# REPORT OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR COMMENTING ON PROPOSED CHANGES TO THE GENERAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT


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# REPORT OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR COMMENTING ON PROPOSED CHANGES TO THE GENERAL RULES OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

## EXECUTIVE SUMMARY

The U.S. Court of Appeals for the District of Columbia Circuit has invited public comments on a proposed revision of its General Rules, and the attached report reflects the comments of the Section on Courts, Lawyers and the Administration of Justice and its Committee on Court Rules. A number of the changes are minor, and there are no major departures from current practice, as was the case last year when the Court adopted its new Case Management Plan. Some of the more significant comments in this report deal with the following topics:

Motions Practice: The proposed rules would impose new page limitations on motions and petitions, as well as responses and replies. The report notes that the Court now requires the filing of dispositive motions at an early phase of the case, suggests that the proposed page limits may not be sufficient for such motions, and urges the Court to take a flexible approach in passing on motions to exceed page limitations. The report also makes technical comments on procedures regarding stays; requests for expedited consideration or emergency relief; and processing of cases charging unreasonably delay by an agency.

Briefs: The report supports some proposed organizational changes, i.e., moving the Reference to Parties and Rulings section into a certificate at the beginning of the brief; adding a statement on subject matter jurisdiction, which the report suggests be included in the opening certificate; and dropping the need for dual citations to U.S. App. D.C. and F.2d in the table of cases. The report urges the Court to re-instate a policy previously followed in this Court that the summary of argument not be counted in computing compliance with page limitations.

One major change reflects the Court's desire to reduce the number of amicus and intervenor briefs. The Court would limit the page length to 35 pages, encourage amici and intervenors to agree on the contents of a single brief, and require amicus briefs to be filed 15 days after the party being supported, as is now done in agency cases. The report generally endorses this approach. On other matters, it suggests clarifications regarding citation of unpublished opinions of other courts and filing of supplemental briefs.

Other matters: The report urges official inclusion of the D.C. Corporation Counsel as an member of the Judicial Conference; opposes reducing the page limit for rehearing en banc petitions by one page; supports adoption of a rule specifying whether a party filing an attorney's fee application should do so in district court of the court of appeals; and supports a 60 day comment period for future changes in court rules.

## INTRODUCTION

The United States Court of Appeals for the District of Columbia Circuit has invited comments on a proposed revision of its General Rules. The District of Columbia Bar's Section on Courts, Lawyers and the Administration of Justice and its Committee on Court Rules are pleased to submit this report commenting on the proposed changes.

In general, the proposal represents a useful revision and update of the Court's General Rules. Our comments will focus on proposed rules which present significant issues and will also discuss each of the six proposed rules (Rules 6, 7, 11, 12, 14 and 23) on which the Court specifically invited comments.

One general comment is appropriate at the outset. In requesting public comments, the Court did not include explanatory statements identifying significant changes or outlining its reasons for proposing changes in current procedures, as is the practice in a number of other courts. Such explanations are helpful to the public, and we urge the Court to consider including them when proposing future rule changes.

## RULE 1

While the proposed Rule confirms that cross-references to the Federal Rules of Appellate Procedure are made where appropriate, the Court should consider including cross-references to its Case Management Plan and the currently effective Manual on the Court's Operating Procedures, which are not readily available to many counsel, although the proposed Rule directs that these sources should "be consulted." We would urge the Court and its

Advisory Committee to determine whether the Case Management Plan and much of the Internal Operating Procedures could not be included in the Rules in the interest of easy access and reference.

RULE 3(c)

This proposed rule (currently General Rule 2(c)) no longer states that regular sessions will generally end in June, implying that regular, as well as special or emergency sessions, may now be held in July or August. If the Court does intend to hold regular sessions in the summer, it would be useful to advise the bar in advance.

RULE 4

General Rule 3(c), which allows the Clerk to release filed papers to the District Court, has been omitted. Presumably the original papers may still be returned to the trial court when needed there. Also omitted is General Rule 3(e) requiring the Clerk to retain one bound copy of the briefs in all completed cases and to transmit unbound copies to law libraries at the direction of the Court. Although this practice may still be maintained absent a rule, the recent closing of the law library in the United States Courthouse to the bar and the sale of the old District of Columbia Bar Association law library there make it even more important that such material continue to be provided to accessible law libraries.

## RULE 6

Proposed Rule 6 (Admission, Disbarment and Suspension of Attorneys) for the most part includes the provisions in General Rule 5 with relatively minor language changes which appear to clarify and make simpler the procedures set forth in that rule. With respect to the amendments of a more substantive nature, we believe that the changes are reasonable and will result in a smoother operation of the attorney admissions and discipline procedures of the Court.

Proposed Rule 6(c) amends current General Rule 5(d) to permit the admission fee to be revised periodically by the Court without the necessity of a rule amendment. It also eliminates the provisions in General Rule 5(d) providing how the funds collected as admission fees should be spent. Both changes provide more flexibility to the Court with respect to fees, a development which we believe is beneficial.

Proposed Rule 6(f)(1) is virtually identical to General Rule 5(g)(1) except that it eliminates the requirement that the Court appoint a member of the bar as secretary of the Committee on Admissions and Grievances. Absent any comments regarding the reasons for deleting this provision, we take no position on it.

## RULE 7

This proposed rule, which deals with motions practice, largely restates current requirements, although there are several proposed changes which merit comment, along with several additional provisions which we believe would be useful to the bar.

Subsection (a). The proposed rule would limit motions and petitions and responses thereto to 20 pages, with replies and responses limited to ten pages. While most procedural motions will not exceed those limitations, it may often be difficult for parties to limit dispositive motions to those lengths. Suppose, for example, that a party moves to dismiss an appeal or petition for review on grounds of standing and ripeness. By the time the moving party has included an adequate statement of the facts and legal arguments, the motion will be comparable to a merits brief in length.

The case management procedures which the Court introduced in August 1986 contemplate greater use of dispositive motions at the early stages of a case; however, unduly restrictive page limitations make it difficult for substantive issues to be fully briefed and litigated by motion. In light of this fact, we urge the Court to be flexible in considering motions to exceed the page limits when counsel seeks to file such dispositive motions.

Subsection (b). The proposed rule states that an original and four copies of all motions, petitions, responses, and replies shall be filed with the clerk. It would be useful to specify either here or in proposed Rule 15 that in cases where rehearing en banc has been granted, an original and 14 copies of any subsequent motions and similar papers shall be filed, as we understand is the current practice of the Court.

Subsection (h). This proposed subsection generally spells out and consolidates the current requirements regarding motions for a stay or emergency relief. Several comments are in order.

1. Subparagraph (1)(A) requires counsel to notify the Court whether a stay has first been sought from the district court, as is required by Rule 8(a), Fed. R. App. P. It may be useful for the Court to include a reference to that rule, perhaps by adding at the end of the first sentence in the subparagraph "as required by Rule 8(a), Fed. R. App. P."

2. Subparagraph (1)(B) requires that motions for a stay or emergency relief be served by hand or, in the case of out-of-town counsel, "by other form of expedited service." This is a new requirement, and we are concerned that the quoted phrase does not state with enough precision how expedited is "expedited." Particularly in an emergency situation, out-of-town counsel should receive any moving papers no later than the day after they are filed, although the rule should be flexible enough to permit service on the date of filing if there is a feasible way of doing so (e.g., by telecopier). We would suggest that the quoted language be amended as follows, with the new text underlined:

> "by a form of expedited service which is reasonably calculated to be delivered to opposing counsel no later than the next day."

The same proposal would apply to similar language in proposed Rule 7(k)(2).

3. Subsection (h)(2) would merge into one provision General Rule 6(i), which concerns requests for expeditious consideration, and General Rule 6(j), which concerns requests for emergency relief made on the ground that the moving party will suffer irreparable harm if required to wait the normal time for the Court to receive and consider a response. The proposed rule would

apply the irreparable harm standard to any request for expeditious consideration or relief. While we understand the Court's desire to maintain that standard for emergency situations, we are unable to understand why the irreparable harm must be alleged in making all motions for expeditious consideration. Counsel are generally unaware of how long it will take the Court to rule on a motion, and there may be situations in which a prompt ruling is needed as soon as possible after an opposition has been filed. For example, a lengthy trial may be about to start in district court in a case where one party is asking the court of appeals for relief on some element of that case, and expedition would be desirable in that situation. We urge the Court to reconsider combining the two concepts in this manner.

Subsection (j). Subsection (j)(2) would codify procedures which we understand the Court presently uses in cases charging agencies with unreasonable delay in violation of the Administrative Procedure Act. We believe, however, that the precise requirements could be clarified further by having the rule read as follows:

> "A petition for a writ of mandamus based on a claim of unreasonable delay by an administrative agency shall be captioned in accordance with paragraph (1) of this subsection. In addition to the number of copies required to be filed under subsection (b) of this rule, counsel shall also file sufficient additional copies for the clerk to serve upon all respondents, and thereafter the case shall be treated as a petition for review."

Subsection (k). This subsection would apply to motions practice certain provisions of the sort now contained in General Rule 8 regarding motions for an extension of time or to exceed

page limitations in filing briefs. In particular, the proposed rule would impose certain deadlines for filing such motions, and it would require the moving party to contact opposing counsel, to state in the opening paragraph of the motion whether counsel will be filing an opposition, and to serve the motion in an expedited manner when an opposition is due to be filed.

Some elements of this proposal are already contained in the Court's rules regarding briefs, but we have reservations about the efficacy of transferring these rules to motions practice, particularly as they relate to the requirement that motions to exceed the page limits must be filed as much as ten days in advance. Our skepticism about a ten-day filing deadline for motions to exceed the page limits stems from the fact that the Court's August 1986 case management plan encourages the filing of dispositive motions early in the case. As noted previously, it may be difficult for a party to limit itself to the new page limitations in filing such motions, responses and replies. The tight time deadlines for filing such papers make it unduly burdensome for counsel to have to file a motion to exceed page limits substantially in advance of the deadlines, particularly if one is responding to a detailed summary affirmance motion or motion to dismiss for lack of standing.

In addition, the proposed rule says that motions for an extension or for extra pages "must" be filed a certain number of days in advance, thus appearing to foreclose the possibility that a party may have good cause for not filing a motion until that deadline has elapsed. Counsel seeking enlargements of time or

leave to file oversized briefs now have the opportunity to seek leave to file such motions out of time "for good cause shown." See Fed. R. App. P. 26(b). A similar "good cause" provision should be adopted here also by amending proposed subsection 7(k)(2) to read:

> "A party who, for good cause, is unable to meet these deadlines shall file a motion for leave to file the motion in question, specifying the good cause for failure to comply."

Otherwise, counsel who, for example, become seriously ill or suffer a death in the family between the deadline for filing a motion for enlargement of time and the deadline for the motion could not, under the literal language of the proposed rule, obtain the extension.

For these reasons, we urge the Court to reconsider this approach or at least to be flexible in passing on motions for more time or extra pages when they are filed in connection with potentially dispositive motions.

Finally, we do support the inclusion of proposed subsection (k)(4), which states that if motions are timely filed but which are not acted upon until after the original filing deadline has passed, the deadline is automatically extended until the Court acts, as well as the automatic extension which is granted in the event the motion is denied.

## RULE 10

Time periods formerly in the Federal Rules of Appellate and Civil Procedure are now set forth here regarding the transmission of the record in criminal and immigration case (40 days after

filing of notice of appeal or petition), and of a certified list of the contents of the record in other agency cases within 40 days. Civil case records are to be transmitted prior to oral argument at the direction of the clerk. Court reporters are directed to expedite preparation of criminal transcripts. Exactly how these periods of time relate to the Court's Case Management Plan should be clarified.

RULE 11

The proposed rule would make a number of changes in the requirements for filing briefs in this Court, several of which merit special comment.

Subsection (a).

1. Subsection (a)(1) would revise General Rule 8(c) and make litigants file a "Certificate as to Parties, Rulings, and Related Cases." Under the current rules, the last two categories of information must be set forth in the body of the brief, and we agree with the proposal to incorporate them into a preliminary statement instead.

2. This subsection would also require that briefs contain several categories of information not required by Rule 28, Fed. R. App. P., but apart from the Certificate requirements contained in proposed Rule 11(a)(1), the subsection does not specify exactly where these other requirements are to be included in the brief. We believe that the proposed rule should be clarified in order to avoid confusion on this point.

In addition, there is one item which could be profitably

moved from the body of the brief to the proposed Rule 11(a)(1) certificate. Specifically, proposed Rule 11(a)(3) continues the current requirement that parties include the pertinent statutes and regulations either in the body of the brief or in a separate addendum. The text of the proposed rule should be amended for clarity (with the new text underlined) to state that such statutes and regulations "shall be set forth either in the body of the brief <u>following the statement of the issues presented for review</u> or in an addendum . . .."

Additionally, proposed Rule 11(a)(4) would impose a new requirement, namely, that parties set forth in the text of the brief a statement of the basis for subject matter jurisdiction with statutory citations or, if necessary, relevant case citations. In addition, on direct appeals, the basis for jurisdiction in the trial court must be specified as well.

The proposed rule does not specify exactly where that statement of jurisdiction should appear in the brief. Since it deals with a threshold matter, we believe that the statement should most properly be included in the preliminary statement required under proposed Rule 11(a)(1), which we suggest be retitled "Certificate as to Parties, Rulings, Jurisdiction and Related Cases." If the Court prefers that the statement of jurisdiction appear in the text of the brief, proposed Rule 11(a)(4) should be amended to specify the precise location, presumably after the text of any statutes and regulations and before the summary of argument.

3. Prior to issuance of the August 1986 general description

of the Court's new Case Management Plan, the summary of argument did not count in determining whether a brief complied with applicable page limitations, although the procedures adopted at that time reduced the maximum number of pages in a brief and counted the summary of argument in computing compliance with those limits. The proposed rules are ambiguous on this point, but we strongly believe that the summary of argument should not count as part of the total number of pages allocated to a party. It is in complex cases, where counsel need all the pages that the rules allow, that a summary of argument is going to be most useful to the Court. The incentives for preparing a helpful summary are diminished if counsel knows that the space devoted to a summary reduces the space that can be devoted to developing the argument. We recommend that proposed Rule 11(d) be amended accordingly. If the Court may be concerned about unduly lengthy "summaries" of an argument, the rule could be amended to suggest that summaries of argument should generally not exceed five typewritten pages.

Subsection (b). This provision would make some changes from the requirements for citations of cases that now appear in General Rule 8(f). Of note is the proposal that in citing decisions of this Court, counsel will no longer have to include in the table of authorities citations to both the reports of this Court and the Federal Reporter and that either one will suffice in both the table of authorities, as well as in the text. While the change would be an improvement over current practice, we suggest two alternatives with respect to citing opinions of this Court:

(1) require citations only to the Federal Reporter, or (2) require parties who cite only the official reporter in the text of their brief to include the Federal Reporter citation in their table of authorities. While the former is preferable, the latter is suggested inasmuch as the official reporter of this Court's decisions may not be readily available, particularly for non-local counsel. Regardless of which approach is ultimately adopted, however, we believe it would be useful to spell it out more clearly in the proposed rule.

Subsection (c). This proposal carries forward the requirement that this Court's unpublished orders and judgments, including explanatory memoranda, are not to be cited as precedents unless they have a binding or preclusive effect on the particular appeal. There is one new element of this rule which merits comment, and that is the second sentence, which states: "The same rule applies to unpublished dispositions of other courts, unless the court involved accords precedential weight to such dispositions." While this concept may be simple in theory, it can be more complicated in practice. It is true that federal appeals courts tend to have rules on publication and non-publication of decisions, and thus even if an "unpublished" opinion should appear in a specialized reporter, counsel may be able to determine whether it has or has not been officially "published."

The situation is more complex in dealing with decisions by federal district courts and state courts. These courts may have no rules regarding official publication of decisions. And even when they do have publication rules, it may be difficult for

counsel to ascertain whether opinions that are published in legal periodicals or unofficial reporters may be cited as precedent or not. For example, we understand that California court rules provide not only for publication or non-publication of state appellate court opinions, but also for "de-publication" of previously published opinions or portions of those opinions -- a potential trap for the unwary.

Thus we believe that the Court needs to be sensitive to the fact that there is not always a bright line between published and unpublished opinions. Accordingly, if the Court decides to adopt the concept contained in the second sentence of this subsection, we suggest that it should be rewritten as follows:

> "The same rule applies to unpublished dispositions of other courts, but only to the extent that other courts have adopted publication rules which specify the precedential value to be accorded to published and unpublished dispositions."

Subsection (e). Subsection (e)(5) would make some significant changes in the way that intervenors in agency cases and amici curiae in both agency cases and direct appeals file briefs in the Court, principally a new page limit of 35 pages, a requirement that all intervenors and amici on the same side join in a single brief to the extent practicable, and a requirement that any separate brief filed by an intervenor or amicus shall contain a certificate stating why a separate brief is necessary.

We support these changes, although we ask the Court to recognize that in some cases, it may simply not be possible for all parties supporting affirmance or reversal to reach agreement on the reasons for a particular outcome. Indeed, different

parties may have entirely different reasons for urging the same result, and it may not possible for those differences to be reconciled in a single brief.

There is one technical point that needs to be resolved regarding the schedule for filing amicus briefs. Under the Court's current scheduling practices, which the proposed rules would continue, intervenors' briefs are due 15 days after service of the brief of the party the intervenor is supporting. As a practical matter, it is easy for the Court to stagger the filing of intervenor briefs when it sets the briefing schedule, inasmuch as Rule 15, Fed. R. App. P., requires that intervention motions be filed within 30 days after a petition for review is filed.

The situation is different with amicus briefs, however. Under Rule 29, Fed. R. App. P., an amicus need not seek leave to participate until the date that the party it wishes to support files its own principal brief, which is when the amicus brief is due as well. Under proposed Rule 11(e)(4), an amicus would not have to seek leave to file until five days after filing of the principal brief the amicus wishes to support, with its own brief due 10 days later.

The proposed rules do not appear to address the practical question of how the briefing schedule would have to be altered if an amicus seeks leave to participate at this point, a situation that may arise in all direct appeals and in those agency cases where there is not an intervenor already filing a brief on the same side. Under current practice, the briefing schedule is set several months in advance, with the reply brief scheduled for

filing shortly before oral argument. If that schedule must be modified to permit the filing of an amicus brief 15 days after service of the brief the amicus is supporting, then the schedule for filing other briefs will have to be pushed back as well.

Such an approach can cause problems for the Court and counsel if the original schedule set oral argument for shortly after the filing of the reply brief. We do not believe that the Court should impose a filing requirement on amici similar to that which Rule 15, Fed. R. App. Pro., imposes on intervenors in agency cases, who were generally parties in underlying agency proceedings and are often aware of when a petition for review is filed. There may be many instances when a non-party first learns of a case several months after an appeal or petition has been filed, yet is still able to file a motion to appear and an amicus brief within the time limitations of Rule 29, Fed. R. App. P., and amici should continue to have that flexibility.

We believe that the solution to any scheduling problem lies not in requiring potential amici to register an expression of interest early on in a case, but rather to build a little more slippage into the briefing schedule, for example, by making the reply brief due four or six weeks before the date of oral argument, rather than two weeks. This approach, which is desirable in any event as a means of accommodating unexpected scheduling problems experienced by counsel, would satisfy the Court's goal of not letting cases go stale between the time of briefing and argument, while at the same time recognizing that other parties may seek to be heard after the initial briefing

schedule has been set.

Subsection (h). Although Rule 28(j), Fed. R. App. P., allows counsel to file a letter citing additional authorities once a case has been set for oral argument, existing General Rule 8(k) does not seem to give counsel that option, requiring instead the filing of a supplemental brief. We support the change in the rule making it explicit that either a supplemental brief or a Rule 28(j) letter may be filed when counsel wish to bring intervening authorities to the attention of the Court.

On a related point, Rule 28(j) also allows counsel to file a supplemental brief after a case has been decided, and there is often good reason for doing so, for example, if an intervening Supreme Court decision affects the issues in the pending case. The Court's rules do not spell out how counsel should proceed in this situation, and it would be helpful to the bar if the rules were more explicit on what a party should do if it wishes to file a supplemental brief.

## RULE 12

Subsection 12(a) alters the dichotomy which currently exists in General Rule 9 between appendices filed in private civil cases, which need only consist of certain "record excerpts," and appendices filed in all other cases, which must comply with Rule 30, Fed. R. App. P. In the future, counsel in all cases (except in forma pauperis cases) would comply with the requirements of Rule 30, Fed. R. App. P. We believe that this change is useful and will avoid confusion.

We note that in private civil cases, the Court presently allows each party to file separate record excerpts along with its brief, thus obviating the need for counsel either to agree upon the contents of an appendix before appellant's brief is filed or else to file a motion to defer the filing of a joint appendix. In a number of the cases where records excerpts are presently filed, it will be difficult for opposing counsel to reach agreement prior to the filing of the appellant's opening brief, and we think it would be useful for the Court to take steps to encourage the parties to file deferred appendices in those case.

Another option to consider is that set forth in the Tenth Circuit's Procedures for Simplifying Designation and Transmission of Records on Appeal. Designations of items in the record are filed by each party at the time it files its brief, and the briefs cite to the record by referring to the docket number of each item that was filed in district court, along with a page reference to that document or to any transcript. The clerk then transmit the designated portions of the district court record to the court of appeals, and the parties are not obliged to file an appendix unless ordered by the court.

On a different subject, we note that subsection (a)(2) would carry forward the proscriptions in General Rule 9(a)(3) against unnecessary record items being included in the appendix, along with a specific reference to the possibility of sanctions being imposed on counsel who have been unreasonable in including such material. To the extent that the Court intends to impose sanctions for violations of this rule, we believe that the reference

to sanctions in this rule in useful.

Finally, subsection (a)(4) would also continue in somewhat modified language General Rule 9(b), which contemplates that if an agency publishes an official reporter of its decisions, a party may include the text of that publication in the appendix rather than the typewritten decision or the decision as it appears in the Federal Register. Alternatively, the party may submit a "Supplemental Appendix" containing the text of that decision. While we have no objection to this rule, we believe that the language could be changed to make the concept clearer to the reader.

RULE 13

This rule concerns oral argument and is basically unchanged except for the movement of some provisions. We note that the rule does not seem to address adequately the allocation of argument time to a "true" intervenor in a case, i.e., a party who has a clearly defined position which is different from the positions advanced by the parties.

RULE 14

We have no specific comments on proposed Rule 14 (Opinions of the Court) other than to suggest that the Court maintain a separate chronological file of unpublished opinions for a period of several years (if it is not doing so already). This suggestion is made so that researchers may be able to analyze trends in this area and make studies or comments which may be useful to the

Court in the future.

RULE 15

Proposed Rule 15(a)(2) would reduce the number of typewritten pages that can be filed on a petition for rehearing en banc from 15 to 14. The current limitation is derived from Rule 40, Fed. R. App. P., and we see nothing to be gained by lowering the familiar maximum by one page.

RULE 16

The second sentence in subsection (a) of this proposed rule on taxation of costs seems to have dropped a line from the text of this rule as it is currently embodied in General Rule 15(a). Under the latter rule, charges actually incurred for printing or reproducing textual and appendix material, indices, tabular matter and exhibits are to be itemized to show the cost per page, while only the charges for footnotes need to be itemized to show the cost per line. We believe that this is a sound approach and should be continued.

On a different subject, our Section last year prepared and submitted to the Court's Advisory Committee a proposed rule regarding resolution of attorneys' fees matters, both in direct appeals and agency cases. The Court declined to adopt the proposal at that time, and it has not addressed the issue of attorneys' fees litigation in these rules either. We would urge the Court to reconsider the issue, in light of the number of cases which involve the possibility of attorneys' fees for work

connected with an appeal. Agency cases generally require that any fees' motion be made in this Court. Further, we believe that even in certain direct appeals, particularly when a case is definitively resolved on appeal, the parties should be able to litigate the attorneys' fees question in the court of appeals. If, however, the Court prefers that all fee matters in direct appeals be litigated in the district court after the mandate has been returned, it would be useful to express that preference in its rules, as a means of providing guidance to the bar about which is the best way to proceed.

RULE 20

Proposed subsection (b) spells out the composition of persons to be invited to the Judicial Conference. While it makes provision for officials from federal agencies and specifies that at least one-fourth of the bar members shall be in the service of the United States government, it makes no explicit provision for inviting officials of the District of Columbia government, a frequent litigant before the Court. We recommend that the Conference membership list explicitly include the Corporation Counsel of the District of Columbia, as the chief legal officer of the District, and that participation by attorneys representing the District of Columbia government be mentioned as well.

RULE 22

The proposed Rule, which permits public comment on proposed changes in the Court's General Rules, is substantially similar to

the current version of this rule, although it expands the minimum period for commenting on proposed amendments from 30 to 45 days. In addition, the proposed rule provides that the minimum comment period shall run from the date of "publication" of the notice of the proposed amendment.

We applaud the proposed expansion of the minimum comment period. Like other institutional commentators, this Section must work through its committees (in our case, a standing Court Rules Committee and the Section's Steering Committee) in order to formulate and adopt comments on proposed rule changes. Even after the Section adopts a position, its comments must be submitted to the D.C. Bar's Board of Governors and other sections of the D.C. Bar under a mandatory "clearance" procedure. See D.C. Bar Section Guidelines, þþ 13-14. Among other things, the Bar's guidelines require circulation of comments to the Bar's Board of Governors and the chairperson of its sections at least seven days prior to the date on which those comments are to be submitted to a court or governmental body. In addition, proposed comments sometimes must be placed on the agenda of the Board of Governors. For all these reasons, it is generally difficult for the Section to submit its comments to the Court's Advisory Committee in fewer than 60 days. While we welcome expanding the comment period to 45 days, a 60 day comment period would be more helpful.

We note that proposed subsection 22(d) is somewhat unclear in stating that the comment period runs from the "date of its [the notice's] publication." This could interpreted to mean that

the period runs from the time that the notice is first made public by any of the means specified in proposed subsection 22(c). We suggest that the rule be clarified to state specifically that the comment period begins running from the date of the notice's publication in the Daily Washington Law Reporter. This clarification would ensure that the period runs from receipt of actual notice by most interested bar members. Therefore, we propose that the first sentence of proposed Rule 22(d) be amended to read as follows, with additional language underlined:

> "The notice will specify a period of not less than sixty days from the date of its publication in the Daily Washington Law Reporter within which any person may submit written comments on the proposed change to the Advisory Committee on Procedures."

RULE 23

Proposed Rule 23 provides for sanctions against a party or an attorney bringing a frivolous appeal or one for purposes of delay. Such a provision has not previously appeared in the General Rules of this Court. However, the Court has made clear in its published opinions that it has the right to issue such sanctions and that it will do so in an appropriate case. See, e.g., Reliance Ins. Co. v. Sweeney Corp., 792 F.2d 1137 (D.C. Cir. 1986); Mathes v. Commissioner of Internal Revenue, 788 F.2d 33 (D.C. Cir. 1986). We believe that including a provision for such sanctions in the rules will have the salutary effect of providing better notice to counsel and parties of their liability for such sanctions upon abuse of the appellate process.