FRAP, Rule 15: Review or Enforcement of an Agency Order

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition—using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention. Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) Payment of Fees. When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

Notes

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

Notes of Advisory Committee on Rules—1967

General Note. The power of the Supreme Court to prescribe rules of practice and procedure for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers is conferred by 28 U.S.C. §2072, as amended by the Act of November 6, 1966, §1, 80 Stat. 1323 (1 U.S. Code Cong. & Ad. News, p. 1546 (1966)). Section 11 of the Hobbs Administrative Orders Review Act of 1950, 64 Stat. 1132, reenacted as 28 U.S.C. §2352 (28 U.S.C.A. §2352 (Suppl. 1966)), repealed by the Act of November 6, 1966, §4, supra, directed the courts of appeals to adopt and promulgate, subject to approval by the Judicial Conference rules governing practice and procedure in proceedings to review the orders of boards, commissions and officers whose orders were made reviewable in the courts of appeals by the Act. Thereafter, the Judicial Conference approved a uniform rule, and that rule, with minor variations, is now in effect in all circuits. Third Circuit Rule 18 is a typical circuit rule, and for convenience it is referred to as the uniform rule in the notes which accompany rules under this Title.

Subdivision (a). The uniform rule (see General Note above) requires that the petition for review contain "a concise statement, in barest outline, of the nature of the proceedings as to which relief is sought, the facts upon which venue is based, the grounds upon which relief is sought, and the relief prayed." That language is derived from Section 4 of the Hobbs Administrative Orders Review Act of 1950, 64 Stat. 1130, reenacted as 28 U.S.C. §2344 (28 U.S.C.A. §2344 (Suppl. 1966)). A few other statutes also prescribe the content of the petition, but the great majority are silent on the point. The proposed rule supersedes 28 U.S.C. §2344 and other statutory provisions prescribing the form of the petition for review and permits review to be initiated by the filing of a simple petition similar in form to the notice of appeal used in appeals from judgments of district courts. The more elaborate form of petition for review now required is rarely useful either to the litigants or to the courts. There is no effective, reasonable way of obliging petitioners to come to the real issues before those issues are formulated in the briefs. Other provisions of this subdivision are derived from sections 1 and 2 of the uniform rule.

Subdivision (b). This subdivision is derived from sections 3, 4 and 5 of the uniform rule.

Subdivision (c). This subdivision is derived from section 1 of the uniform rule.

Subdivision (d). This subdivision is based upon section 6 of the uniform rule. Statutes occasionally permit intervention by the filing of a notice of intention to intervene. The uniform rule does not fix a time limit for intervention, and the only time limits fixed by statute are the 30–day periods found in the Communications Act Amendments, 1952, §402(e), 66 Stat. 719, 47 U.S.C. §402(e), and the Sugar Act of 1948, §205(d), 61 Stat. 927, 7 U.S.C. §1115(d).

Notes of Advisory Committee on Rules—1993 Amendment

Subdivision (a). The amendment is a companion to the amendment of Rule 3(c). Both Rule 3(c) and Rule 15(a) state that a notice of appeal or petition for review must name the parties seeking appellate review. Rule 3(c), however, provides an attorney who represents more than one party on appeal the flexibility to describe the parties in general terms rather than naming them individually. Rule 15(a) does not allow that flexibility; each petitioner must be

named. A petition for review of an agency decision is the first filing in any court and, therefore, is analogous to a complaint in which all parties must be named.

Subdivision (e). The amendment adds subdivision (e). Subdivision (e) parallels Rule 3(e) that requires the payment of fees when filing a notice of appeal. The omission of such a requirement from Rule 15 is an apparent oversight. Five circuits have local rules requiring the payment of such fees, see, e.g., Fifth Cir. Loc. R. 15.1, and Fed. Cir. Loc. R. 15(a)(2).

Committee Notes on Rules—1998 Amendment

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Committee Notes on Rules—2009 Amendment

Subdivision (b)(2). The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 26.