

to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good

faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is received no more than 60 days after the date of the Clerk's letter, its filing will be deemed timely.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U.S.C. §1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U.S.C. §1651(a), §2241, or §2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as appli-

cable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U.S.C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the “reasons for not making application to the district court of the district in which the applicant is held.” If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court’s discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U.S.C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule

has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

PART V. MOTIONS AND APPLICATIONS

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court’s original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will