PART A. STARTING THE APPEAL

CHAPTER 1. WHETHER TO APPEAL

§ 1:1	Should you appeal?
§ 1:2	Have you preserved the grounds for an appeal?
§ 1:3	Must your client intervene before appealing?
§ 1:4	Does your client have standing to appeal?
§ 1:5	Can you wait and appeal later?
§ 1:6	What are the pros and cons of waiting?
§ 1:7	Should you file a protective appeal after denied intervention?
§ 1:8	If you are uncertain about where to appeal, should you file a protective appeal?
§ 1:9	If you are uncertain about the length of the appeal period, should you file a protective appeal?
§ 1:10	Should you file a protective appeal to protect contingent rights?
§ 1:11	When can you appeal from a remand to state court?
§ 1:12	Is your appeal subject to other statutory limits?
§ 1:13	Have you discussed an appeal with your client?
§ 1:14	Should trial counsel handle the appeal?
§ 1:15	Form: Motion for Leave to Intervene for Purposes of Appealing Consent Decree
§ 1:16	Form: Notice of Protective Appeal Following Denied Intervention

CHAPTER 2. FINAL JUDGMENT RULE

§ 1:17 Form: Notice of Precautionary Appeal

§ 2:1	Must a judgment or order be final before you can appeal?
§ 2:2	When will the court exercise pendent jurisdiction?
§ 2:3	What are the tests of finality?
§ 2:4	Is the order final as a practical matter?
§ 2:5	Is the order final because it is collateral to the merits?
§ 2:6	Is an order that affects third parties appealable as a collateral order?
§ 2:7	Is an order denying immunity appealable as a collateral order?
§ 2:8	When is a contempt order appealable?
§ 2:9	When is an order granting or denying a stay appealable?

- § 2:10 When are stay orders involving arbitration appealable?
- § 2:11 Is an order transferring property appealable as a final order?
- § 2:12 Can you cure an order's lack of finality?

CHAPTER 3. FINALITY IN CASES INVOLVING MULTIPLE PARTIES OR CLAIMS

- § 3:1 When can the district court certify for appeal a ruling that seems final as to some but not all parties or claims?
- § 3:2 How does appeal under Rule 54(b) differ from appeal under 28 U.S.C. § 1292(b)?
- § 3:3 Do you need a 54(b) certification in consolidated cases?
- § 3:4 Is the ruling really final in light of the remaining claims or parties?
- § 3:5 Does the case involve multiple parties?
- § 3:6 Must a ruling apply either to all parties or all claims before it may be certified?
- § 3:7 What is the procedure for certification?
- § 3:8 How does the court of appeals review a certification?
- § 3:9 When will the court of appeals consider an appeal without a certification?
- § 3:10 Form: Motion to Certify Order in Multiple Claim Case

CHAPTER 4. INTERLOCUTORY APPEALS AS A MATTER OF RIGHT

- § 4:1 What interlocutory appeals are available by statute as a matter of right?
- § 4:2 Does the order involve an injunction?
- § 4:3 Even if the order does not expressly involve an injunction, does it have that effect?
- § 4:4 Will the court consider other issues during an injunction appeal?
- § 4:5 Does the order involve a receivership?
- § 4:6 Does the order determine rights and liabilities in admiralty?
- § 4:7 When are arbitration orders appealable?

CHAPTER 5. INTERLOCUTORY APPEALS BY PERMISSION

- § 5:1 If an order is not final, when may the district court certify it for appeal?
- § 5:2 Why would you want an interlocutory appeal?

§ 5:10

§ 5:3 What is the procedure and what are the tests for certification by the district court? Can the district court grant more time to file your § 5:4 petition for permission to appeal? § 5:5 What is the petition procedure in the court of appeals? § 5:6 How is the appeal handled after the court of appeals grants permission? § 5:7 How can you appeal from a class certification order? § 5:8 What other statutes or rules allow appeal by permission? § 5:9 Form: Motion to Certify Orders for Immediate Appeal and for Stay Pending Appeal

CHAPTER 6. EXTRAORDINARY WRITS

Illustration: Petition for Permission to Appeal

- § 6:1 When can you obtain interlocutory review with an extraordinary writ?
- § 6:2 Does the court of appeals have jurisdiction to issue a writ?
- § 6:3 What are the criteria for issuing a writ?
- § 6:4 Do you have an adequate remedy by appeal or otherwise?
- § 6:5 Is the district court's action or inaction erroneous as a matter of law?
- § 6:6 Is the question recurring, significant, or novel?
- § 6:7 What is the petition procedure?
- § 6:8 How should you draft the petition?
- § 6:9 Can a writ cure a defective appeal?
- § 6:10 Form: Petition for Writ of Mandamus or Prohibition

CHAPTER 7. WHEN TO APPEAL

- § 7:1 Why is it important to know when the appeal period starts?
- § 7:2 Has the district court clerk entered the order or judgment?
- § 7:3 Does the order or judgment satisfy the separate document rule?
- § 7:4 Does the appeal period re-start when the district court amends or vacates and re-enters a final order or judgment?
- § 7:5 Was the order or judgment entered in a consolidated case?
- § 7:6 If you appeal too early, is the appeal effective?
- § 7:7 How long is the appeal period and how do you count it?
- § 7:8 Does the civil or criminal appeal period apply?

§ 7:9 When does U.S. government involvement affect the appeal period?

CHAPTER 8. THE NOTICE OF APPEAL

§ 8:1	Do you n	ieed permi	ission to	appeal?
3 0.1	Doyoun	icca perm	ibbioii to	appear.

- § 8:2 What must the notice of appeal contain?
- § 8:3 How should you list the parties taking the appeal?
- § 8:4 How should you designate the judgment or order that you are appealing?
- § 8:5 Must you name the court to which you are appealing?
- § 8:6 Must you name the district court?
- § 8:7 Must you include the cause number and caption?
- § 8:8 Must you name the appellees?
- § 8:9 Must you date a notice of appeal?
- § 8:10 Must you name appellant's counsel?
- § 8:11 Must you sign a notice of appeal?
- § 8:12 Other notice of appeal issues
- § 8:13 Where and how do you file a notice of appeal?
- § 8:14 What fees are due when you file a notice of appeal?
- § 8:15 May other documents serve the function of a notice of appeal?
- § 8:16 Form: Notice of Appeal to a Court of Appeals From a Judgment of a District Court
- § 8:17 Form: Notice of Appeal From an Appealable Order of a District Court

CHAPTER 9. APPELLATE VENUE

- § 9:1 To what circuit must you appeal?
- § 9:2 Does this appeal require direct Supreme Court review?
- § 9:3 Is this appeal within the Federal Circuit's jurisdiction?
- § 9:4 Where do you appeal after your case is transferred to a district in another circuit?
- § 9:5 What if you appeal to the wrong court?

CHAPTER 10. POST-JUDGMENT MOTIONS

- § 10:1 What motions suspend the appeal period?
- § 10:2 How do these motions affect the judgment?
- § 10:3 How do these motions affect a pending appeal?
- § 10:4 How do these motions affect appeals involving other parties?
- § 10:5 When are these motions timely and sufficient?
- § 10:6 What if the motion is premature?
- § 10:7 When does the appeal period restart?
- § 10:8 What if the court grants a post-judgment motion?

- § 10:9 How can you also appeal the ruling on a post-judgment motion?§ 10:10 How does a motion to reconsider a post-judgment
- ruling affect the appeal period?
 § 10:11 Do motions for costs, interest, or sanctions suspend
- the appeal period?
 § 10:12 Do motions for attorneys fees suspend the appeal period?
- § 10:13 How do motions under Rule 60(b) filed more than 28 days after judgment affect an appeal?
- § 10:14 Form: Notice of Appeal From Post-Judgment Award of Attorneys Fees

CHAPTER 11. APPEALS BY ADDITIONAL PARTIES

- § 11:1 When does an appeal by one party extend the appeal period for others?
- § 11:2 When is a cross-appeal required?
- § 11:3 Can you cross-appeal in an interlocutory appeal?
- § 11:4 What is the procedure for a cross-appeal?
- § 11:5 Form: Notice of Cross-appeal

CHAPTER 12. EXTENDING OR REOPENING THE TIME TO APPEAL

- § 12:1 How do you obtain an extension of the appeal period?
- § 12:2 What is excusable neglect or good cause?
- § 12:3 If the district court misled you, is this grounds for an extension?
- § 12:4 After the time for an extension expires, when will the court reopen the appeal period?
- § 12:5 How will the court of appeals review the grant or denial of an extension?
- § 12:6 Form: Motion To Extend Time for Appeal

PART B. SPECIAL APPEALS

CHAPTER 13. APPEALS FROM MAGISTRATE JUDGMENTS

- § 13:1 When can a magistrate judge function the same way as a district court judge?
- § 13:2 How does an appeal from a magistrate judge differ from other appeals?
- § 13:3 What interlocutory appeals are allowed from magistrate judge decisions?

§ 13:4 Form: Consent to Magistrate and Order of Reference

CHAPTER 14. BANKRUPTCY APPEALS

- § 14:1 Where do you appeal from a decision in bankruptcy?
- § 14:2 When is a bankruptcy decision final for purposes of appeal?
- § 14:3 When is a remand order by the district court or appellate panel final?
- § 14:4 When can you appeal interlocutory bankruptcy decisions?
- § 14:5 What is the procedure to appeal a bankruptcy decision?
- § 14:6 Form: Notice of Bankruptcy Appeal to District Court or Appellate Panel
- § 14:7 Form: Notice of Bankruptcy Appeal From District Court or Appellate Panel
- § 14:8 Form: Notice of Bankruptcy Appeal Directly to Court of Appeals by Agreement

CHAPTER 15. APPEALS IN CRIMINAL CASES

- § 15:1 What are the main differences between criminal and civil appeals?
- § 15:2 When can defendant appeal?
- § 15:3 Has defendant waived the right to appeal?
- § 15:4 When does the appeal period start?
- § 15:5 How long is the appeal period?
- § 15:6 What motions suspend the appeal period?
- § 15:7 What must a notice of appeal contain?
- § 15:8 How is the notice of appeal served and filed?
- § 15:9 What if the appeal is premature?
- § 15:10 When will the court extend the appeal period?
- § 15:11 What interlocutory appeals are allowed?
- § 15:12 Are extraordinary writs available?
- § 15:13 What can the district court do while an appeal is pending?
- § 15:14 How will the court of appeals regulate practice in a pending appeal?
- § 15:15 When will a court dismiss an appeal for failure to prosecute?
- § 15:16 If the government moves to dismiss defendant's appeal do special procedures apply?
- § 15:17 Can defendant voluntarily dismiss an appeal?
- § 15:18 How is the record prepared?
- § 15:19 Is an appendix required?

§	15:20	What must a brief contain?
§	15:21	When are briefs due?
§	15:22	How is a criminal appeal expedited?
§	15:23	In what other ways is a criminal appeal handled differently?
§	15:24	When will the court of appeals stay its mandate?
§	15:25	Must defense counsel seek Supreme Court review?
§	15:26	When and how may defense counsel withdraw?
§	15:27	In death penalty appeals what special procedures apply?
§	15:28	How does the Criminal Justice Act affect an appeal
§	15:29	When and how may the government appeal?
§	15:30	How can defendant appeal from a pre-trial order denying or limiting release?
§	15:31	After conviction how can defendant seek release pending appeal?
§	15:32	When can third parties appeal?
§	15:33	Form: Notice of Appeal in Criminal Case
§	15:34	Form: Notice of Pre-conviction Appeal from Order Respecting Release
§	15:35	Form: Motion for Release Pending Appeal from Conviction

CHAPTER 16. HABEAS CORPUS AND SECTION 2255 APPEALS

- § 16:1 When may you appeal from an order denying habeas corpus or section 2255 relief?
- § 16:2 When do you need a certificate of appealability?
- § 16:3 How do you obtain a certificate of appealability?
- § 16:4 How can petitioner appeal if the district court denies or limits a certificate of appealability?
- § 16:5 What restrictions apply to second or successive applications?
- § 16:6 How can petitioner seek release pending appeal?
- § 16:7 In death penalty appeals, how do procedures differ?
- § 16:8 Form: Petition for Certificate of Appealability on Appeal From Denial of Writ of Habeas Corpus

CHAPTER 17. PETITIONS FOR REVIEW OF ADMINISTRATIVE ACTION

- § 17:1 When may a court of appeals review an agency's action?
- § 17:2 How do finality requirements apply?
- § 17:3 When will a court review preliminary agency action or inaction?

§ 17:4	What if the statute does not specifically authorize review or expressly bars it?
§ 17:5	When should review be in the district court instead of the court of appeals?
§ 17:6	When and how must you preserve issues for judicial review?
§ 17:7	How long is the period for filing a petition for review?
§ 17:8	When does the period for filing a petition for review start?
§ 17:9	Does a petition by someone else extend the review period?
§ 17:10	How does a request to the agency to reconsider affect a petition for review?
§ 17:11	What must a petition for review contain?
§ 17:12	Where and how do you file a petition for review?
§ 17:13	How can you stay an agency's order pending review?
§ 17:14	How can you intervene in another review proceeding?
§ 17:15	When will the court transfer petitions to another circuit?
§ 17:16	How is the record prepared?
§ 17:17	How is the appeal handled after filing the record?
§ 17:18	If the agency files a petition for enforcement, what is the procedure?
§ 17:19	How does the perspective in agency review differ from other appeals?
§ 17:20	Form: Petition for Review of Order of an Agency, Board, Commission, or Officer
§ 17:21	Illustration: Motion for Leave to Intervene

CHAPTER 18. TAX COURT APPEALS

- § 18:1 When and where can you appeal from the Tax Court?
- § 18:2 What is the appeal procedure?
- § 18:3 How does an appeal from the Tax Court differ from others?
- § 18:4 Form: Notice of Appeal From Tax Court Decision
- § 18:5 Form: Stipulation of Venue in Tax Court Appeal

CHAPTER 19. APPEALS TO THE FEDERAL CIRCUIT

- § 19:1 When must you appeal to the Federal Circuit?
- § 19:2 What is the Federal Circuit's jurisdiction in appeals that formerly went to the Temporary Emergency Court of Appeals?
- § 19:3 When can you take an interlocutory appeal?
- § 19:4 In patent infringement cases what other interlocutory appeals are allowed?

- § 19:5 How does an appeal to the Federal Circuit differ from others?
- § 19:6 What law applies in Federal Circuit appeals?

PART C. THE APPEAL PROCESS

CHAPTER 20. SECURITY FOR COSTS ON APPEAL

- § 20:1 When must appellant post security for costs on appeal?
- § 20:2 What is the procedure for obtaining security for costs?
- § 20:3 Who is exempt from prepaying costs?
- § 20:4 How does a party obtain in forma pauperis status?
- § 20:5 How does an in forma pauperis appeal differ?
- § 20:6 Form: Motion to Require Cost Bond
- § 20:7 Form: Stipulation and Order Authorizing Interest-Bearing Account in Lieu of Bond or Cash Deposit
- § 20:8 Form: Motion for Leave to Appeal in Forma Pauperis

CHAPTER 21. STAY PENDING APPEAL

- § 21:1 Must a debtor stay execution on the judgment before appealing?
- § 21:2 What is the difference between staying execution on the judgment and a stay or injunction pending appeal?
- § 21:3 When can you extend the automatic stay on execution of a judgment?
- § 21:4 How do you stay execution on a judgment?
- § 21:5 How do you obtain a stay pending appeal on rulings other than a judgment?
- § 21:6 How does an injunction pending appeal differ from a stay?
- § 21:7 How do you modify or vacate a stay or injunction?
- § 21:8 How do you enforce a bond?
- § 21:9 Form: District Court Motion to Stay Judgment Pending Appeal
- § 21:10 Form: Motion in Appellate Court to Require Additional Security
- § 21:11 Form: District Court Order Granting Interim Stay
- § 21:12 Form: Motion in Appellate Court for Stay of Preliminary Injunction

CHAPTER 22. DOCKETING THE APPEAL

§ 22:1 How is an appeal docketed?

- § 22:2 What will the court require incidental to docketing?
- § 22:3 How do you become admitted to practice before the court of appeals?
- § 22:4 Form: Representation Statement
- § 22:5 Form: Application for Admission
- § 22:6 Illustration: Motion for Leave to Argue Pro Hac Vice

CHAPTER 23. CERTIFICATION OF LEGAL QUESTIONS

- § 23:1 When can the district court certify questions to the court of appeals?
- § 23:2 When can the court of appeals certify questions to the Supreme Court?
- § 23:3 When and how can the court of appeals certify questions to a state court?
- § 23:4 Form: Motion to Certify State Law Question

CHAPTER 24. DEFENDING THE PRO SE APPEAL

- § 24:1 How should you defend against the pro se appeal?
- § 24:2 Must pro se parties follow the rules to the same extent as others?

CHAPTER 25. DISMISSING THE APPEAL

- § 25:1 When will the court dismiss an appeal for failure to prosecute?
- § 25:2 When will the court reinstate a dismissed appeal?
- § 25:3 When should appellee move to dismiss for lack of jurisdiction?
- § 25:4 When should appellee move to affirm or dismiss on the merits?
- § 25:5 If an appeal is moot, what is the dismissal procedure?
- § 25:6 What is the effect of a motions panel's refusal to dismiss an appeal?
- § 25:7 How do you voluntarily dismiss an appeal?
- § 25:8 Will the court withdraw or vacate an earlier decision as part of a settlement?
- § 25:9 Form: Motion to Dismiss Appeal
- § 25:10 Form: Dismissal Agreement

CHAPTER 26. PROCEEDINGS BELOW PENDING APPEAL

§ 26:1 What can the district court do pending appeal from a final order or judgment?

- § 26:2 What can the district court do pending interlocutory appeal?
- § 26:3 What can an administrative agency do pending a petition for review or enforcement?

CHAPTER 27. PARTIAL REMANDS

- § 27:1 When will the court of appeals order a partial remand?
- § 27:2 What is the procedure for a partial remand?
- § 27:3 Form: Motion for Limited Remand for District Court To Decide Rule 60(b) Motion
- § 27:4 Form: Stipulation for Partial Remand to District Court
- § 27:5 Form: Report by Appellant of Decision on Remand

CHAPTER 28. RECORD ON APPEAL

- § 28:1 What is the record on appeal?
- § 28:2 Why should appellant monitor the record's preparation?
- § 28:3 What is appellee's interest in the record's preparation?
- § 28:4 In ordering the transcript, what are appellant's options?
- § 28:5 When is appellant free of any duty to certify?
- § 28:6 What should appellant designate?
- § 28:7 What is appellant's deadline to designate?
- § 28:8 Who pays for the transcript designated by appellant?
- § 28:9 What should appelle designate?
- § 28:10 Who pays for the transcript designated by appellee?
- § 28:11 What is the court reporter's responsibility?
- § 28:12 What if the court reporter is late in preparing the transcript?
- § 28:13 How is the record transmitted?
- § 28:14 How can you exclude material from the transmitted record?
- § 28:15 When can you temporarily keep the record in the district court?
- § 28:16 Should you consider an agreed statement in lieu of a record?
- § 28:17 How do you re-create a lost or incomplete record?
- § 28:18 When can you or the court supplement the record?
- § 28:19 How can you correct errors in the record?
- § 28:20 When will the court of appeals consider materials outside the record?
- § 28:21 How do you prepare the record in an interlocutory appeal?
- § 28:22 Form: Appellant's Initial Designation of Reporter's Transcript

§ 28:23 Form: Certificate Regarding Reporter's Transcript and Statement of Issues
 § 28:24 Form: Motion To Correct Record
 § 28:25 Form: Motion To Settle Record Where No Stenographic Report Was Made
 § 28:26 Illustration: Agreed Statement as Record on Appeal
 § 28:27 Illustration: Motion To Take Judicial Notice

CHAPTER 29. APPENDIX

- § 29:1 How do the record and appendix differ?
- § 29:2 When is an appendix required?
- § 29:3 How do you prepare an appendix?
- § 29:4 What should you put in the appendix?
- § 29:5 What do you prepare in circuits that have abolished an appendix?
- § 29:6 Form: Appellant's Initial Designation of Appendix Contents
- § 29:7 Form: Stipulation Regarding Exhibits in Appendix

CHAPTER 30. INTERACTING WITH THE COURT OF APPEALS

- § 30:1 How do you communicate with the court?
- § 30:2 What is the procedure on motions?
- § 30:3 What are the procedures for electronic filing?
- § 30:4 When will the court ask you to attend a conference?
- § 30:5 What can you do when the court takes too long?
- § 30:6 Form: Notice of Delay

CHAPTER 31. STANDARD OF REVIEW

- § 31:1 Why is the standard of review important?
- § 31:2 When and how does the clearly erroneous standard apply?
- § 31:3 When and how does the de novo standard apply?
- § 31:4 When and how does the abuse of discretion standard apply?
- § 31:5 What standards apply to review of administrative decisions?
- § 31:6 What standard applies when findings mix law and facts?
- § 31:7 When and how do other standards apply?

CHAPTER 32. BRIEFS

- § 32:1 What briefs are allowed?
- § 32:2 What are the limits on length?

§ 33:11

§ 33:12

§ 33:13

§ 33:14

§ 33:15

§ 33:16

§	32:3	What are the briefing deadlines and when will the
		court change them?
	32:4	From cover to cover, what must a brief contain?
-	32:5	Who should write the brief?
§	32:6	How should you draft the statement of issues?
§	32:7	When can you raise issues for the first time on appeal?
§	32:8	How should you draft the statement of facts?
-	32:9	How should you handle material subject to a protective order?
§	32:10	How should you draft the argument?
	32:11	How should you draft the conclusion?
§	32:12	What are the best strategies in an answering brief?
§	32:13	What are the best strategies in a reply brief?
§	32:14	What is the strategy and procedure for amicus briefs?
§	32:15	What is the right way to file supplemental authorities?
§	32:16	Form: citation of supplemental authority
§	32:17	Form: Certificate of Compliance with Type-Volume
		Limit
C	CHAP	TER 33. ORAL ARGUMENT
§	33:1	When will the court dispense with oral argument?
§	33:2	When should you request an initial hearing en banc?
§	33:3	How does the court set the argument calendar?
§	33:4	How does the court set the location, sequence, and time allotted for argument?
§	33:5	How are judges assigned to the panel?
	33:6	When and how should you move to disqualify a judge?
§	33:7	Who should handle the argument?
	33:8	Should more than one lawyer per side argue?
8	33:9	How do the judges prepare for oral argument?
§	33:10	What is the procedure at oral argument?

CHAPTER 34. DISPOSITION OF APPEAL

Form: Motion to Assign Appeal to Original Panel

Illustration: Statement of Reasons Why Oral

Form: Motion for Submission Without Oral Argument

Form: Motion to Restore Case to Argument Calendar

§ 34:1 When the court makes its decision, what are the operative events?

How can you argue more effectively?

Argument Should Be Heard

Illustration: Motion to Expedite Hearing

§ 34:2	What if the court does not issue or publish an opinion?
§ 34:3	How are costs taxed?
§ 34:4	How does appellee obtain interest on a judgment affirmed in whole or part?
§ 34:5	How do you obtain attorneys fees on appeal?
§ 34:6	May the court of appeals direct entry of judgment fo the party who lost below?
§ 34:7	When and how should you petition for rehearing?
§ 34:8	When and how should you seek rehearing en banc?
§ 34:9	How can amicus support or oppose a rehearing petition?
§ 34:10	When and how should you seek Supreme Court review?
§ 34:11	What is the mandate's purpose and effect?
§ 34:12	When will the court issue its mandate?
§ 34:13	When will the court stay its mandate?
§ 34:14	When will the court vacate or recall its mandate?
§ 34:15	On remand, when will the court order reassignment to a different district judge?
§ 34:16	What happens after remand?
§ 34:17	Form: Letter Requesting Publication of Opinion
§ 34:18	Form: Bill of Costs
§ 34:19	Illustration: Motion for Allowance of Interest on Judgment
§ 34:20	Illustration: Petition for Rehearing
§ 34:21	Illustration: Emergency Motion for Stay of Mandate Pending Application for Certiorari
§ 34:22	Form: Motion to Vacate Mandate
§ 34:23	Form: Motion to Enforce Judgment

CHAPTER 35. SANCTIONS

- § 35:1 What justifies sanctions?
- § 35:2 How are sanctions imposed?
- § 35:3 Form: Motion for Punitive Damages and Double Costs

APPENDIX

Appendix A. Federal Rules of Appellate Procedure

Index