filed subsequent to the date of its enactment. The second clause continues in effect, for these and all other cases in which the United States enjoys immunity from costs, the presently prevailing rule that the United States may recover costs as the prevailing party only if it would have suffered them as the losing party.

Subdivision (c). While only five circuits (D.C. Cir. Rule 20(d); 1st Cir. Rule 31(4); 3d Cir. Rule 35(4); 4th Cir. Rule 21(4); 9th Cir. Rule 25, as amended June 2, 1967) presently tax the cost of printing briefs, the proposed rule makes the cost taxable in keeping with the principle of this rule that all cost items expended in the prosecution of a proceeding should be borne by the unsuccessful party.

Subdivision (e). The costs described in this subdivision are costs of the appeal and, as such, are within the undertaking of the appeal bond. They are made taxable in the district court for general convenience. Taxation of the cost of the reporter's transcript is specifically authorized by 28 U.S.C. §1920, but in the absence of a rule some district courts have held themselves without authority to tax the cost (*Perlman v. Feldmann*, 116 F.Supp. 102 (D.Conn., 1953); *Firtag v. Gendleman*, 152 F.Supp. 226 (D.D.C., 1957); *Todd Atlantic Shipyards Corps. v. The Southport*, 100 F.Supp. 763 (E.D.S.C., 1951). Provision for taxation of the cost of premiums paid for supersedeas bonds is common in the local rules of district courts and the practice is established in the Second, Seventh, and Ninth Circuits. *Berner v. British Commonwealth Pacific Air Lines, Ltd.*, 362 F.2d 799 (2d Cir. 1966); *Land Oberoesterreich v. Gude*, 93 F.2d 292 (2d Cir., 1937); *In re Northern Ind. Oil Co.*, 192 F.2d 139 (7th Cir., 1951); *Lunn v. F. W. Woolworth*, 210 F.2d 159 (9th Cir., 1954).

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Subdivision (c). The proposed amendment would permit variations among the circuits in regulating the maximum rates taxable as costs for printing or otherwise reproducing briefs, appendices, and copies of records authorized by Rule 30(f). The present rule has had a different effect in different circuits depending upon the size of the circuit, the location of the clerk's office, and the location of other cities. As a consequence there was a growing sense that strict adherence to the rule produces some unfairness in some of the circuits and the matter should be made subject to local rule.

Subdivision (d). The present rule makes no provision for objections to a bill of costs. The proposed amendment would allow 10 days for such objections. Cf. Rule 54(d) of the F.R.C.P. It provides further that the mandate shall not be delayed for taxation of costs.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to subdivision (c) is intended to increase the degree of control exercised by the courts of appeals over rates for printing and copying recoverable as costs. It further requires the courts of appeals to encourage cost-consciousness by requiring that, in fixing the rate, the court consider the most economical methods of printing and copying.

The amendment to subdivision (d) is technical. No substantive change is intended.

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. All references to the cost of ''printing'' have been deleted from subdivision (c) because commercial printing is so rarely used for preparation of documents filed with a court of appeals.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (d)(2). The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

Rule 40. Petition for Panel Rehearing

(a) TIME TO FILE; CONTENTS; ANSWER; ACTION BY THE COURT IF GRANTED.

(1) *Time*. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

(2) *Contents*. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer*. Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) *Action by the Court*. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) FORM OF PETITION; LENGTH. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

This is the usual rule among the circuits, except that the express prohibition against filing a reply to the petition is found only in the rules of the Fourth, Sixth and Eighth Circuits (it is also contained in Supreme Court Rule 58(3)). It is included to save time and expense to the party victorious on appeal. In the very rare instances in which a reply is useful, the court will ask for it.

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Subdivision (a). The Standing Committee added to the first sentence of Rule 40(a) the words ''or by local rule,'' to conform to current practice in the circuits. The Standing Committee believes the change noncontroversial.

Subdivision (b). The proposed amendment would eliminate the distinction drawn in the present rule between printed briefs and those duplicated from typewritten pages in fixing their maximum length. See Note to Rule 28. Since petitions for rehearing must be prepared in a short time, making typographic printing less likely, the maximum number of pages is fixed at 15, the figure used in the present rule for petitions duplicated by means other than typographic printing.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). The amendment lengthens the time for filing a petition for rehearing from 14 to 45 days in civil cases involving the United States or its agencies or officers. It has no effect upon the time for filing in criminal cases. The amendment makes nation-wide the

current practice in the District of Columbia and the Tenth Circuits, *see* D.C. Cir. R. 15(a), 10th Cir. R. 40.3. This amendment, analogous to the provision in Rule 4(a) extending the time for filing a notice of appeal in cases involving the United States, recognizes that the Solicitor General needs time to conduct a thorough review of the merits of a case before requesting a rehearing. In a case in which a court of appeals believes it necessary to restrict the time for filing a rehearing petition, the amendment provides that the court may do so by order. Although the first sentence of Rule 40 permits a court of appeals to shorten or lengthen the usual 14 day filing period by order or by local rule, the sentence governing appeals in civil cases involving the United States purposely limits a court's power to alter the 45 day period to orders in specific cases. If a court of appeals could adopt a local rule shortening the time for filing a petition for rehearing in all cases involving the United States, the purpose of the amendment would be defeated.

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.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) CONTENTS. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) WHEN ISSUED. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) EFFECTIVE DATE. The mandate is effective when issued.

(d) STAYING THE MANDATE.

(1) *On Petition for Rehearing or Motion.* The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending Petition for Certiorari.*

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

The proposed rule follows the rule or practice in a majority of circuits by which copies of the opinion and the judgment serve in lieu of a formal mandate in the ordinary case. Compare Supreme Court Rule 59. Although 28 U.S.C. §2101(c) permits a writ of certiorari to be filed within 90 days after entry of judgment, seven of the eight circuits which now regulate the matter of stays pending application for certiorari limit the initial stay of the mandate to the 30-day period provided in the proposed rule. Compare D.C. Cir. Rule 27(e).

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). The amendment conforms Rule 41(a) to the amendment made to Rule 40(a). The amendment keys the time for issuance of the mandate to the expiration of the time for filing a petition for rehearing, unless such a petition is filed in which case the mandate issues 7 days after the entry of the order denying the petition. Because the amendment to Rule 40(a) lengthens the time for filing a petition for rehearing in civil cases involving the United States from 14 to 45 days, the rule requiring the mandate to issue 21 days after the entry of judgment would cause the mandate to issue while the government is still considering requesting a rehearing. Therefore, the amendment generally requires the mandate to issue 7 days after the expiration of the time for filing a petition for rehearing.

Subdivision (b). The amendment requires a party who files a motion requesting a stay of mandate to file, at the same time, proof of service on all other parties. The old rule required the party to give notice to the other parties; the amendment merely requires the party to provide the court with evidence of having done so.

The amendment also states that the motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The amendment is intended to alert the parties to the fact that a stay of mandate is not granted automatically and to the type of showing that needs to be made. The Supreme Court has established conditions that must be met before it will stay a mandate. *See* Robert L. Stern et al., *Supreme Court Practice* §17.19 (6th ed. 1986).

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.

Several substantive changes are made in this rule, however.

Subdivision (b). The existing rule provides that the mandate issues 7 days after the time to file a petition for panel rehearing expires unless such a petition is timely filed. If the petition is denied, the mandate issues 7 days after entry of the order denying the petition. Those provisions are retained but the amendments further provide that if a timely petition for rehearing en banc or motion for stay of mandate is filed, the mandate does not issue until 7 days after entry of an order denying the last of all such requests. If a petition for rehearing or a petition for rehearing en banc is granted, the court enters a new judgment after the rehearing and the mandate issues within the normal time after entry of that judgment.

Subdivision (c). Subdivision (c) is new. It provides that the mandate is effective when the court issues it. A court of appeals' judgment or order is not final until issuance of the mandate; at that time the parties' obligations become fixed. This amendment is intended to make it clear that the mandate is effective upon issu-