

**TITLE 6 : APPEALS**

U.S. ATTORNEYS MANUAL 1970

## TITLE 6 : APPEALS

The division of responsibility between the Department and the U.S. Attorneys varies to a considerable extent, dependent on the Division under whose supervision the case arises, particularly in relation to appeals in the Courts of Appeals. The separate relationship of each Division to U.S. Attorneys with respect to appellate matters is discussed in Part II. There are, however, certain matters which overlap many of the Divisions, particularly in relation to decisions adverse to the Government. These general matters are discussed in Part I.

### I.

#### GENERAL PROCEDURE WITH RESPECT TO APPEALS

##### A. U.S. SUPREME COURT REVIEW

###### 1. Responsibility in Appeals or Certiorari by United States

Litigation in the Supreme Court, for or against the Government, is handled by the Department of Justice under the supervision of the Solicitor General. The responsibility of the U.S. Attorney goes only to filing the notice of appeal and preserving rights pending review, as set forth below. The assistance of the U.S. Attorney may also be sought in having the Clerk of the appropriate court send up the record needed either on direct appeal or on petition for a writ of certiorari. If the Solicitor General has authorized an appeal to the Supreme Court from a decision by the highest court of a State, the aid of the U.S. Attorney may be sought by the Department in the filing of the appeal papers in the State court.

###### 2. Appeal by Adverse Party

Responses to petitions for writs of certiorari and proceedings by the Government in connection with an appeal by an adverse party will be handled by the Department.

When an appeal from a district court to the Supreme Court is taken by the adverse party, the U.S. Attorney should notify the Department immediately and should make sure that copies of all necessary papers and documents are transmitted at once to the Department.

###### 3. Service of Papers

If the U.S. Attorney is served with papers (other than a notice

**TITLE 6: APPEALS**

of appeal) in proceedings before the Supreme Court, he should inform counsel that service must be made upon the Solicitor General in Washington as required by Rule 33(2) of the Rules of the Supreme Court (effective October 2, 1967). The U.S. Attorney should inform the Solicitor General promptly of all attempts to make service upon him.

**4. Supreme Court Mandates and Orders**

Since mandates, judgments, and orders denying petitions for certiorari are sent by the Clerk of the Supreme Court to the lower courts as a matter of course, applications should not be made by the U.S. Attorney to the Clerk of the Supreme Court.

**B. PROCEDURE WHEN A DECISION OF A DISTRICT OR CIRCUIT COURT IS ADVERSE TO THE GOVERNMENT****1. Prompt Report of Adverse Decision****(a) In General**

In any case in which the decision is adverse to the Government, in whole or in part, and is or may be reviewable, the U.S. Attorney must make a report promptly to the appropriate Division of the Department, with his recommendation for or against appeal or certiorari or other review, together with his reasons therefor and any comments which he may care to make. The report should include the dates on which the opinion was rendered and the judgment was entered. If a written opinion was rendered by the court, at least one copy (but preferably two copies) should promptly be transmitted to the appropriate Division. Such copy or copies should be transmitted in addition to, and separate from, copies of opinions made available by the Clerk of the Court.

There should be transmitted with the report of an adverse decision all appropriate documents, including copies of opinions, findings of fact, conclusions of law, judgments, briefs and memoranda (and, if available, transcripts of testimony), for consideration in determining whether an appeal should be taken. The report should be made promptly in order to give the Department adequate time in which to determine whether review should be sought. This is especially true in cases where appeal time is short, such as appeals in criminal cases, and appeals from interlocutory orders.

**(b) In Criminal Cases**

In reporting on adverse decisions within the purview of 18 U.S.C. 3731, the U.S. Attorney should furnish the Department,  
June 1, 1970

## TITLE 6: APPEALS

together with copies of the opinion and judgment, copies of the indictment or information, the motion or motions of the defendant, and the briefs, if any, of both sides. In order to avoid any doubt regarding the proper court to which an appeal should be taken, the U.S. Attorney should endeavor to have included in any order or opinion dismissing an indictment or information, or arresting a judgment of conviction for insufficiency of the indictment or information, a specific statement that the decision is or is not based exclusively upon the invalidity or construction of the statute upon which the indictment or information is founded.

(c) *With respect to Interlocutory Appeals*

Because of the short period of time (10 days) allowed by the statute for making application for interlocutory appeals, the appropriate division of the Department should immediately be advised by telephone or telegraph in every case in which the U.S. Attorney believes that the Government should take such an interlocutory appeal or in which the district judge has stated in his order that a controlling question of law is involved, and the necessary papers should immediately be transmitted to the appropriate Division of the Department.

**2. Necessity of Authorization by Solicitor General**

(a) *Appeals or Petitions on Behalf of United States*

All appeals or petitions for writs of certiorari by the United States or one of its officers or agencies must be authorized by the Solicitor General. This includes interlocutory appeals under 28 U.S.C. 1292(b) and litigation in State courts subject to review by a higher State court or by the U.S. Supreme Court.

(b) *Rehearings En Banc*

The prior authorization of the Solicitor General (through the appropriate Division of the Department) must be obtained for the filing of a suggestion for rehearing en banc in a Court of Appeals.

Prior authorization is not required for a petition for rehearing to the panel which decided the case.

(c) *Briefs Amicus*

The authorization of the Solicitor General is required for the filing of any brief amicus in an appellate court. 28 C.F.R. 0.2.0.

(d) *Petitions Seeking Mandamus or other Extraordinary Relief*

The authorization of the Solicitor General is required for the filing of petitions in appellate courts for the issuance of extraordinary writs.

## TITLE 6: APPEALS

**3. Notice of Appeal—Protective Notice**

(a) The U.S. Attorney is responsible for serving and filing a notice of appeal on behalf of the United States or any party or agency thereof. This applies to appeals to the Supreme Court (see Rule 10 of Rules of Supreme Court) as well as to the Courts of Appeals.

With respect to notices of appeal to the Supreme Court, attention is directed to the requirements (1) that service by mail on a person residing 500 miles or more from the office of the U.S. Attorney be by airmail, and (2) that if proof of service is by certificate, the attorney signing the certificate be a member of the bar of the Supreme Court..

The U.S. Attorney should notify the Department promptly when he has served and filed the notice of appeal.

(b) If the time for appeal is about to expire (see time limitations, *infra*) and the U.S. Attorney has not received notice from the appropriate Division of the Department as to whether an appeal is to be taken, a notice of appeal—commonly called a “protective” notice of appeal—should be filed in order to preserve the Government’s right to appeal. Such action should be reported to the appropriate Division of the Department. In order that the Department may have adequate time to consider the case, such notice of appeal should not be filed sooner than five days before the time for appeals expires.

(c) If rehearing is desired en banc it is usually necessary to obtain an extension of time as only 14 days are allowed for rehearing; consult with the appropriate Division in the Department.

**4. Preserving Government’s Rights Pending Review**

U.S. Attorneys shall be responsible in courts other than the Supreme Court for preserving the Government’s rights pending review and also pending determination of the question whether review should be sought. They shall take the necessary steps to stay the issuance of mandates by the Courts of Appeals if the issuance of the mandate might prejudice the Government’s interests. If a Court of Appeals refuses to stay the mandate or conditions its stay upon the seeking of review within a stated period, the Department shall immediately be informed of such fact. The Department shall likewise be informed if a District Court refuses to stay further proceedings or execution of its judgment or imposes conditions on review. In cases handled by the Department, the U.S. Attorney will be advised of what steps, if any, to take in order to preserve the Government’s rights.

June 1, 1970

## TITLE 6: APPEALS

**C. PROCEDURE WHERE APPEAL IS TAKEN BY ADVERSE PARTY TO COURT OF APPEALS**

When an appeal to a Court of Appeals is taken in a Government case by the adverse party, the U.S. Attorney shall advise the appropriate Division of the Department at once and shall prepare a report covering in substance the same matters required to be covered by the report in cases in which the decision is adverse to the Government in the district court. The notice of appeal and other pertinent papers shall accompany the report.

**D. PROCEDURE IN INTERLOCUTORY APPEALS**

(a) Subsection (b) of the Interlocutory Appeals Act of 1958, 72 Stat. 1770, 28 U.S.C. 1292, authorizes the Courts of Appeals to entertain appeals from certain nonfinal orders entered by the District Court which are not appealable under subsection (a) of that Act. Under subsection (b), such orders are appealable only if the District Court states in writing in the order that it involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from it may materially advance the ultimate termination of the litigation. Upon application within 10 days after entry of the order, the Court of Appeals may, in its discretion, allow an appeal to be taken. The Act is intended to apply only in exceptional cases. See e.g., *Milbert v. Dick Laboratories*, 260 F. 2d 431 (3d Cir., 1958); *In re Hedendorff*, 263 F. 2d 887 (1st Cir., 1959); *United States v. Woodberry*, 263 F. 2d 784 (9th Cir., 1959). Examples of orders which may be appropriate for appeal under 28 U.S.C. 1292(b) are orders overruling a defense going to the right to maintain the action, such as a challenge to capacity or to jurisdiction; orders refusing to permit joinder of a third-party defendant; and orders transferring cases to other District Courts under 28 U.S.C. 1404 in which the jurisdiction of a transferee court is in issue.

(b) If an interlocutory ruling adverse to the Government is handed down by a District Court and is believed that an appeal under 28 U.S.C. 1292(b) is necessary to protect the Government's interest, a request should be made to the District Court for a 10-day delay in entry of the order by the Clerk, pending determination by the Department as to whether an interlocutory appeal should be sought.

(c) The contents of the petition to appeal are governed by Rule 5 of the Federal Rules of Appellate Procedure.

**TITLE 6: APPEALS**

(d) As noted above, prompt notification is imperative in view of the short time limitations.

(e) Whenever permission to take such an interlocutory appeal has been requested by the other side, or whenever the District Judge has certified that the other side may take such an appeal, the question whether the Government should oppose or acquiesce in the appeal will be handled according to the practice of the appropriate Division of the Department.

**E. STATE COURT PROCEEDINGS**

In litigation in the State courts, the U.S. Attorney should promptly inform the appropriate Division of the Department as to all decisions, including those adverse to the United States and subject to review in a higher State court. In all of these cases, he should follow the general procedures established for appeals from Federal District Courts to Courts of Appeal. However, the U.S. Attorney is primarily responsible for the technical and procedural matters involved in the taking and perfecting of the appeal to the higher State court, including the preparation of the record and its docketing in the higher court. If the procedural steps involved in the taking or perfecting of the appeal raise an issue which bears upon the merits of the case, the U.S. Attorney should promptly inform the appropriate appellate section of the Department and secure its advice with respect to that issue, but in any event the necessary protective action should be timely taken.

**II.****RELATIONSHIP OF UNITED STATES ATTORNEYS  
TO PARTICULAR DIVISIONS WITH RESPECT TO  
CASES IN THE COURTS OF APPEAL****A. TAX DIVISION CASES****1. Civil Tax Cases****(a) Preparation of Record**

The U.S. Attorney has the responsibility of preparing the record but in most cases will receive advice and instruction from the Tax Division.

On Government appeals in cases handled in the District Court by the U.S. Attorney, he should prepare the designation of record and statement of points if one is necessary, and should otherwise perfect the record and see to the docketing of the case in the Court

June 1, 1970

## TITLE 6: APPEALS

of Appeals. If the taxpayer is the appellant, the U.S. Attorney should prepare the counterdesignation and other necessary papers. It is advisable that all appeal documents be submitted to the Department for consideration in advance of filing.

In cases handled in the District Court by the Tax Division, the Department will prepare the designation of record or counter-designation, as the case may be, and the statement of points if one is necessary.

U.S. Attorneys located in the Second, Third, Fourth, and Sixth Circuits should have a duplicate copy of the record prepared and transmitted to the Department. The duplicate record is necessary because under the rules of the Courts of Appeals of those Circuits the printed record will usually consist of the portions of the record printed as appendixes to the Court of Appeals briefs and in civil tax cases the Government's brief in the Court of Appeals will be prepared and filed by the Tax Division (see the section on briefing below).

In the other circuits, where the rules provide for a separately printed record, the U.S. Attorney should see that the Department receives three copies of the record as soon as it is printed.

*(b) Preparation of Briefs and Oral Arguments*

On appeal by either party in a civil case, the Department normally advises the clerk of the Court of Appeals that the Tax Division will handle the case in the appellate court and that matters incident to it in that court should be forwarded to the Department.

The Government's brief in the appellate court is prepared by the Tax Division. After it has been reviewed and coordinated with other tax litigation pending in other courts, the brief is sent to the U.S. Attorney for printing by the contract printer in his district with instructions as to the number of copies which are to be filed, served upon opposing counsel, and supplied to the Department.

In most cases a member of the staff of the Tax Division will argue the case in the Court of Appeals, but the Department will endeavor to keep the U.S. Attorney advised of all developments in the case on appeal. Ordinarily it is not necessary for the U.S. Attorney to be present at the argument. If the U.S. Attorney feels that his attendance is important, for instance because of other cases pending in his district, authority is granted to him to appear

June 1, 1970

## TITLE 6: APPEALS

with the representative from the Tax Division. In some instances, the U.S. Attorney will be requested to argue the case.

In instances where it is necessary to obtain stipulations or to obtain the consent of opposing counsel to proposed motions, the Tax Division may call upon the U.S. Attorney to handle these matters.

**2. Criminal Tax Cases***(a) Preparation of Record*

In criminal cases the U.S. Attorney has the entire responsibility for preparation of the record on appeal. The U.S. Attorney should make sure that the record accurately includes all matters necessary for a review of the case and should send three copies of the printed record to the Department as soon as printed.

*(b) Preparation of Briefs and Oral Arguments*

As a general rule, the U.S. Attorney will prepare the brief and argue the case on appeal. In all such instances, a draft of the Government's brief should be submitted to the Department far enough ahead of the due date to give sufficient time for adequate review by the Tax Division. Fifteen copies of the printed brief for the Government should be forwarded to the Department, as well as copies of the other side's briefs.

**B. CIVIL DIVISION CASES****1. In General**

The major portion of Civil Division cases in the Courts of Appeals (and in State appellate courts) are handled by attorneys in the Appellate Section of the Division, but some of these cases, particularly those involving factual issues, may be assigned by the Chief of the Appellate Section to the U.S. Attorney for handling. In all cases, the Chief of the Appellate Section will notify the U.S. Attorney whether the appellate case will be handled by the Appellate Section attorneys or by the U.S. Attorney's office. In addition to such notification, the U.S. Attorney will be advised specifically of the steps he is to take in order to protect fully the interests of the Government.

**2. Applications in the Courts of Appeals for Stays or Injunctions Pending Appeal**

When an appeal to a Court of Appeals is taken in a Civil Division case by the adverse party, the U.S. Attorney shall advise the Chief

**TITLE 6: APPEALS**

of the Appellate Section by wire or telephone of any motion filed by the appellant for a stay or injunction pending appeal or for any other emergency relief.

**3. Appeals Under Interlocutory Appeals Act**

Where an interlocutory ruling adverse to the Government is handed down by a District Court and it is believed that an appeal under the Interlocutory Appeals Act, 28 U.S.C. 1292(b) is necessary to protect the Government, a 10-day delay in the entry of the order should be requested, and the same day the details are to be wired or telephoned directly to the Chief of the Appellate Section of the Civil Division. Simultaneously, there should be forwarded to him by airmail, marked for urgent handling, a brief résumé of the case, a statement of the question to be presented on appeal, the reasons why it is a controlling question which may advance termination of the case, and the ground upon which a difference of opinion is asserted to exist. If the Department authorizes an interlocutory appeal, the U.S. Attorney will be advised by direct wire. Only upon receipt of this authorization should he apply to the District Court for inclusion in the order from which appeal is sought of the certification required by the Act.

If an interlocutory ruling is handed down by the District Court which is adverse to the Government's opponent, and the latter applies for inclusion of a certification under the Interlocutory Appeals Act in the order to be entered, the Chief of the Appellate Section of the Civil Division is to be notified in the manner noted above, and a 10-day delay should be requested. The same procedure is to be followed where the District Court, *sua sponte*, includes a certification under the Act in an order.

Whether or not the Department has been previously notified, the Chief of the Appellate Section of the Civil Division is to be immediately informed by telephone or wire of the service of petitions to the Courts of Appeals for leave to appeal under the Act. A copy of the petition, marked for urgent handling, should at once be forwarded by airmail to the Chief of the Appellate Section of the Civil Division.

**C. CRIMINAL DIVISION CASES**

Normally the U.S. Attorney handles Criminal Division cases on appeal to the Court of Appeals whether by the United States or by the defendant. This includes all collateral proceedings stemming from criminal convictions such as appeals from motions under 28

**TITLE 6: APPEALS**

U.S.C. 2255. Unless otherwise directed by the Department, the U.S. Attorney should where necessary prepare the record, have it docketed and printed in due time, and prepare the brief, have it printed, serve and file it, and designate the person to argue the appeal. Two copies of all briefs filed by either side should be forwarded to the Department as promptly as possible after receipt.

**D. CIVIL RIGHTS DIVISION CASES****1. Preparation of Record**

In all cases under the jurisdiction of the Civil Rights Division, the U.S. Attorney should advise the Department at once of the entry of any adverse final decision and of the filing of any notice of appeal by an opponent of the Government. At the same time, a brief statement relating the nature of the case and the points expected to be argued on appeal should be forwarded, to be followed as soon thereafter as practicable by copies of opinions, findings, conclusions, and final judgments, and of all pleadings not previously transmitted to the Department. In any case in which the Government's opponent has filed an appeal the U.S. Attorney should prepare and file a counterdesignation of record after consultation with the Department. The Department should be advised promptly when the record on appeal is docketed in the Court of Appeals, and four copies of the printed record should be forwarded, one by airmail, as soon as they are received. The letter transmitting the record should state the date from which the time for filing the Government's brief is calculated.

**2. Preparation of Briefs and Oral Arguments**

Briefs in cases on appeal to the Court of Appeals will be prepared and printed in the Department. Four copies of the brief of the Government's opponent should be forwarded, one by airmail, as soon as they are received, and copies of all replies to Government briefs and any petitions or motions should likewise be transmitted immediately upon receipt. Suggestions as to matter to be included in the Government's brief should be submitted not later than 5 days after the printed record is received in cases where the Government is the appellant, and not later than 5 days after the appellant's brief is received in cases where the Government is the appellee. The person to present the oral argument will be designated by the Department but ordinarily it will be the attorney who prepared the Government's brief. The Department should be advised as soon as the date of argument is known. As

**TITLE 6: APPEALS**

a general rule, appeals involving primarily factual issues will be handled by the U.S. Attorney, those involving problems of statutory construction or other legal issues of nationwide application by the Department. In cases being handled by the Department the procedure applicable to other cases under the jurisdiction of the Civil Rights Division will be followed. The U.S. Attorney prepares the Government's brief and conducts the oral argument in all cases assigned to him. Two copies of the briefs filed by any party should be forwarded to the Department.

**E. LANDS DIVISION CASES****1. Preparation of Record**

Land Division cases on appeal to the Court of Appeals are primarily handled by the Department. The U.S. Attorney is charged with the responsibility of filing the record and docketing the case in the Court of Appeals within the time allowed or any extension thereof permissible under the applicable law or court rules. As soon as notice is received that an appeal has been authorized, the U.S. Attorney should promptly submit suggestions as to matter to be included in the record. The necessary appeal papers such as designation of record, statement of points, etc., will be forwarded by the Department for service and filing. When the Government's opponent has appealed, one copy of all appeal papers should be transmitted to the Department together with suggestions as to material to be included in a counterdesignation, etc. Such counterdesignation will be forwarded for service and filing. Any agreed statement under Rule 10(d), Federal Rules of Appellate Procedure, must be submitted for the consideration of the Department prior to approval by the U.S. Attorney.

The Department should be advised promptly when the record on appeal is docketed in the Court of Appeals. Any designation of record or other document required under the rules of the appellate court will be prepared by the Department. In some instances the record will be printed under the supervision of the U.S. Attorney by the local Government contract printer. Specific instructions will be given by the Department in those cases.

Four copies of the printed record should be forwarded to the Department, one by air mail, as soon as they are received. Promptness is emphasized since the time for filing the brief usually is measured from the date the printed record is mailed or received from the Clerk of the appellate court. The letter transmitting the record should state the date from which the time for filing the Government's brief is calculated.

June 1, 1970

**TITLE 6: APPEALS**

In any case where a judgment or an appealable order adverse to the Government has been entered, the U.S. Attorney should file a notice of appeal near the end of the period allowed for such filing in order to protect the Government's right, unless contrary instructions are received from the Chief of the Appellate Section of the Lands and Natural Resources Division. At the same time he should advise the Appellate Section of the date of such filing as to whether he has a copy of the reporter's transcript of the proceedings, so that the Appellate Section can decide whether to order such transcript within the 10 days required by Rule 10(b), Federal Rules of Appellate Procedure.

**2. Preparation of Briefs and Oral Arguments**

Briefs are prepared and printed in the Department. When the Government is the appellant, two copies of the printed record (appendix) received from the Clerk of the Court or the printer should be forwarded immediately by airmail to the Chief of the Appellate Section of the Lands and Natural Resources Division. Suggestions as to matter that should be included within the brief should be submitted within 5 days thereafter. When the Government is appellee, two copies of the appellant's brief and printed record (appendix) should be forwarded to the Appellate Section by airmail, as soon as they are received, and suggestions as to matter to be incorporated in the Government's brief should be submitted within 5 days thereafter. When the Government's brief is reproduced, the necessary copies are forwarded by the Department to the Clerk of the Court for filing and copies are forwarded to the U.S. Attorney. Copies of all replies to Government briefs should be promptly forwarded to the Appellate Section.

The person to present the oral argument will be designated by the Department. Ordinarily it is the attorney who prepared the Government's brief. The Appellate Section should be promptly advised as soon as information as to the date of the argument is received. Since, through clerical errors, the Department sometimes does not receive copies of opinions rendered, the U.S. Attorney should promptly forward to the section a copy of any opinion or other ruling received in its cases.

**3. Interlocutory Appeals**

It is imperative that the Appellate Section of the Lands and Natural Resources Division be advised promptly whenever pos-

**TITLE 6: APPEALS**

sible of an anticipated application to the District Court by the Government's opponent under the Interlocutory Appeals Act or, if possible, action by the District Court on its own motion. When the order of the District Court, containing the requisite certification for appeal under the statute, has been entered, the Appellate Section should be advised immediately by telephone or wire and the order, findings of fact, conclusions of law, opinion and any other necessary papers required by the rules of the Court of Appeals relative to interlocutory appeals should be immediately transmitted to the Appellate Section. The files of the case should also be rechecked to see that all other papers have been previously submitted to the Appellate Section. Applications and responses in the Court of Appeals will be prepared and filed by the Department.

**F. INTERNAL SECURITY DIVISION CASES**

The Internal Security Division should be notified promptly when an appeal is taken so that a determination can be made as to whether the Department or the U.S. Attorney will handle the appeal. Unless otherwise directed by the Department, the U.S. Attorney should prepare the record and have it docketed and printed in due time. See Rule 39, Federal Rules of Criminal Procedure, and Rules 73-76 Federal Rules of Civil Procedure. Two copies of the record, when printed, should be forwarded to the Department.

Unless he is subsequently advised that the Department will handle the appeal or desires to review the brief, the U.S. Attorney will prepare the brief, have it printed, serve and file it, and designate the person to argue the appeal. Two copies of all briefs filed by either side should be forwarded to the Department.

**III.****TIME TO APPEAL OR PETITION FOR REVIEW  
OR CERTIORARI****A. CRIMINAL CASES AND COLLATERAL RELIEF****1. Criminal Cases**

(a) Criminal appeals by the Government under 18 U.S.C. 3731 must be taken within 30 days after entry of the judgment or order appealed from.

(b) Appeals by a convicted defendant must be taken within 10

**TITLE 6: APPEALS**

days after the entry of the judgment appealed from, but if a timely motion in arrest of judgment or for a new trial on grounds other than newly discovered evidence has been made, an appeal may be taken within 10 days after entry of an order denying such motion. A motion based on newly discovered evidence extends the time for appeal, if made before, or within 10 days after entry of the judgment of conviction.

(c) The time to appeal in criminal cases may be extended up to 30 days on a showing of excusable neglect.

(d) Petitions for writs of certiorari to the Supreme Court by the Government or a defendant must be filed within 30 days after the entry of judgment, but this time may be extended not more than an additional 30 days for cause shown, provided the extension is granted within the initial 30 day period following the judgment of the Court of Appeals. If the judgment was entered in a District Court in Alaska, Hawaii, Puerto Rico, the Canal Zone, or the Virgin Islands, the petition shall be deemed in time if mailed by airmail under a postmark dated within such 30-day period.

**2. Collateral Relief**

(a) Proceedings under 28 U.S.C. 2255 and habeas corpus are treated as independent proceedings subject to the rules for civil cases for the purpose of computing time to appeal under the rules. This means that the time to appeal from the District Court to the Court of Appeals is 60 days and the time to petition for a writ of certiorari is 90 days, with possibility of extension for another 60 days.

(b) Other forms of relief such as an application for a writ of error coram nobis, a motion to correct an illegal sentence, or a motion for a new trial based on newly discovered evidence, are deemed to be made in the criminal case, and are therefore subject to the time limitations of criminal cases set forth above.

**3. CIVIL CASES**

In all civil cases, petitions for writs of certiorari in cases to be taken to the Supreme Court from Courts of Appeals or from State courts must be filed within 90 days after the entry of judgment, but this time may be extended not to exceed 60 days if the extension is obtained within the initial 90-day period (28 U.S.C. 1254, 1257(3), 2101(c)).

Appeals from State courts to the Supreme Court must be taken

## TITLE 6: APPEALS

within 90 days after the entry of the judgment or decree; this time cannot be extended (28 U.S.C. 1257 (1, 2), 2101 (c)).

Appeals generally in civil actions, in which the United States or an officer or agency thereof is a party, from judgments of the District Courts to the Courts of Appeals, must be taken within 60 days after entry of the judgment or decree appealed from (28 U.S.C. 2107).

In cases pending in U.S. courts in which the United States or any officer or employee, as such officer or employee, is a party, or in which the United States has intervened and become a party, and the decision is against the constitutionality of an Act of Congress, an appeal may be taken by any party directly to the Supreme Court within 30 days after entry of a final or interlocutory judgment, decree or order; this time cannot be extended (28 U.S.C. 2101).

In cases where an injunction is sought against the enforcement of an Act of Congress upon the ground that such Act is unconstitutional, which cases are heard by a three-judge court, and there is a judgment, order, or decree denying or granting an interlocutory or permanent injunction, an appeal may be taken direct to the Supreme Court within 30 days after entry of the order, judgment, or decree; this time cannot be extended (28 U.S.C. 1252, 2101).

In cases seeking to enjoin the enforcement of orders of the Interstate Commerce Commission heard by a three-judge District Court, an appeal may be taken direct to the Supreme Court from an order granting or denying an interlocutory injunction within 30 days after the entry of the order and within 60 days if the order is final; this time cannot be extended (28 U.S.C. 1253, 2101; 2325).

In civil suits under the antitrust laws in which the United States is plaintiff, appeal lies only to the Supreme Court and notice of appeal must be filed in the District Court within 60 days of the entry of final judgment; this time cannot be extended (15 U.S.C. 29; 28 U.S.C. 2101 (b)).

In civil suits under the Interstate Commerce Act wherein the United States is complainant, direct appeal to the Supreme Court from the decisions of the District Court shall be taken within 30 days from the judgment, order or decree appealed from, if interlocutory, and within 60 days if final; this time cannot be extended (28 U.S.C. 2101; 49 U.S.C. 45).

In bankruptcy cases, petitions for review of an order of a Referee must be filed in accordance with Section 39(c) of the

## TITLE 6: APPEALS

Bankruptcy Act, as amended (11 U.S.C. 67), within 10 days after the entry of the Referee's order unless the time is extended for cause shown. Appeals to a Court of Appeals must be taken within 30 days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice should be filed within 5 days after service or, if such notice is not served and filed, then within 40 days from such entry (Sec. 25 (a) of the Bankruptcy Act, 11 U.S.C. 48).

In civil actions for infringement of patents, an appeal may be taken from a final decree to the Courts of Appeals within 30 days from the entry of the decree (28 U.S.C. 1292, 2101).

Appeals to the Court of Appeals for interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property must be filed in cases in which the United States is a party, within 60 days from the entry of such orders (28 U.S.C. 1292; Rule 73(a), Federal Rules of Civil Procedure).

In cases of arbitration between carriers and their employees as provided by 45 U.S.C. 157, in which petitions are filed to impeach the awards, as provided by 45 U.S.C. 159, the decisions of the District Courts on such petitions may be appealed from to the Courts of Appeals by either party within 10 days from the decision of the District Courts (45 U.S.C. 159, par. 5).

Under the Agriculture Adjustment Act of 1938, any farmer who is dissatisfied with his farm marketing quota may, within 15 days after notice of such quota, have the same reviewed by a review committee and if dissatisfied by the determination of the review committee may, within 15 days after notice is mailed to him by registered mail, file a bill in equity against the review committee in the court specified in the act, for the purpose of obtaining a review of the determination of the committee (7 U.S.C. 1363-1366).

Under the Commodity Exchange Act, it is provided that certain orders of the agency set up to enforce the Act, may be reviewed on appeal to the Court of Appeals within 15 days after the entry of such orders (7 U.S.C. 8).

Cease and desist orders made by the Secretary of Agriculture under 7 U.S.C. 1599 may be reviewed by the proper Court of Appeals, upon the filing of a written petition therefor by the person aggrieved, within 30 days after the service of such orders (7 U.S.C. 1600).

## TITLE 6: APPEALS

Applications for review of decisions of the U.S. Customs Court to the Court of Customs and Patent Appeals in cases arising in the United States must be filed within 60 days, and in cases arising in the Territories and Possessions, within 90 days after the entry of the judgment or decree complained of (28 U.S.C. 2601).

Any party to a proceeding, aggrieved by an order of the Federal Power Commission under the Federal Power Act, 16 U.S.C. 701 (a)-825(r), may obtain a review of such order in the proper Court of Appeals by filing in such court within 60 days after the entry of the order of the Commission, a written petition praying that such order be modified or set aside in whole or in part (16 U.S.C. 825 1).

Any person aggrieved by an order of the Securities and Exchange Commission under 15 U.S.C. 80(a)-1 to 80(a)-52, or under the last sentence of 72(a) or 107(f) of 15 U.S.C., may obtain a review of such order in the proper Court of Appeals by filing in such court within 60 days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part (15 U.S.C. 80(a)-42).

Any order, affirmative or negative, issued by the Civil Aeronautics Board under 49 U.S.C. 401-681, except an order issued under Section 601, may be reviewed by the proper Court of Appeals upon the petition of any person having a substantial interest in such order filed within 60 days after the entry of such order (49 U.S.C. 646).

Any party to a proceeding under 15 U.S.C. 717-717(w), who is aggrieved by an order issued by the Federal Power Commission, may obtain a review of such order in the Court of Appeals having jurisdiction, by filing a petition within 60 days after entry of such order, praying that such order be modified or set aside in whole or in part (15 U.S.C. 717(r)).

Any person or party aggrieved by an order of the Securities and Exchange Commission may obtain a review of such order by filing in the Court of Appeals having jurisdiction, with 60 days after entry of such order, a petition praying that such order be modified or set aside in whole or in part (15 U.S.C. 77(i), 78(y), 79(x), 80(b)-(13)).

When the Commissioner of Internal Revenue determines that there is a deficiency in respect of taxes imposed by the internal revenue laws, and notifies the taxpayer of such deficiency, the taxpayer may, within 90 days, file a petition in the Tax Court for a redetermination of such deficiency (26 U.S.C. 272).

## TITLE 6: APPEALS

When the Tax Court has rendered a decision on the petition referred to in the preceding paragraph, either party may file in the Court of Appeals, within 3 months, a petition to review the decision of the Tax Court (26 U.S.C. 1142).

Review of decisions of the Railroad Retirement Board may be had by any employee or other person aggrieved, within 1 year as provided by 45 U.S.C. 228(k), in the proper District Court, and within 90 days in reference to a claim for benefits as prescribed by 45 U.S.C. 355.

Appeals from decisions in condemnation cases under the Tennessee Valley Authority Act (16 U.S.C. 831-831dd) must be taken within 30 days to the Court of Appeals (16 U.S.C. 831x).

Appeals from orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921 (7 U.S.C. 193) may be taken to the proper Court of Appeals within 30 days after the service of such order (7 U.S.C. 194).

Review of orders of the Federal Communications Commission, except those relating to radio licenses, may be had in the proper Court of Appeals by filing a petition for review within 60 days of the order (47 U.S.C. 402 (a), as amended by the Act of Dec. 29, 1950, 64 Stat. 1129, and the Act of July 16, 1952, 66 Stat. 711). Appeals from orders relating to radio licenses are taken only to the Court of Appeals for the District of Columbia Circuit within 30 days after public notice of the decision complained of (47 U.S.C. 402(c), as amended by the Act of July 16, 1952, 66 Stat. 711).

Any person who will be adversely affected by an order of the Department of Health, Education, and Welfare, made under 21 U.S.C. 371 (Food and Drug Act), may, prior to the 90th day after such order is issued, file in the Court of Appeals having jurisdiction a petition seeking a judicial review of such order (21 U.S.C. 371).