 21:9
  - Post-judgment motion, effect, § 21:3



## INDEX

### **JUDGMENT—Cont'd**

- Execution, stay, § 21:1—Cont'd
  - State law, § 21:3
- Fewer than all defendants - finality, Ch. 3, § 2:3
- Final judgment rule, § 8:4
- Multiple judgments
  - Designation, § 4
  - Post-judgment motion, § 10:3
  - Same subject, finality, § 2:3
- Notice of entry, lack, § 12:4
- Post-judgment motion, effect, §§ 10:2, 10:3, 10:9
- Registration pending appeal, § 21:1, § 21:3
- Remand, direct entry for other party, § 34:6
- Separate document rule, § 7:3
  - Post-judgment motion, effect of ruling, § 10:7
  - 28 U.S.C. appeal, § 15:4
- Settlement, agency enforcement, § 17:18
- Silent on some claims - finality, § 2:3
- Stay of execution, § 21:1
- Unspecified amount - finality, § 2:3
- Vacated and re-entered, § 7:4

### **JUDICIAL NOTICE**

- District court, § 28:18
- Internet research by judges, § 28:20
- Material outside record, § 28:20
- Motion, form, § 28:28

### **JUDICIAL REVIEW**

- See Administrative Review

### **JURISDICTION**

- See also Appeal Period, District Court Jurisdiction, Finality, Pending Appellate Jurisdiction
- Administrative review, § 17:1
  - Statute barring review, § 17:6
- Bankruptcy, § 14:1
- Dismissal, lack of jurisdiction, motion, § 25:3
- District court, pending appeal, Ch. 26
- Extraordinary writ review, § 6:2
- Federal circuit, scope of jurisdiction, § 19:1
- Hypothetical, § 2:1
- Mandate, effect, § 34:11
- Pending partial remand, § 27:2
- Prudential limits, § 2:1
- Retained for future appeals, § 34:11
- Sanctions, jurisdiction over merits not required, § 35:2
- Supreme Court direct review, effect on court of appeals, § 9:2
- Tax court appeals, § 18:1

**JURISDICTION—Cont'd**

Uncertain jurisdiction, writ as alternative or cure, § 6:9

Venue affected by, §§ 9:3, 9:5

**JURISDICTIONAL VS. NON-JURISDICTIONAL**

Administrative review, § 17:7

Appeal period

Generally, § 7:1

Bankruptcy, § 14:5

Criminal, § 15:5

Failure to preserve issue, § 1:2

Separate document lacking, § 7:3

Three strikes rule, § 24:1

Waivable time limits

Class certification petition, § 5:7

Criminal appeals, §§ 7:1, 15:5

Cross-appeal, § 11:4

Petition for permission to appeal, § 10:5

Post-judgment motions, § 10:5

**JURY AND JURY TRIAL**

Instructions, standard of review, § 31:7

Verdict, standard of review, § 31:7

**LABOR DISPUTES**

Administrative review, § 17:18

NLRB as petitioner, § 32:1

**LATER APPEAL**

Arbitration order, § 4:7

Collateral order appeal, § 2:5

Delay not allowed after 54(b) certification, § 3:7

Interlocutory orders, §§ 1:5, 34:10

Later injunction appeals limited to new issues, § 4:2

Pros and cons of waiting, § 3:6

Supreme Court review of discretionary interlocutory appeal, § 5:6

Third party collateral orders, § 2:6

**LOST RECORD**

New trial, § 28:17

Reconstructing, § 28:17

**MAGISTRATES**

Generally, Ch. 13

See also Judges

**MAIL AND MAILING**

Delay as grounds for extension, § 12:2

Electronic service and filing, § 30:3

Federal circuit address, § 19:5

Prison mailbox rule, §§ 8:13, 15:8

## INDEX

### **MAIL AND MAILING—Cont'd**

Tax court address, § 18:2

### **MANDAMUS**

Extraordinary Writ Review, this index

### **MANDATE**

Accelerated, § 34:12

Change of law as grounds for recall, § 34:14

Criminal appeals, stay, § 15:24

Delay by rehearing petition, §§ 34:7, 34:8, 34:12

Delay for other reasons, § 34:13

District court duties, § 34:16

Expedited, § 34:12

Form, § 34:11

Hold by judge, § 34:12

Issuance, § 34:12

Jurisdiction after mandate, § 34:11

Motion, §§ 34:21, 34:22

Omission of interest, § 34:14

Purpose and effect, § 34:11

Recall, § 34:14

Stay

After denial of certiorari, § 34:13

Criminal appeal, § 15:24

Grounds, § 34:13

Pending certiorari, §§ 34:10, 34:13

Motion for stay, § 34:13

Form, § 34:21

Renewed motion in Supreme Court, § 34:13

Pending rehearing, §§ 34:7, 34:8, 34:12

Related Supreme Court case, § 34:13

Timing, § 34:12

Vacate or recall, § 34:14

Motion to vacate, form, § 34:22

### **“MANUFACTURED” FINALITY**

Creating finality, § 2:12

### **MEDIA**

Collateral orders, § 2:6

Third party appeals in criminal cases, § 15:32

### **MEDIATION**

Procedure, § 30:4

### **MOOT COURT**

Argument, § 33:11

### **MOOTNESS**

Delayed appeal, § 1:5

**MOOTNESS—Cont'd**

Grounds for dismissal, § 25:5

Preliminary injunction appeal, § 4:2

Vacatur, § 25:8

**MOTIONS**

See also Post-Judgment Motion

Effect of pending motion, § 30:2

Emergency motion, § 30:2

Procedure, § 30:2

Transfer to merits panel, § 30:2

**MULTI-DISTRICT LITIGATION**

See also Transfer

Appellate venue, § 9:4

**MULTIPLE CLAIMS OR PARTIES**

See Finality

**NEW TRIAL**

Motion needed to preserve appeal, § 1:2

**NLRB PROCEEDINGS**

Administrative review, § 17:18

Briefs, NLRB as petitioner, § 32:1

Settlement of judgment, enforcement action, § 17:1

**NON-INTERVENING PARTIES AS APPELLANTS**

Intervention in interlocutory appeal, § 5:6

Right to appeal, § 1:3

Unique interest required, § 1:3

**NOTICE OF APPEAL**

Generally, **Ch. 8**

Amendment, ruling on post-judgment motion, § 10:9

Criminal appeal, not required, § 15:6

Bankruptcy, following, § 14:5

Contents, §§ 8:2-8:11

Federal Circuit, § 19:5

Criminal appeals

Contents, § 15:7

Form, § 15:33

Service and filing, § 15:8

Cross appeal, § 11:45

De facto notice, § 8:5

Designations required, § 8:2

Documents treated as notice, § 8:5

Electronic filing, §§ 7:7, 8:13

Filing, § 8:13

Filing in wrong court, § 9:5

## INDEX

### **NOTICE OF APPEAL—Cont'd**

#### Forms

Bankruptcy, §§ 14:6, 14:7

Civil, §§ 8:16, 8:17

Criminal, §§ 15:33, 15:34

Cross-appeal, § 11:5

Tax Court, § 18:4

Habeas corpus and 2255 relief, §§ 16:3-16:4

Later orders, §§ 7:3, 8:4

Other documents as notice, §§ 8:15, 15:10, 16:1

Post-judgment motions

Designation of ruling on motion, §§ 10:9, 15:6

Effect on appeal, §§ 10:3, 15:6

Ruling on motions, § 10:9

Pro se, § 24:1

Tax court appeals, § 18:2

### **NOVEL QUESTIONS**

Extraordinary writ review, § 6:6

### **NUNC PRO TUNC CERTIFICATION**

Multiple claims or parties, § 3:9

### **OPINION OF COURT**

Issuance, § 34:1

Publication, § 34:1

Letter requesting publication, form, § 34:17

Withholding, § 34:2

Revision, new rehearing petition, § 34:7

Unpublished, §§ 32:4, 32:10, 34:2, 34:8

Vacating on rehearing, § 34:5

Vacating or withdrawing as part of settlement, § 25:8

### **ORAL ARGUMENT**

Generally, **Ch. 33**

See also En Banc, Judges

Assignment to panels, § 33:5

Come-back cases, § 33:5

Motion to assign, form, § 33:16

Attendance by client, § 33:10

Brief, statement regarding, § 32:4

Calendar, § 33:3

Cameras, § 33:10

Dispensing with argument, § 33:1

Motion to submit without argument, form, § 33:13

Disposition without argument, § 33:1

Statement supporting argument, illustration, § 33:15

District judge on panel, § 33:5

Divided, § 33:8

Effective, § 33:11

**ORAL ARGUMENT—Cont'd**

- Expedited appeal, § 33:3
  - Motion to expedite, form, § 33:12
- Failure to attend, § 33:10
- Federal Circuit, § 19:5
- Issue selection, § 33:11
- Judges
  - Identity of panel members, § 33:6
  - Panel assignment, § 33:5
  - Preparation by, § 33:9
- Location, § 33:4
- Moot court, § 33:22
- Motions
  - Calendar restoration, § 33:14
  - Expedite hearing, § 33:12
  - Panel assignment, original, § 33:16
  - Submission without oral argument, § 33:13
- Multiple parties and attorneys, § 33:8
- New issues, § 33:10
- Postponement, § 33:3
- Procedure, § 33:10
- Restoring to calendar, § 33:1
  - Motion to restore, form, § 33:14
- Sequence, § 33:4
- Statement regarding, § 33:4
  - Illustration, § 33:15
- Submission on briefs, § 33:1
- Technique, § 33:11
- Time allowed, §§ 33:4, 33:10
- Venue, § 33:4
- Virtual hearings, §§ 33:3, 33:10
- Visual aids, § 33:10
- Who should argue, § 33:7

**ORDERS**

- See also Collateral Orders, District Court Orders, Finality, Post-Judgment or Decree Orders
- Scope of review
  - Arbitration, § 4:7
  - Bankruptcy, § 14:4
  - Discretionary interlocutory appeal, § 5:6
  - Orders, not issue, § 5:6
  - Remand of removed action, § 1:10

**PANEL OF COURT**

- See Judges

**PARTIAL JUDGMENTS**

- Generally, §§ 2:3, 3:1 et seq.

## INDEX

### **PARTIAL REMAND**

- Generally, **Ch. 27**
- See also Indicative Ruling
- Circumstances, § **27:1**
- Issues to resolve, § **27:2**
- Motion, form, § **27:3**
- Reactivating appeal, § **27:2**
- Report on remand decision, form, § **27:5**
- Retaining appellate jurisdiction, § **26:2**
- Rule 60(b) motion, § **10:13**
- Stipulation, § **27:4**

### **PARTIES**

- Additional party appeals
  - Cross appeal, §§ **11:2-11:4**
- Briefs, § **32:1**
- Extraordinary writ review, § **6:7**
- Intervenor, § **3:5**
- Multiple briefing, § **32:2**
- Non-party appeal, § **1:3**
- Petition by others, § **17:7**
- Petition for review, § **17:17**
- Pro se, **Ch. 24**
- Standing to appeal, § **1:4**
- U.S. government as party, § **7:9**

### **PATENT INFRINGEMENT**

- Federal circuit jurisdiction, § **19:1**
- Interlocutory appeal, § **19:4**
- Post-judgment motion, § **19:4**

### **PENALTIES**

- Sanctions, this index

### **PENDENT APPELLATE JURISDICTION**

- Generally, § **2:2**
- Arbitration appeal, § **4:7**
- Attorneys fees and merits, § **10:12**
- Collateral order appeals, § **2:5**
- Contempt appeal; review of injunction, § **2:8**
- Discretionary interlocutory appeal, § **5:6**
- Injunction appeal, interrelated orders, § **4:4**
- Interlocutory appeals, § **5:6**
- Multiple claims or parties appeal, § **3:2**
- State claims, § **1:11**
- Threshold issues, § **2:2**

### **PERMISSION TO APPEAL**

- See Discretionary Interlocutory Appeals

**PERMISSIVE APPEALS**

See Discretionary Interlocutory Appeals

**PETITIONER**

Name in petition, § 17:11

**PETITION FOR PERMISSION TO APPEAL**

See Discretionary Interlocutory Appeals

**PETITION FOR REHEARING**

See Rehearing

**PETITION FOR REVIEW**

See Administrative Review

**POST-JUDGMENT MOTIONS**

Generally, **Ch. 10**

Adequacy or sufficiency, § 10:5

Amending notice of appeal, § 10:9

Amendment, § 10:5

Appealing motion ruling, §§ 10:8, 10:9

Appeal period

Restart after denial, §§ 10:7, 15:6

Restart with denial vs. amended judgment, § 7:2

Restart with grant of motion, § 10:8

Attorney fee motion and awards, § 10:12

Bankruptcy, § 14:5

Checklist of motions suspending appeal period, § 10:1

Consolidated cases, § 10:4

Cost motions, § 10:11

Criminal appeals, § 15:6

Curing deficiencies, § 10:5

Deadline, §§ 10:5, 15:6

Judgment not on separate document, § 7:3

Decision on motion, appeal procedure, § 10:9

Disposition by district court

Effect, § 10:7

Grant of motion, §§ 10:8, 15:9

Effect on appeal period, §§ 10:1, 10:7

Entry of judgment, §§ 10:2, 10:7

Exceptions to reconsideration rule, § 10:10

Execution on judgment pending motion, § 21:3

Extension of deadline, § 10:5

Fee motion and awards, § 10:12

Notice of appeal, form, § 10:14

Fees, when payable, § 8:14

Filing, § 10:5

Government criminal appeals, § 15:29

Grant of motion, effect, §§ 10:8, 15:9



## INDEX

### **POST-JUDGMENT MOTIONS—Cont'd**

Habeas and section 2255 proceedings, § 16:1

Second or successive, motion as, § 16:5

Interest motions, § 10:11

Interlocutory appeal, §§ 4:5, 4:6, 10:1, 19:4

Issue raised for first time, § 1:2

Multi-party cases, §§ 3:7, 10:4

Multiple motions

Appeal after denial of less than all, § 10:7

Multiple party or claim appeal, § 3:7

Needed to preserve issue, § 1:2

New judgment, § 10:8

Notice of appeal, effect, § 10:3

Notice to appellate court of pending motion, § 10:3

Pending appeal, §§ 10:13, 15:6

Premature motions, § 10:6

Prior appeal, effect on, § 10:3

Re-argument exception, § 10:10

Reconsideration

Generally, § 10:10

Administrative agency, § 17:10

Review of ruling on motion, §§ 8:4, 10:9, 15:9

Review period

Administrative review, § 17:10

Rule 60(b) motions filed more than 28 days after judgment, § 10:13

Ruling on motion, appeal procedure, §§ 10:8, 10:9

Sanctions motions, effect, § 10:11

Second or successive habeas application, § 16:5

Sentence, motion to reduce or vacate, § 15:2

Separate document not required, § 7:3

Shortcomings, § 10:5

Substance vs. labels, § 10:1

Suspending effect

Scope of suspension, § 21:3

Suspend vs. tolling appeal period, § 10:1

Tax court appeals, § 18:2

Timeliness of motions, §§ 10:5, 10:6, 15:6

Tolling appeal period, §§ 10:1 et seq.

Vacating judgment, § 10:13

Withdrawal, § 10:7

### **POST-JUDGMENT OR DECREE ORDERS**

Finality, § 2:3

Review in earlier appeal, § 8:4

### **PRACTICAL FINALITY**

Generally, § 2:4

Administrative review, § 17:2

**PRECAUTIONARY APPEAL**

See also Protective Appeal  
Notice of appeal - form, § 1:17

**PRECONVICTION APPEAL**

Form of notice, § 15:33

**PREFERENCE AND PRIORITY**

Argument, § 33:3  
Criminal appeals, § 15:22  
Extraordinary writs, § 6:7

**PREJUDICE**

Extending time to appeal, §§ 12:1, 12:2, 12:4  
Standard of review, § 31:7

**PRELIMINARY INJUNCTIONS**

See Injunction

**PREMATURE APPEAL**

Generally, § 7:6  
Criminal cases, § 15:9  
Cumulative finality, §§ 2:12, 3:9, 7:6  
Extraordinary writ as cure, § 6:9  
Finality after premature appeal, § 2:12  
Late certification as cure, § 3:9  
Petition for review, § 17:8  
Post-judgment motion, § 10:6  
Tax Court, § 18:2

**PREMATURE MOTIONS**

Post-judgment motions, § 10:6

**PRESERVING ISSUES**

Generally, § 1:2  
Administrative review, § 17:6  
Failure to raise in lower court, §§ 15:3, 15:20, 32:12  
Unraised issues, generally, § 32:12

**PREVAILING PARTY**

Cross-appeal, § 11:2  
Right to appeal, § 1:4

**PRISONERS**

Fees, § 16:1  
Filing notice of appeal, §§ 8:13, 15:8  
Forms, §§ 15:34-15:35  
Mailbox rule, §§ 8:13, 15:8  
Release pending trial or appeal, §§ 15:30, 15:31  
Three strikes rule, § 20:4

**PRISON MAIL BOX RULE**

Filing, §§ 8:13, 15:8

## INDEX

### **PRIVILEGES, DENIAL**

Collateral order, § 2:6

### **PRO HAC VICE ADMISSION**

Motion, § 22:6

### **PROHIBITION**

Extraordinary writ review, § 6:8

Petition form, § 6:10

### **PROPERTY**

Orders as final judgment, §§ 2:3, 2:11

### **PRO SE APPEALS**

Generally, Ch. 24

Corporations, § 8:11

Defending, Ch. 24

Extending time to appeal, § 12:56

Filings restricted, §§ 24:1, 35:1

Rule, binding effect, Ch. 24

Sanctions, § 35:1

### **PROSECUTION APPEALS**

Criminal appeals, generally, §§ 15:16, 15:29

### **PROTECTIVE APPEAL**

See also Precautionary Appeal

Denied intervention, § 1:7

Notice of appeal, form, § 1:16

Pending Solicitor General approval, § 17:7

Stay pending, § 1:7

Uncertain appeal period, § 1:9

Uncertain appellate venue, § 1:8

Would-be intervenor, § 1:10

### **PROTECTIVE ORDERS**

Briefs, § 32:9

Electronic filing, § 30:3

Record under seal, § 28:13

### **PRUDENTIAL RIPENESS**

See Ripeness

### **PUBLICATION OF OPINION**

See Opinion

### **PUNITIVE DAMAGES**

Generally, Ch. 35

Sanction motion, § 35:3

### **RECEIVERSHIP**

Appealable orders, § 4:5

**RECONSIDERATION**

- Administrative review, § 17:10
- Habeas corpus and 2255 relief, § 16:5
- Post-judgment motions, § 10:10
- Tax court appeals, § 18:2

**RECORD ON APPEAL**

- Generally, **Ch. 28**
- Accuracy disputes, § 28:19
- Administrative review, § 17:16
- Agreed statement in lieu of record, § 28:16
  - Illustrations, § 28:2
- Appellee's interest, § 28:3
- Appendix compared, § 29:1
- Bankruptcy appeal, § 14:5
- Briefs, record references, §§ 12:8, 32:10
- Certification by appellant
  - Exceptions, §§ 32:8, 32:10
  - Form, § 28:23
- Contents, §§ 28:1, 28:13
- Correction, § 28:19
  - Motion to correct, form, § 28:24
- Cost of transcript, liability, §§ 28:8, 28:10
- Court reporters' duties, § 28:11
- Criminal appeals, §§ 15:18, 15:19
- Cross appellant's obligation, § 11:4
- Described, § 28:1
- Designating transcript, see Transcript, below
- Disputes over accuracy, § 28:19
- District court retention, §§ 28:14, 28:15
- District court role in preparation, § 28:13
- Errors, § 28:19
- Excerpts, see Appendix
- Excess designation, costs refused, § 34:3
- Excluding material, § 28:14
- Extraordinary writ review, § 6:7
- Extra-record material, § 17:16
- Federal Circuit, § 19:5
- Holding back record, §§ 28:14, 28:15
- Incomplete record, § 28:17
- In forma pauperis appeal, § 20:5
- Interlocutory appeal, § 28:21
- Judicial notice, § 28:20
  - By district court, § 28:18
  - Motion, form, § 28:28
- Late transcript, § 28:12
- Lost or incomplete, § 28:17
  - Grounds for new trial, § 28:17

## INDEX

### **RECORD ON APPEAL—Cont'd**

- Monitoring preparation, § 28:2
- Motion, § 28:25
- Motions
  - Corrections, § 28:24
  - Judicial notice, § 28:28
  - Settle record, following, § 28:25
- Necessity, § 28:1
- Omitting materials, § 28:14
- Outside the record, considering matters, §§ 28:18, 28:20
- Record excerpts as alternative, § 29:5
- References required in briefs, §§ 32:8, 32:10
- Sealed or sensitive documents, § 28:13
  - Briefs, references in, § 32:9
- Setting the record, § 28:19
  - Motion, form, § 28:25
- Statement, agreed, in lieu of record, § 28:16
- Stipulations
  - In lieu of statement, § 28:16
  - Omission from record, form, § 28:27
- Supplemental, §§ 17:16, 28:18
- Supplementing, § 28:18
  - Habeas exceptions, § 28:18
  - Inherent authority, § 28:18
  - Missing items, § 28:17
- Tax court appeals, § 18:3
- Temporary retention, § 28:15
- Timeliness, §§ 28:7, 28:12
- Transcript
  - Generally, §§ 28:4-28:12
  - Appellee's designation, § 28:9
  - Cause number to court reporter, § 22:1
  - Certification exceptions, § 28:5
  - Cost liability, §§ 28:8, 28:10
  - Court reporter's duties, §§ 28:11, 28:12
  - Delay in preparing, § 28:12
  - Designating, generally, § 28:6, 28:9
    - Form, § 28:22
  - Federal circuit appeals, § 19:4
  - Inadequate transcript, effect, §§ 15:18, 28:9
  - Interlocutory appeal, § 28:21
  - Lost or incomplete, § 28:17
  - Ordering, §§ 15:18, 28:4-28:7, 28:9
    - Appellant's designation, form, § 28:22
    - Interlocutory appeal, § 28:21
    - Payment, §§ 28:8, 28:10
  - Statement of issues, § 28:4

**RECORD ON APPEAL—Cont'd**

- Transmittal, § 28:13
- Exclusion of parts, § 28:14
- Withholding record, §§ 28:14, 28:15
- Writ review, § 6:7

**RECURRING QUESTIONS**

- Extraordinary writ review, § 6:6

**RECUSAL OF JUDGE**

- Appealability, § 2:3
- Disclosure statement, § 32:4
- Extraordinary writ review, § 6:6
- Motion to disqualify, § 33:6

**REHEARING**

- Combined petitions to panel and en banc, § 34:8
- Decision after Supreme Court remand, § 34:10
- Effect on mandate, §§ 34:7, 34:8, 34:12
- En banc, § 34:8
- En banc vs. panel, § 34:8
- Late petition, § 34:12
- Petition, § 34:7
  - Form, § 34:20
- Post-decision events, § 34:12

**REINSTATEMENT**

- Dismissed appeal, § 25:2

**RELEASE PENDING TRIAL OR APPEAL**

- Criminal cases, §§ 15:30, 15:31
- Motion, § 15:35

**RELIANCE ON COURT**

- Grounds for extension, § 12:3

**REMAND DURING APPEAL**

- See also Partial Remand

**REMAND OF REMOVED ACTION**

- Generally, § 1:11
- Acting under federal officer, § 1:11
- Attorneys fees for improper removal, § 35:1
- Class Action Fairness Act, § 5:7
- Denial, appealability, §§ 1:11, 2:3
- Federal employee immunity, § 2:7

**REMAND ORDERS**

- Administrative review, § 17:17
- Appealability
  - Generally, § 2:3
  - Agency remand, § 17:2

## INDEX

### **REMAND ORDERS—Cont'd**

- Appealability—Cont'd
  - Magistrate orders, § 13:3
  - Removed action, § 1:11
- Bankruptcy, §§ 14:1, 14:3
- Class actions, §§ 1:11, 5:8
- Different district judge, §§ 31:2, 34:15
- Finality, § 2:3
- Indicative ruling by district court, Ch. 27, §§ 10:3, 26:1
- Judgment, entry for other party, § 34:6
- Partial remand, Ch. 27
- Post-remand procedure, § 35:16
  - Motion to enforce judgment, forms, § 34:23
- Procedure after, § 34:16
- Reassignment to different judge, § 34:15
- Removed action, review of remand, § 1:11
- Supreme Court, § 34:10

### **REMOVED ACTION**

- See also Remand of Removed Action
- Appeal from abstention, § 2:9
- Appeal from remand, § 1:11

### **REPLY BRIEF**

- Briefs, §§ 32:1, 32:13

### **REPORTERS, COURT**

- Transcript, §§ 28:11, 28:12, 28:17

### **REPRESENTATION STATEMENT**

- Docketing appeals, § 22:3
- Form, § 22:4

### **RES JUDICATA**

- Administrative non-acquiescence, § 17:17
- Effect of ruling in multiple claim or party case, § 3:4

### **RESTORATION ON CALENDAR**

- Argument, § 33:1
- Motion, form, § 33:14

### **REVERSAL**

- District court duties, § 34:16

### **RIPENESS**

- Administrative review, § 17:2
- Extraordinary writ review, § 6:2
- Injunction appeal, § 4:2
- Limit on exercise of jurisdiction, § 2:1
- Prudential ripeness, § 2:1

**RULES OF APPELLATE PROCEDURE**

Text of rules, **FRAP Appx A**

**SAME TRANSACTION OR OCCURRENCE**

Multiple petitions for review, § 17:15

Separateness of multiple claims, § 3:4

**SANCTIONS**

Generally, **Ch. 35**

Administrative agency, against, § 35:1

Non-acquiescence, agency, § 17:17

Amount, determination procedure, § 35:2

Authority to impose, § 35:1

Bad faith, § 35:1

Contempt distinguished, § 2:8

Criminal defendant, § 15:23

Delay, as grounds, § 5:3

Finality of orders, § 2:3

Frivolous, meaning, § 35:1

Grounds, § 35:1

Misconduct, § 35:1

Motion for sanctions, effect, §§ 10:11, 35:2

Form, § 35:3

Post-judgment motions, § 10:11

Procedure, § 35:2

Pro se parties, § 24:1

Rule 11, compared, § 35:1

Separately appealable, § 10:11

U.S. government

Award, § 35:2

Entitlement, § 35:1

Voluntary dismissal, § 25:7

**SCHEDULING**

Argument, §§ 22:2, 33:3-33:4

Orders, § 22:2

**SCOPE OF REVIEW**

See Issues, Scope; Orders; Pendent Appellate Jurisdiction

**SEALING BRIEFS**

Briefs, § 32:9

Protective orders, this index, § 32:9

**SECTION 2255 RELIEF**

Habeas Corpus and 2255 Relief, this index

**SECURITY FOR COSTS**

See Bond

**SENTENCE, CRIMINAL**

Amendment pending appeal, § 26:1



## INDEX

### **SENTENCE, CRIMINAL—Cont'd**

Appealable separate from conviction or restitution, § 15:1

Appeal period

Motion to vacate or reduce, § 7:8

Standard of review, § 31:7

### **SEPARABLE CLAIMS**

Multiple parties or claims, §§ 3:4 et seq.

### **SEPARATE DOCUMENT RULE**

See Judgment

### **SERVICE**

Briefs, proof of service, § 32:4

Electronic filing, § 30:3

Orders quashing, finality, § 2:3

Petition for review, § 17:12

### **SETTING ASIDE**

Vacating, this index

### **SETTLEMENT**

Conference, § 30:4

Finality of post-settlement orders, § 2:3

Judgment form, agency enforcement, § 17:18

Vacating or withdrawing opinion with settlement, § 25:8

### **SETTLING RECORD**

Motion, § 28:25

Record on appeal, § 28:19

### **SIGNATURES**

Briefs, § 32:4

Electronic, § 30:3

Notice of appeal, § 8:11

Pro se appeals, § 24:1

Stipulations, § 2:12

### **SPRINGING FINALITY**

Continuous dismissal, § 2:3

### **STANDARD OF REVIEW**

Generally, Ch. 31

Abuse of discretion, § 31:4

Administrative review, § 31:5

Bankruptcy, § 14:5

Brief, identifying standard in, §§ 31:1, 32:4, 32:10

Chevron doctrine, § 31:5

Clearly erroneous, § 31:2

Constitutional facts, § 31:2

Credibility of witnesses, § 31:2

Criminal appeals, §§ 31:2, 31:7

**STANDARD OF REVIEW—Cont'd**

- Cross summary judgment motions, § 31:1
- De novo review, § 31:3
- Different standard by varying statement of issue, §§ 31:1, 31:3, 32:6
- Federal Circuit, § 19:5
- Harmless error, § 31:7
- Jury findings, § 31:2
- Mixed question of fact and law, § 31:6
- Prejudicial error, § 31:7
- Purpose and importance of standards, § 31:1
- Rational basis, § 31:7
- Reasonableness, § 31:7
- State law questions, § 31:3
- Statement in briefs, § 32:4
- Strict scrutiny, § 31:7

**STANDING ON APPEAL**

- Administrative review, § 17:17
- Bankruptcy, § 14:5
- Extraordinary writ petition, § 6:7
- Intervenor treated as amicus, § 17:14
- Prevailing parties, § 1:4
- Waiver of right to appeal, § 1:4

**STATE COURT**

- Certifying legal questions, § 23:3
- Remand of removed action, review, § 1:31

**STATE LAW**

- Certification of issues, § 23:3
- Standard to review legal issues, § 31:3
- Stay of execution on judgment, § 21:3

**STAY PENDING APPEAL**

- Generally, Ch. 21
- See also Mandate
- Abstention, § 2:2
- Administrative appeal, § 4:6
- Administrative or interim stay, § 21:5
  - Order, form, § 21:11
- Admiralty appeal, § 4:6
- Arbitration appeal, §§ 2:10, 4:7
- Automatic stay duration, § 21:3
- Bankruptcy appeal, § 14:5
- Collecting on security, § 21:8
- Contempt sanctions, § 21:8
- Discretionary interlocutory appeal, § 5:6
- Duration of stay, § 21:3
- Enforcing bond, § 21:8
- Entitlement, § 21:5

## INDEX

### **STAY PENDING APPEAL—Cont'd**

- Execution on judgment, § 10:2
- Motion to stay, form, § 21:9
- Stay, §§ 21:1-21:14
- Extraordinary writ review, § 6:7
- Federal Circuit, § 19:5
- Federal vs. state proceedings, § 2:9
- Grant or denial- appealability, § 2:9
- Initial request to district court, § 21:5
- Injunction
  - Appeal, § 4:2
  - Distinguished, § 21:6
  - Stay of preliminary, motion, § 21:12
- Modifying or vacating, § 21:7
- Motion for stay, form, § 21:12
- Pending Supreme Court review, § 21:5
- Preliminary injunction stay, motion, § 21:12
- Procedure, § 21:5
- Protective appeal, § 1:7
- Security for stay, § 21:5
- Supreme Court, § 21:5
- Tax court appeals, § 18:3
- Test, § 21:3
- Vacating injunction or stay, § 21:7

### **SUBSTITUTION**

- Agency, § 17:11
- Appellants, § 8:3
- Court of appeals authority, § 8:3
- Cure lack of standing, l 1:4
- Death of appellant, § 8:3
- Defunct agency, § 17:11
- Officials, § 8:3
- Wrong appellant, § 8:3

### **SUMMARY AFFIRMANCE**

- Affirm or dismiss summarily, § 25:4
- Criminal appeal, § 15:23
- Federal Circuit, § 19:5
- Motion, § 25:4

### **SUMMARY JUDGMENT**

- Appeal of denial, § 1:2
- Denied immunity, § 2:7
- Isolating issue for certification, § 5:2

### **SUMMARY OF ARGUMENT**

- Briefs, §§ 32:4, 32:10

**SUPPLEMENTAL AUTHORITIES**

Briefs, § 12:15

Form, § 32:17

**SUPREME COURT**

Certifying questions of law, § 23:2

Certiorari before judgment, §§ 21:5, 34:10

Certiorari petition

    Criminal appeals, § 15:25

    Deadline, § 34:10

    Denial, effect, §§ 34:10, 34:13

    Effect of mandate, § 34:13

    Mandate stay, §§ 34:10, 34:13

Criminal appeals, § 15:23

Direct review, §§ 1:8, 9:2

GVR order, § 34:10

Later review, interlocutory appeal, § 34:10

Mandate after Supreme Court decision, § 34:13

Post-decision procedure, § 34:10

Stay pending appeal, §§ 19:4, 19:5

**SUSPENDING APPEAL PERIOD**

Criminal appeals, § 15:6

Federal circuit appeals, §§ 19:4, 19:5

Post-judgment motions, Ch. 10

**TABLES**

Briefs, § 32:4

**TAX COURT APPEALS**

Generally, Ch. 18

Costs, taxation, § 34:3

Docketing, § 22:1

Extension of time to file, § 18:2

In forma pauperis procedure, § 20:4

Jurisdiction, § 18:1

Mail filing, § 18:2

Motions, § 18:2

Notice of appeal, form, § 18:2

Post-judgment motions, § 18:2

Premature appeal, § 18:2

Procedure, §§ 18:2, 18:3

Reconsideration motions, § 18:2

Record on appeal, §§ 18:3, 28:14

Scope of review, § 18:3

Stay of collection, § 18:3

Stipulation of venue, form, § 18:5

Types of appeals, § 18:1

Venue, § 18:1

## INDEX

### **TEMPORARY EMERGENCY COURT OF APPEALS**

Federal circuit appeals, §§ 19:1, 19:2

### **TEMPORARY RESTRAINING ORDERS**

Preliminary injunction, compared, § 4:2

### **THIRD PARTIES**

Collateral orders, § 2:6

Criminal victims, § 15:32

Discovery orders - finality, §§ 2:3, 2:6

Right to appeal, § 1:3

### **TIME LIMITS**

See Appeal Period, Extension of Time, Jurisdictional vs. Non-Jurisdictional

### **TIMETABLES**

Disposition of appeal, § 34:1

### **TOLLING OR SUSPENDING APPEAL PERIOD**

See Post-Judgment Motions

### **TRANSCRIPTS**

See Record

### **TRANSFERS**

Administrative review, § 17:15

Controlling law, § 9:1

District court transfer, appellate venue, § 9:4

Federal circuit, regional circuits, §§ 9:3, 9:4

Forum non conveniens, §§ 9:4, 17:15

Incorrect transfer, § 9:5

Motion in retransfer, prerequisite to review, § 9:4

Multi-district litigation, appellate venue, § 9:4

Review of district court transfer orders, § 9:4

Supreme Court to circuit, § 9:2

Venue, §§ 9:4, 9:5

Wrong circuit, § 9:5

### **TRANSMITTING RECORD**

Generally, § 28:13

### **UNIQUE CIRCUMSTANCES**

Criminal appeal, § 15:10

Doctrine limited, § 12:3

### **UNPUBLISHED DECISIONS**

Citation, § 32:10

Opinions, precedential effect, § 34:2

### **VACATING OR SETTING ASIDE**

Dismissal of appeal, § 25:2

Federal circuit appeals, § 19:5

Following settlement, § 25:8

**VACATING OR SETTING ASIDE—Cont'd**

- Mandate, § 25:8
- Moot appeal, § 25:5
- Permission to appeal, § 5:6
- Post-judgment order, § 10:30
- Prior decision, § 25:8
- Stay pending appeal, § 21:7

**VENUE, APPELLATE**

- Generally, Ch. 9
- Administrative review, §§ 17:5, 17:12, 17:15
- Correct circuit, §§ 9:1, 17:12, 19:1
- Error in venue, § 9:5
- Federal circuit appeals, appellate venue issues, §§ 9:3, 19:1
- Multi-district litigation, § 9:4
- Preliminary agency action, review, § 17:3
- Remote hearings, § 9:1
- Retransfer, § 9:5
- Stipulation, § 18:5
- Supreme Court direct review, circuit's role, § 9:2
- Tax court appeals, § 18:1
- Transfer, controlling law, § 9:1
- Transfer to cure error, § 9:5
- Transfer to district in different circuit, § 9:4
- Wrong circuit, administrative review, §§ 9:5, 17:12, 17:15

**VICTIMS**

- Third party appeals in criminal cases, § 15:32

**VOLUNTARY DISMISSAL**

- Generally, Ch 25:7
- Administrative review, § 17:17
- Agreement, form, § 25:10
- Class actions, § 25:7
- Creating finality - arbitration orders, § 4:7
- Creating finality - other orders, § 2:12
- Criminal appeals, § 15:15
- Dismissal of appeal, § 25:7
- Finality of order imposing conditions, § 2:3
- No sanctions, § 35:2

**WAIVABLE TIME LIMITS**

- See Jurisdictional vs. Non-Jurisdictional

**WAIVER**

- Briefs, §§ 32:6, 32:12
- By appellee, § 32:12
- Consent judgment, § 1:4
- Effect on standing, § 1:4
- Failure to brief and support issues, §§ 32:6, 32:12

## INDEX

### **WAIVER—Cont'd**

- Failure to cross-appeal, § 11:2
- Failure to raise issue below, §§ 15:3, 15:20, 32:7, 32:12
- Forfeiture distinguished, § 32:7
- Guilty plea waiver, § 15:3
- Inadequate brief or record, § 32:12
- Late arbitration appeal, 4:7
- Plea bargain, § 15:3
- Postponing interlocutory appeal, §§ 1:5-1:6
- Prisoner's escape, § 15:3
- Unraised issues, at retrial, § 32:6
- Unraised issues, generally, § 32:12

### **WITHDRAWAL OF COUNSEL**

- Criminal cases, § 15:26

### **WRIT REVIEW**

- Extraordinary Writ Review, this index