HANDBOOK OF PRACTICE
and
INTERNAL PROCEDURES

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IV. DOCKETING THE APPEAL

A. CASES FROM THE DISTRICT COURT AND THE TAX COURT

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3. *Docketing the Appeal*
(*See* Fed. R. App. P. 12; D.C. Cir. Rule 12.)

After an appeal has been docketed, the Clerk's Office sends out an initial scheduling order that specifies the dates on which the docketing statement and initial submissions, procedural motions, and dispositive motions are due. In civil cases, the order directs the appellant to file within 30 days an original and 1 copy of a docketing statement on a form provided by the Clerk's Office and to serve a copy on all other parties and *amici curiae*. The docketing statement includes information about the type of case; the district court or agency case number; relevant dates; the order sought to be reviewed; related cases; relevant statutes; and counsel's name, address, and telephone number. A copy of the district court judgment under review must be submitted with the docketing statement, as well as a preliminary statement of the issues for appeal and a transcript status report. This material assists the Clerk's Office and the Legal Division in screening and classifying all new appeals, identifying related cases in this Court, and detecting possible jurisdictional problems. The information about preparation of the transcript is especially important to ensure against delays as the case is processed. The parties also may include a stipulation to be placed in the stand-by pool for argument or a request to be included in the Court's mediation program. *See infra* Part IV.D (discussing the Court's mediation program), and Part X.E.4 (discussing the requirements to enter the stand-by pool).

Appellants must attach to the docketing statement a provisional certificate setting forth the information specified in Circuit Rule 28(a)(1), identifying parties, intervenors, and *amici* in the district court proceedings and in this Court, and all law firms that participated in any capacity in the district court proceedings. ¶ Along with the provisional certificate, appellants must also make the disclosure ~~including a disclosure statement~~ required by Circuit Rule 26.1. Circuit Rule 26.1 requires corporations, associations, joint ventures, partnerships, syndicates, or other similar entities appearing before the Court to file a disclosure statement that identifies all parent companies and any publicly-held company that has a 10% or greater ownership interest (such as stock or partnership shares) in the entity. The statement also must identify the represented entity's general nature and purpose, as relevant to the litigation, and if the entity is unincorporated and its members have no ownership interests, the statement must include the names of any members of the entity that have issued shares or debt securities to the public. No listing need be made, however, of the names of members of a trade association or professional association. Circuit Rules 26.1 and 28 were amended in 2007 to add the requirement that parties

and amici identify all law firms that participated, in any capacity, in the agency or district court proceedings under review.

In civil cases, oral argument dates and panels are usually set *before* the briefs are filed; thus, the provisional certificate and disclosure statement filed with the docketing statement ~~is~~ are necessary to enable the Clerk's Office to avoid assigning the case to be heard by a judge who would be recused because of his or her association with a party or counsel in the case.

Appellees must file, within 7 calendar days of service of the docketing statement, or upon filing a motion, response, or answer, whichever occurs first, any disclosure statement required by Circuit Rule 26.1. *See* Fed. R. App. P. 26.1(b). Any disclosure statement required by Circuit Rule 26.1 must also accompany a motion to intervene, a written representation of consent to participate as *amicus curiae,* and a motion for leave to participate as *amicus. See* D.C. Cir. Rules 12(f), 15(c)(6). This disclosure statement and a Rule 28(a)(1)(A) certificate of parties, ~~and~~ *amici*, and law firms must likewise accompany a petition for panel rehearing or rehearing *en banc*. *See* D.C. Cir. Rule 35(c). A revised corporate disclosure statement must also be filed any time there is a change in corporate ownership interests that would affect the disclosures required under Circuit Rule 26.1.

B. CASES FROM ADMINISTRATIVE AGENCIES

(*See* Fed. R. App. P. 16, 17; D.C. Cir. Rules 15, 17.)

In cases from administrative agencies, docketing occurs at the time the petition for review or notice of appeal is filed and precedes transmission of the record. The appellant or petitioner must remit the docketing fee to this Court at that time. ¶ For information the parties are required to provide with the docketing statement, motions, and rehearing petitions, see *supra* Part IV.A.3.
In particular, parties and amici curiae should note the 2007 revisions to the Circuit Rules, expanding the information that must be included in the disclosure statement required by Circuit 26.1 and in the "Certificate as to Parties, Rulings, and Related Cases" required by Circuit Rule 28(a)(1). Under the new provisions, parties and amici must identify all law firms that participated in any capacity in the agency proceedings under review. In addition, in cases involving direct review of administrative agency actions, the docketing statement must contain a brief statement of the basis for the appellant's or petitioner's claim of standing. *See* D.C. Cir. Rule 15(c)(2).

The record on review consists of the order sought to be reviewed or enforced; the findings or report on which it is based; and the pleadings, evidence, and proceedings before the agency. The record may later be corrected or supplemented by stipulation or by order of this Court, as in the case of an appeal from the district court.

Because of a lack of storage space, the record before the administrative agency is not transmitted to this Court at the time of docketing; only a certified index to the record is submitted by the agency. Any party to the proceeding may, by motion, subsequently request that part or all of the record be transmitted to the Court, or the Court on its own may require transmission of the record. It is the duty of the agency to maintain the record so that it can be

transmitted to the Court with a minimum of delay. In most cases, however, transmission of the actual record will be unnecessary because the appendix must contain those documents necessary for the Court's review.

The administrative agency submits to this Court the certified index to the record within 45 days of the filing of the petition for review or application for enforcement, unless the statute authorizing review fixes a different time. The date of filing the certified index is deemed to be the date the record is filed.

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IX. BRIEFS AND APPENDIX

A. BRIEFS

(*See* Fed. R. App. P. 28-32.1; D.C. Cir. Rules 25, 28-32.1)

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8. *Contents*

(*See* Fed. R. App. P. 28, 32.1; D.C. Cir. Rules 28, 32.1.)

Briefs must contain the following in the order indicated. Note, however, that intervenors and *amici* might not be required to include each of the specified items in their briefs.

(a) A "Certificate as to Parties, Rulings, and Related Cases" immediately inside the cover of the brief and preceding the table of contents. Three items must be included in this certificate:

i. The certificate must identify by name all parties, intervenors, and *amici* who appeared before the district court, ~~and~~ all parties, intervenors, or *amici* in this Court, and all law firms that participated in any capacity in the agency or district court proceedings under review. The appellee or the respondent may omit from the certificate those listed by the appellant or the petitioner but must identify the briefs in which the lists are set forth. The certificate also must include the name of any parent company and any publicly-held company that has a 10% or greater ownership interest in the certifying party. Circuit Rule 26.1 specifies precisely what must be included as to corporate entities and law firms, and counsel should consult that provision for greater detail.

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