



decision should each be briefly summarized. The summaries should include record citations and a discussion of evidence supporting the court's findings, particularly on issues subject to "clearly erroneous" review.

d. Analysis

The recommendation should give the legal, factual, and policy considerations militating for and against appeal. Relevant legal authorities must be cited.

5. Transmission of the Record

a. Unless otherwise instructed by Appellate Services, the Regional Attorney is responsible for ensuring that the record is promptly forwarded to Appellate Services once Appellate Services commences processing a case. In situations where the trial court ruled against the Commission in some or all respects, the legal unit should forward the record to Appellate Services no later than 20 days after final judgment or other appealable order is entered. Where the Commission prevailed in the trial court, the record shall be sent to Appellate Services within 20 days of receipt in the legal unit of a Notice of Appeal by another party.

b. For purposes of these procedures, the term "record" means the "record on Appeal" as defined in Rule 10 of the [Federal Rules of Appellate Procedures](#). This consists of: (1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the clerk of the district court. The "docket entries" referred to in (3) above is an official court document maintained in the district court's clerk's office, commonly known as the "docket sheet." It must be distinguished from a purely internal legal unit document, often referred to by that name, that lists all documents associated with a given trial court matter. It is the court's official listing of the "docket entries" or the docket sheet that Appellate Services requires. The "original papers and exhibits," referred to in (1) above, are easily identifiable through reference to the "docket entries."

c. In cases that were electronically filed in the district court, and where the record documents are available on PACER, the legal unit shall so notify Appellate Services no later than 20 days after final judgment or other appealable order is entered. The legal unit is responsible for verifying whether the entire record is available via PACER or whether certain documents (such as hearing transcripts, documents filed under seal, documents filed only as hard copies, or items in audio or video format) are not available online. In such cases, the legal unit shall transmit only those record



documents that are not available via PACER to Appellate Services. The legal unit may send to Appellate Services either the originals or legible copies of all documents transmitted. The legal unit shall ensure that the exhibits in the record are legible, clearly labeled, and attached to the proper pleading or motion.

d. If there was an evidentiary hearing, the legal unit should order a transcript in every case in which the legal unit recommends in favor of appeal. Appellate Services may request that the legal unit order a transcript in other situations. The Regional Attorney is responsible for arranging payment for transcripts of district court proceedings. Delays in ordering transcripts or in their preparation should not delay the transmission of other parts of the record. Specifically, all court papers and other submissions, referenced in the "docket entries," must be sent in their entirety to Appellate Services within the timeframes specified above. Exceptions may be made only with the agreement of the appellate attorney assigned to the matter.

6. Appellate Services' Appeal Recommendations

Upon receipt of the Regional Attorney's appeal recommendation, Appellate Services shall prepare an appeal recommendation and forward both it and the Regional Attorney's recommendation to the General Counsel and the Associate General Counsel, LMS. A copy of the Appellate Services recommendation shall also be sent to the Regional Attorney.

7. Decision Whether to Appeal

The General Counsel shall decide whether an appeal should be pursued. The Associate General Counsel, LMS, or the Regional Attorney may raise with the General Counsel any objection to the Appellate Services recommendation.

8. Responsibilities of the Regional Attorney

a. File the Notice of Appeal

(1) The Regional Attorney is responsible for ensuring that the notice of appeal is timely filed. Upon notification from and as directed by Appellate Services, trial counsel shall file the notice of appeal in the form prescribed by the Federal Rules of Appellate Procedure (Appendix to Forms, form 1) and shall specify therein the name



and address of the Appellate Services attorney responsible for the case. The notice shall be accompanied by a certificate of service upon opposing counsel.

(2) The Regional Attorney is responsible for contacting the district court to confirm receipt and filing of the notice of appeal at least one day prior to the filing due date. If the district court has not received the notice, trial counsel shall immediately forward the notice of appeal by express mail. If the notice of appeal is filed late, trial counsel shall confer with the Appellate Services attorney regarding preparation of a motion to extend the time for filing (see Rule 4(a)(5), Fed. R. App. P.).

b. File Record Designations, Docketing Statements, and Statement of Issues

In consultation with Appellate Services and in accordance with Rule 10, Fed. R. App. P. and local appellate court rules, trial counsel shall prepare and file any designation of record, transcript order form, docketing statement, or statement of issues required to be filed in the district court.

c. Consult with Appellate Services

Legal unit staff should be available to work closely with Appellate Services staff during the appeal process. Legal unit trial counsel should provide whatever assistance the Appellate Services attorney requires during the pendency of the appeal.

9. Procedures for Appeals by Defendants

When a defendant files a notice of appeal, the Regional Attorney shall immediately notify the Associate General Counsel, Appellate Services, and the Associate General Counsel, LMS. Thereafter, the procedures outlined above shall be followed.

10. Writs

Requests to petition for a writ of mandamus or prohibition shall be made orally to the Associate General Counsel for Appellate Services and followed up with a written recommendation pursuant to OGC appeal procedures. Where the Commission is respondent in any such petition, the Regional Attorney shall **immediately** transmit the petition and complete record to the Associate General Counsel for Appellate Services.



11. Legal Unit Appellate Program

a. Designation of legal unit to Represent the Commission.

(1) A Regional Attorney can recommend to either the Associate General Counsel for LMS or the Associate General Counsel for Appellate Services that a legal unit represent the Commission in a case on appeal.

(2) The Associate General Counsel, Appellate Services, has primary responsibility for determining whether appellate cases are appropriate for legal unit representation. Appellate cases most suitable for legal unit representation include cases involving primarily factual issues where the Commission is appellee, subpoena appeals which do not raise novel issues of law, and cases that do not involve complex legal issues and where the legal issues raised have recently been briefed by Appellate Services. Appellate cases least suitable for legal unit representation include cases where the Commission is appellant and cases involving novel or difficult legal issues.

(3) The Associate General Counsel, LMS, has primary responsibility for determining whether a legal unit should undertake a particular appeal. This determination will be based on an assessment of the quality of the office's legal work and, in consultation with the Regional Attorney, an assessment of the workload of the office and the availability of a qualified attorney.

(4) Disagreements between the Associate General Counsel, LMS, and the Associate General Counsel, Appellate Services, shall be resolved by the General Counsel.

b. Procedure for Legal Unit Appeals

(1) The Associate General Counsel, Appellate Services, has supervisory responsibility for all appeals.

(2) All appellate briefs shall be reviewed and approved by Appellate Services before being filed. Legal units will adhere strictly to deadlines imposed by Appellate Services.

(3) The responsible legal unit attorney will participate in a moot court in Appellate Services.



(4) A copy of the appellate record will be sent to Appellate Services within 20 days of entry of judgment or 20 days after appellee files its Notice of Appeal. Where the Commission is appellee, the Regional Attorney will promptly send Appellate Services a copy of appellant's brief.

12. Settlement and Mediation Activities at the Appellate Level

At the appellate court level, the Appellate Services attorney assigned to the matter will conduct settlement negotiations designed to resolve the case, whether at the initiative of any party or the court. The appellate attorney will represent OGC in any court-sponsored mediation effort or settlement conference. Legal unit trial counsel will be consulted prior to the beginning of negotiations, and as part of his or her discussions with the appellate attorney should inform the latter of prior settlement positions taken by the legal unit in the case (recognizing that the bargaining strengths of the parties will have changed due to the result in the district court). Appellate Services and the legal unit will attempt to agree on the approach the agency will take in settlement negotiations. Appellate counsel will keep trial counsel apprised of the progress of negotiations and of any changes in Appellate Services' approach to settlement. Trial counsel will be consulted before Appellate Services agrees to submit a tentative settlement to the General Counsel. All settlements at the appellate level must be approved by the General Counsel.