(d) *Remand.* If the record in any case is remanded to a court or agency, this Court retains jurisdiction over the case.

If the case, is remanded, this Court does not retain, jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the remand proceedings. (Amended, June 19, 1972; May 1, 1981.)

Scope of subdivision (d). — This Rule only makes clear that a remand of a case requires new jurisdictional grounds to be established if an appeal is taken after the remand of the case. The Rule in no way circumscribes the Court's power to construe its own mandate that led to the remand. Potomac Elec. Power Co. v. Interstate Commerce Comm'n, 702 F.2d 1026 (D.C. Cir. 1983).

Cited in International Union of Elec. Workers v. National Labor Relations Bd., 650 F.2d 334 (D.C. Cir. 1980); Lewis v. Sawyer, 698 F.2d 1261 (D.C. Cir. 1983); Shelvy v. Whitfield, 718 F.2d 441 (D.C. Cir. 1983).

Rule 14. Petitions for rehearing, suggestions for hearing or rehearing en banc, and mandates.

(See Rules 25, 32, 35, 40 and 41, Federal Rules of Appellate Procedure)

(a) *Petitions for rehearing and suggestions for hearing and rehearing en banc.*

(1) Time. A party that suggests pursuant to Rule 35 (b), Federal Rules of Appellate Procedure, the appropriateness of an initial hearing en banc, shall file the suggestion on or before the date on which appellee's brief is due to be filed. Any party that wishes to file a petition for rehearing pursuant to Rule 40, Federal Rules of Appellate Procedure, or a suggestion of the appropriateness of rehearing en banc, in a case in which neither the United States nor an agency or officer thereof is a party, shall do so within 30 days after entry of judgment. In all cases in which the United States, or an agency or officer thereof, is a party, the time within which any party may seek rehearing shall be 45 days after entry of judgment. The time for filing a petition for rehearing or a suggestion of the appropriateness of a rehearing en banc will not be extended except for good cause shown.

(2) Number of copies and length. An original and 14 copies of petitions for rehearing and of suggestions for hearing or rehearing en banc shall be filed. Such petitions and suggestions may be combined in 1 pleading or filed as separate documents. Whether filed as 1 pleading or as separate documents, a petition and/or suggestion shall not exceed a cumulative length of 10 pages by standard typographical printing, or 15 pages of printing by any other process of duplicating or copying, and shall be served in compliance with Rule 25, Federal Rules of Appellate Procedure. All printed matter must appear in at least 11 point type on opaque unglazed paper. The Court looks with disfavor upon motions to exceed the page limitation and such motions will only be granted for extraordinary and compelling reasons.

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(3) Contents. In connection with suggestions for hearing or rehearing en banc, counsel's attention is directed to the criteria for such en banc consideration set forth in Rule 35 (a) of the Federal Rules of Appellate Procedure. Suggestions that an appeal be heard or reheard en banc shall contain a separate section at the beginning thereof, captioned "Concise Statement of Issue and Its Importance", which shall set forth the reasons why the case is of exceptional importance or with what decision or decisions of the Supreme Court of the United States, this Court, or any other federal appellate court, the panel decision is claimed to be in conflict. Without such a statement, the suggestion will not be accepted for filing.

(b) *Mandates.* A petition for a stay of the issuance of mandate shall not be granted simply upon request. A stay shall not issue unless the petition sets forth facts showing good cause for the relief sought. While retaining discretion to direct immediate issuance of its mandate in an appropriate case, the Court will ordinarily include as a part of its disposition an instruction that the Clerk withhold issuance of the mandate until the expiration of the time for filing a petition for rehearing or a suggestion of the appropriateness of rehearing en banc and, if such petition or suggestion is timely filed, until 7 days after disposition thereof. Such an instruction is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown. No mandate shall issue in connection with an order granting or denying a writ of mandamus or other special writ, but the order or judgment granting or denying the relief sought shall become effective automatically 21 days after issuance in the absence of an order or other special direction of this Court to the contrary. (Amended, Feb. 11, 1977; Dec. 31, 1979; Nov. 30, 1981; June 15, 1982.)

Cited in Deering Milliken, Inc. v. Federal Trade Comm'n, 647 F.2d 1124 (D.C. Cir. 1978).

Rule 15. Taxation of costs of briefs and appendices.

(a) *Allowable items*. Costs shall be taxable in conformity with Rule 39 of the Federal Rules of Appellate Procedure. Costs will be allowed for the docketing fee, the cost of printing or otherwise reproducing the text of 50 copies of briefs and 25 copies of appendices, any charges for indices, covers, footnotes, and tabular matter of briefs and appendices, and the sales tax, if any, for printing or reproduction services. Charges actually incurred for printing or reproducing textual and appendix material, indices, tabular matter and exhibits shall be itemized to show cost per page. Charges for footnotes shall be itemized to show cost per line. Costs for fasteners used in place of binding may be claimed as a separate item only for briefs and appendices reproduced by photocopy methods. Forms furnished by the Clerk's Office of this Court, or facsimiles thereof, must be used in requesting taxation of costs. Bills of costs in which costs are not itemized as herein described, or which are not presented on Clerk's Office forms (or reasonable facsimiles thereof), shall not be filed.

Rule 32. Form of briefs, the appendix and other papers.

(a) *Form of briefs and the appendix.* Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6⅛ by 9¼ inches and type matter $4^1/_6$ by $7^1/_6$ inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text. In patent cases the pages of brief and appendices may be of such size as is necessary to utilize copies of patent documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices, if separately printed, shall contain: (1) The name of the Court and the number of the case; (2) the title of the case (see Rule 12 (a)); (3) the nature of the proceeding in the Court (e. g., Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (e. g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) *Form of other papers.* Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8½ by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

Notes of Advisory Committee on Appellate Rules. — Only 2 methods of printing are now generally recognized by the circuits — standard typographic printing and the offset duplicating process (multilith). A 3rd, mimeographing, is permitted in the Fifth Circuit. The District of Columbia, Ninth, and Tenth Circuits permit records to be reproduced by copying processes. The Committee feels that recent and impending advances in the arts of duplicating and copying warrant experimentation with less costly forms of reproduction than those now generally authorized. The proposed Rule permits, in effect, the use of any process other than the carbon copy process which produces a clean, readable page. What constitutes such is left in 1st instance to the parties and ultimately to the Court to determine. The final sentence of the 1st paragraph of subdivision (a) is added to allow the use of multilith, mimeograph, or other forms of copies of the reporter's original transcript whenever such are available.

otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) *Non-appearance of parties.* If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

(f) *Submission on briefs.* By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.* If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — A majority of circuits now limit oral argument to 30 minutes for each side, with the provision that additional time may be made available upon request. The Committee is of the view that 30 minutes to each side is sufficient in most cases, but that where additional time is necessary it should be freely granted on a proper showing of cause therefor. It further feels that the matter of time should be left ultimately to each Court of Appeals, subject to the spirit of the Rule that a reasonable time should be allowed for argument. The term "side" is used to indicate that the time allowed by the Rule is afforded to opposing interests rather than to individual parties. Thus if multiple appellants or appellees have a common interest, they constitute only a single side. If counsel for multiple parties who constitute a single side feel that additional time is necessary, they may request it.

In other particulars this Rule follows the usual practice among the circuits. See Third Cir. Rule 31; Sixth Cir. Rule 20; Tenth Cir. Rule 23.

Editor's notes. — All of the Circuit Rules cited in the second sentence in the second paragraph of the Advisory Committee Notes have been revised since the Notes were written and the numbering referred to is no longer accurate.

Rule 35. Determination of causes by the Court in banc.

(a) *When hearing or rehearing in banc will be ordered.* A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the Court of Appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) *Suggestion of a party for hearing or rehearing in banc.* A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the Court shall so order. The Clerk shall transmit any such suggestion to the members of the panel and the judges of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) *Time for suggestion of a party for hearing or rehearing in banc; suggestion does not stay mandate.* If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Court of Appeals or stay the issuance of the mandate. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — Statutory authority for in banc hearings is found in 28 U.S.C. § 46 (c). The proposed Rule is responsive to the Supreme Court's view in Western Pacific Ry. Corp. v. Western Pacific Ry. Co., 345 U.S. 247, 73 S. Ct. 656, 97 L. Ed. 986 (1953), that litigants should be free to suggest that a particular case is appropriate for consideration by all the judges of a Court of Appeals. The Rule is addressed to the procedure whereby a party may suggest the appropriateness of convening the Court in banc. It does not affect the power of a Court of Appeals to initiate in banc hearings sua sponte.

The provision that a vote will not be taken as a result of the suggestion of the party unless requested by a judge of the court in regular active service or by a judge who was a member of the panel that rendered a decision sought to be reheard is intended to make it clear that a suggestion of a party as such does not require any action by the Court. See Western Pacific Ry. Corp. v. Western Pacific Ry. Co., supra, 345 U.S. at 262, 73 S. Ct. 656. The Rule merely authorizes a suggestion, imposes a time limit on suggestions for rehearings in banc, and provides that suggestions will be directed to the judges of the Court in regular active service.

In practice, the suggestion of a party that a case be reheard in banc is frequently contained in a petition for rehearing, commonly styled "petition for rehearing in banc". Such a petition is in fact merely a petition for a rehearing, with a suggestion that the case be reheard in banc. Since no response to the suggestion, as distinguished from the petition for rehearing, is required, the panel which heard the case may quite properly dispose of the petition without reference to the suggestion. In such a case the fact that no response has been made to the suggestion does not affect the finality of the judgment or the issuance of the mandate, and the final sentence of the Rule expressly so provides.

In banc review not necessarily barred in absence of factors specified in subdivision (a). — This Rule does not establish a blanket policy barring in banc review in the absence of the 2 factors delineated in subdivision (a) of this Rule; in banc consideration may be appropriate in an extremely unusual case in order to cure a gross injustice. United States v. Lynch, 690 F.2d 213 (D.C. Cir. 1982).

Cited in Jolly v. Listerman, 675 F.2d 1308 (D.C. Cir.), cert. denied, — U.S. —, 103 S. Ct. 450, 74 L. Ed. 2d 604 (1982).

Rule 36. Entry of judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Notes of Advisory Committee on Appellate Rules. — This is the typical rule. See First Cir. Rule 29; Third Cir. Rule 32; Sixth Cir. Rule 21. At present, uncertainty exists as to the date of entry of judgment when the opinion directs subsequent settlement of the precise

No exception in Rule for costs of intervenors. — This Rule generally contemplates taxation of costs in favor of the prevailing party and against the losing party, and there is no broadside exception for review of agency proceedings and the costs of intervenors. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

Costs may be taxed either for or against intervenors in agency review proceeding. Delta Air Lines v. Civil Aeronautics Bd., 505 F.2d 386 (D.C. Cir. 1974).

Court is ordinarily inclined to tax costs in favor of winning intervenors, without taking the time required to make a more defined determination of any additional or incremental contribution. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

But practice not ironclad rule. — While there is a prevailing practice of the taxation of costs for or against intervenors as prevailing or losing parties, it is a practice, not an ironclad rule. Delta Air Lines v. Civil Aeronautics Bd., 505 F.2d 386 (D.C. Cir. 1974).

Different considerations are involved in determining costs in cases testing general industry regulations, where the number of interested participants and intervenors balloons exponentially, and consumer interests have relatively modest resources. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

And Court considers intervenor's contribution, issues' novelty, intervention's necessity and public interest. — In deciding whether or not to award costs, the Court is called upon to exercise discretion, and to consider not only who won and who lost but also such other factors as the relative merit of the intervenor's contribution, the novelty of the issues, the necessity of intervention and the public interest. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

Petitioners representing strands of public opinion not denied sums for briefs. — The fact that the petitioners represent strands of public interest will not warrant denying the party respondent the modest sums required for a duplication of briefs. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

But intervenors not entitled to reimbursement for duplicative briefs. — Insofar as the intervenors' briefs duplicated what was presented by the government agency responsible for the order or regulation involved, these were costs essentially for their own account, a kind of extra insurance for which they paid the premium and were not entitled to reimbursement. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

III. BILL OF COSTS.

Order regarding rehearing petition not entry of judgment. — Entry of judgment means exactly what it states and does not have reference to an order that may be entered with regard to a petition for rehearing. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

And filing period for bills of costs not tolled by petition. — Nothing in the Rules gives the pendency of a petition for rehearing the effect of tolling the filing period for bills of costs seeking taxation of printing expenses. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

Authority under Rule 26 (b) encompasses extensions of time for filing bills of costs. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

Recovery of costs is not foreclosed by failure to file within 14-day period specified by subdivision (d). Saunders v. Washington Metropolitan Area Transit Auth., 505 F.2d 331 (D.C. Cir. 1974).

As particular circumstances may explain tardiness. — Claims for costs should be submitted promptly after the rendition of the judgment on appeal; the 14-day limit subserves that policy and should be scrupulously observed. Yet it is evident that the circumstances of particular situations may satisfactorily explain tardiness and may call for an allowance of costs nonetheless. Saunders v. Washington Metropolitan Area Transit Auth., 505 F.2d 331 (D.C. Cir. 1974).

Rule 40. Petition for rehearing.

(a) *Time for filing; content; answer; action by Court if granted.* A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in

support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) *Form of petition; length.* The petition shall be in a form prescribed by Rule 32 (a), and copies shall be served and filed as prescribed by Rule 31 (b) for the service and filing of briefs. Except by permission of the Court, or as specified by local rule of the Court of Appeals, a petition for rehearing shall not exceed 15 pages. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — This is the usual rule among the circuits, except that the express prohibition against filing a reply to the petition is found only in the Rules of the Fourth, Sixth and Eighth Circuits (it is also contained in Supreme Court Rule 58 (3)). It is included to save time and expense to the party victorious on appeal. In the very rare instances in which a reply is useful, the Court will ask for it.

Editor's notes. — The Supreme Court Rules were extensively revised in 1980. There is no longer a Rule 58, referred to in the first sentence in the Advisory Committee Notes. Rule 51 deals with rehearings.

Cited in City of Gallup v. Federal Energy Regulatory Comm'n, 726 F.2d 772 (D.C. Cir. 1984).

Rule 41. Issuance of mandate; stay of mandate.

(a) *Date of issuance.* The mandate of the Court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) *Stay of mandate pending application for certiorari.* A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that Court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

Notes of Advisory Committee on Appellate Rules. — The proposed Rule follows the rule or practice in a majority of circuits by which copies of the opinion and the judgment serve in lieu of a formal mandate in the ordinary case. Compare Supreme Court Rule 59. Although 28 U.S.C. § 2101 (c) permits a writ of certiorari to be filed within 90 days after entry