

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DESCRIPTION OF NEW CASE MANAGEMENT PLAN

Effective Date of
Plan: August 1, 1986

I. INTRODUCTION

Effective August 1, 1986, the Court of Appeals will implement a new case management plan. The basic goal of the plan is to facilitate case processing. In particular, the plan establishes calendar and case handling procedures that will afford the judges better opportunities to do high quality work on the relatively difficult cases. In addition, the plan seeks to streamline the processing of routine motions, 11(d) cases and summary dispositions so that these matters can be fully addressed by the judges, but with greater ease of effort than under existing systems.

II. HIGHLIGHTS OF THE NEW CASE MANAGEMENT PLAN

The most notable feature of the plan is the scheduling of most cases for oral argument in conjunction with the establishment of the initial briefing schedule. Other pertinent aspects include the disclosure of the panel of judges before briefing and an improved plan for handling both routine and dispositive motions. The plan will apply to all cases filed on and after August 1, 1986.

The plan affords more information earlier to counsel to facilitate their planning, since the dates for briefing and argument will be known well in advance. The purpose of tying the briefing schedule to the oral argument date is to lessen the time between the filing of briefs and the date of argument. Not only will the cases be fresher in the minds of counsel, but the briefs will reflect more accurately the current state of the law. In this way, it is expected that the number of supplemental briefs, filed pursuant to Gen. R. 8(k), can be reduced significantly.

Another advantage to counsel is in the new procedures for filing motions. The need to file requests for extensions of time to file briefs, or motions to postpone argument, will be substantially reduced since the dates provided in the scheduling order are so closely keyed to the

hearing date. In addition, the filing of dispositive motions, if any, will be required within 45 days of the docketing of the appeal. Thus, the necessity for briefing and oral argument will be eliminated in cases which are closed as a result of a dispositive motion.

III. CASE PROCESSING PROCEDURES

The Office of the Chief Staff Counsel will screen new appeals initially to determine which one of three classifications a case will be given. Following a recommendation from Chief Staff Counsel, a case will then be designated either "regular," "complex," or "11(d)." Most cases will be designated "regular" and will be assigned to a merits panel at the time of the briefing order. Complex cases and Rule 11(d) cases (amenable to disposition pursuant to Gen. R. 11(d)) will be treated differently.

Generally, complex cases are larger, multi-party agency or district court cases which involve unusually complex issues. Such cases will be assigned to a "select" panel, which will be disclosed to the parties early in the appeal. The panel or its designated screening judge will dispose of all motions filed in such cases and coordinate the management of the case with the Office of the Chief Staff Counsel.

Cases that appear to fall within the guidelines of Gen. R. 11(d) will be referred to a "special" panel of the Court. The panel will have the option of sending the case to a "regular" merits panel for oral argument or disposing of the appeal pursuant to the rule. If the "special" panel agrees to decide the case pursuant to Gen. R. 11(d), the Clerk will issue an order to that effect.

Within the broad categories of "regular" cases, including private civil appeals, criminal appeals, civil appeals where the government is a party, and review of agency

actions, the Court will schedule cases, to the extent possible, in chronological order. Regular panels' caseloads will consist of a roughly proportional mix of these case types.

IV. DISPOSITIVE MOTIONS

Pursuant to Gen. R. 6(k), the parties will be required to file dispositive motions, if any, within 45 days from the docketing of the case. Included in this category are motions for summary reversal, summary affirmance, transfer and dismissal. The filing of these motions after the 45-day deadline will not be allowed, absent special leave of Court. Generally, briefing will be deferred pending resolution of any dispositive motion.

Counsel may, at any time within the 45-day period, stipulate that no dispositive motions will be filed. Such a stipulation will enable the Court to accelerate issuance of the briefing schedule.

V. MOTIONS AFFECTING CALENDARING

After an appeal has been docketed, an initial order will be issued to establish a due date for the filing of any motions affecting the calendaring of the case and any other nondispositive motions. Normally, such motions must be filed within 30 days. This is to supply the Clerk's Office with sufficient information to process and schedule cases efficiently.

Included in this category are motions to defer appendix, dispense with oral argument, stay proceedings, hold in abeyance, consolidate, assign to a prior panel and have cases heard on the same day before the same panel. Motions to expedite proceedings should also be filed within this early time frame.

VI. SCHEDULED SITTING PERIODS

The present sitting periods beginning in September and ending in June will continue. The Court has approved its sitting periods for the coming year. Although the schedule is not published, it is presently estimated that oral argument calendars will be established approximately four months in advance of the hearing date.

VII. RULE 8 (c) CERTIFICATES

From time to time judges must recuse themselves from consideration of a case. This may occur under the circumstances set forth in 28 U.S.C. § 455 or in accord with Canon 3C, Code of Judicial Conduct, as approved by the Judicial Conference of the United States, April 1973. Since the argument date under the new plan will be established before briefs are submitted, the Court will require that a provisional certificate of counsel be submitted before the filing of briefs. The initial order issued in the case will set the date on which the Rule 8 (c) certificate is due. The preliminary filing of this certificate will not do away with the filing of the formal certificate of counsel when the briefs are filed.

VIII. DISCLOSURE OF PANELS

Under the new case management plan, the names of judges on the regular merits panels will be revealed in the order which establishes briefing and argument dates. Calendars of scheduled hearings, including the composition of the panels, will be periodically published in *The Washington Law Reporter*.

IX. AMOUNT OF TIME FOR ORAL ARGUMENT

There will be no significant changes in procedures for the allocation of oral argument time. As in the past, the Court will enter an order setting forth the amount of time to be allowed for argument. See Fed. R. App. P.

34 and Gen. R. 12 concerning the assignment of time allotted. Consolidated cases are considered to be one case for purposes of argument time.

X. PAGE LIMITS ON BRIEFS AND BAR MEMBERSHIP

Although not specifically included in the new case management plan, there are two related matters of which counsel should be aware. The first concerns limitations on the size of briefs. The other relates to the bar membership of attorneys.

Effective August 1, 1986, amendments to Gen. R. 8 (b) and Gen. R. 8 (g) will become effective. These amendments will reduce the amount of pages in briefs. The "summary of argument" portion of the briefs will be counted in determining page limitations. Opening briefs will be limited to 36 pages printed or 50 pages reproduced by other means. Reply briefs will be limited to 14 pages printed and 20 pages reproduced by other means.

This Court maintains a bar separate from the United States District Court for the District of Columbia and the District of Columbia Court of Appeals. An attorney intending to present argument should be a member of the bar of this Court in good standing. The early establishment of the hearing date will permit attorneys not already admitted to the bar of this Court to complete the application process in a timely fashion.

An application for admission may be obtained by calling the Clerk's Office (535-3300).

XI. THE IMPORTANCE OF TIME LIMITS

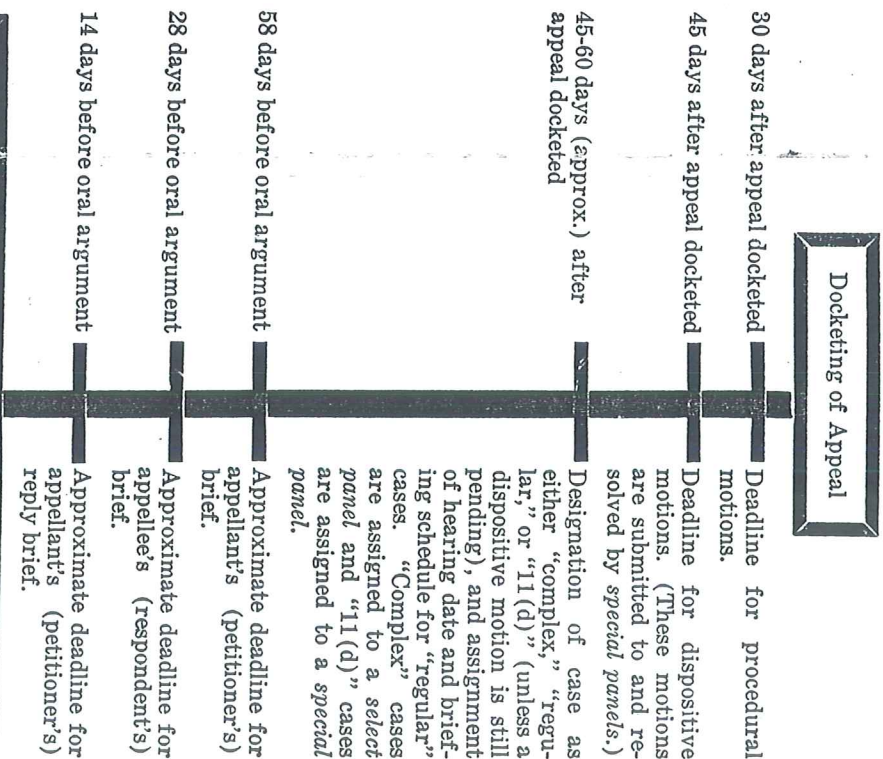
Under the new case management plan, it will be critically important for counsel to adhere strictly to all prescribed time limits. Because the briefing schedule is keyed to the date of argument, the Court will be unable

to grant requests for waiver of time limits except in truly extraordinary situations.

The Court will hold counsel to strict observance of the 30-day deadline for filing procedural motions, the 45-day deadline for filing dispositive motions, and the briefing dates in the schedule. Supplemental briefs should be unnecessary and, accordingly, will not be permitted absent truly extraordinary circumstances.

Under the new plan, counsel will know the date for oral argument sufficiently in advance to arrange for the scheduling of other matters. For that reason, the Court will not grant requests to postpone oral argument, except possibly upon a showing of truly extraordinary cause.

CHART SHOWING KEY ASPECTS OF THE NEW CASE MANAGEMENT PLAN *



* The chart does not take account of situations involving intervenors or cases in which leave has been granted to file a deferred appendix. Also, the time limits noted may be subject to variance in special circumstances, such as expedited cases, etc.

filed. Counsel filing the motion shall make every practicable effort to serve the motion personally or to notify opposing counsel promptly by telephone and shall describe in the motion or accompanying memorandum the efforts made so to serve or notify.

(k) **Dispositive Motions.** Any party intending to file a motion which, if granted, would dispose of the appeal or petition for review in its entirety, shall do so within 45 days of the docketing of the case in this Court. Any dispositive motion shall have attached a copy of the judgment or order involved, and of any memorandum, opinion, and/or statement of findings and conclusions issued by the District Court or the federal officer or agency whose decision is on appeal or review. (New Rule adopted August 1, 1986)

R U L E 7.

TRANSMISSION OF RECORD ON APPEAL

(a) **Temporary Retention in District Court.** If pursuant to Rule 11(c), Federal Rules of Appellate Procedure, by stipulation of the parties or by order, the record on appeal is temporarily retained in the District Court, the appellant shall arrange to have said record filed in this Court no later than the date on which appellee's brief is due to be filed.

(b) **Exhibits of Unusual Bulk.** Pursuant to Rule 11(b), Federal Rules of Appellate Procedure, exhibits of unusual bulk or weight designated by the parties to be included in the record on appeal shall not be transmitted to the Clerk of this Court until 10 days prior to oral argument on the merits.

(c) **Emergency and Expedited Appeals.**

(1) Appeals by United States Under 18 U.S.C. § 3731

(A) Counsel for appellant shall file the notice of appeal promptly with the Clerk of the District Court and shall advise the Clerk of this Court immediately.

(B) The Clerk of the District Court shall transmit a copy of the notice of appeal and a certified copy of the docket entries to the Clerk of this Court forthwith. The Clerk of this Court shall docket the record on the duplicate notice of appeal and shall prepare an abbreviated briefing schedule. No extensions of time for the filing of briefs will be granted except for extraordinary cause.

(C) Counsel for appellant shall order the necessary portions of the transcript of the hearing prepared on an expedited basis and shall make arrangements with the