(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) RELEASE PENDING REVIEW OF DECISION ORDERING RELEASE. While a decision ordering the release of a prisoner is under review, the prisoner must—unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety.

(d) MODIFICATION OF THE INITIAL ORDER ON CUSTODY. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

The rule is the same as Supreme Court Rule 49, as amended on June 12, 1967, effective October 2, 1967.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rules 23(b) and (c) are 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.

Subdivison (d). The current rule states that the initial order governing custody or release ''shall govern review'' in the court of appeals. The amended language says that the initial order generally ''continues in effect'' pending review.

When Rule 23 was adopted it used the same language as Supreme Court Rule 49, which then governed custody of prisoners in habeas corpus proceedings. The ''shall govern review'' language was drawn from the Supreme Court Rule. The Supreme Court has since amended its rule, now Rule 36, to say that the initial order ''shall continue in effect'' unless for reasons shown it is modified or a new order is entered. Rule 23 is amended to similarly state that the initial order ''continues in effect.'' The new language is clearer. It removes the possible implication that the initial order created law of the case, a strange notion to attach to an order regarding custody or release.

Rule 24. Proceeding in Forma Pauperis

(a) LEAVE TO PROCEED IN FORMA PAUPERIS.

(1) *Motion in the District Court*. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the Motion*. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior Approval*. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) *Notice of District Court's Denial*. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the Court of Appeals*. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL OR REVIEW OF AN ADMINISTRATIVE-AGENCY PROCEEDING. When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(c) LEAVE TO USE ORIGINAL RECORD. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

Subdivision (a). Authority to allow prosecution of an appeal in forma pauperis is vested in ''[a]ny court of the United States'' by 28 U.S.C. §1915(a). The second paragraph of section 1915(a) seems to contemplate initial application to the district court for permission to proceed in forma pauperis, and although the circuit rules are generally silent on the question, the case law requires initial application to the district court. *Hayes v. United States*, 258 F.2d 400 (5th Cir., 1958), *cert. den.* 358 U.S. 856, 79 S.Ct. 87, 3 L.Ed.2d 89 (1958); *Elkins v. United*

States, 250 F.2d 145 (9th Cir., 1957) see 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960); *United States v. Farley*, 238 F.2d 575 (2d Cir., 1956) see 354 U.S. 521, 77 S.Ct. 1371, 1 L.Ed.2d 1529 (1957). D.C. Cir. Rule 41(a) requires initial application to the district court. The content of the affidavit follows the language of the statute; the requirement of a statement of the issues comprehends the statutory requirement of a statement of ''the nature of the . . . appeal. . . .'' The second sentence is in accord with the decision in *McGann v. United States*, 362 U.S. 309, 80 S.Ct. 725, 4 L.Ed.2d 734 (1960). The requirement contained in the third sentence has no counterpart in present circuit rules, but it has been imposed by decision in at least two circuits. *Ragan v. Cox*, 305 F.2d 58 (10th Cir., 1962); *United States ex rel. Breedlove v. Dowd*, 269 F.2d 693 (7th Cir., 1959).

The second paragraph permits one whose indigency has been previously determined by the district court to proceed on appeal in forma pauperis without the necessity of a redetermination of indigency, while reserving to the district court its statutory authority to certify that the appeal is not taken in good faith, 28 U.S.C. §1915(a), and permitting an inquiry into whether the circumstances of the party who was originally entitled to proceed in forma pauperis have changed during the course of the litigation. Cf. Sixth Circuit Rule 26.

The final paragraph establishes a subsequent motion in the court of appeals, rather than an appeal from the order of denial or from the certification of lack of good faith, as the proper procedure for calling in question the correctness of the action of the district court. The simple and expeditious motion procedure seems clearly preferable to an appeal. This paragraph applies only to applications for leave to appeal in forma pauperis. The order of a district court refusing leave to initiate an action in the district court in forma pauperis is reviewable on appeal. See *Roberts v. United States District Court*, 339 U.S. 844, 70 S.Ct. 954, 94 L.Ed. 1326 (1950).

Subdivision (b). Authority to allow prosecution in forma pauperis is vested only in a ''court of the United States'' (see Note to subdivision (a), above). Thus in proceedings brought directly in a court of appeals to review decisions of agencies or of the Tax Court, authority to proceed in forma pauperis should be sought in the court of appeals. If initial review of agency action is had in a district court, an application to appeal to a court of appeals in forma pauperis from the judgment of the district court is governed by the provisions of subdivision (a).

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

The proposed amendment reflects the change in the title of the Tax Court to ''United States Tax Court.'' See 26 U.S.C. §7441.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rule 24(a) are 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. The Advisory Committee deletes the language in subdivision (c) authorizing a party proceeding in forma pauperis to file papers in typewritten form because the authorization is unnecessary. The rules permit all parties to file typewritten documents.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (a)(2). Section 804 of the Prison Litigation Reform Act of 1995 (''PLRA'') amended 28 U.S.C. §1915 to require that prisoners who bring civil actions or appeals from civil actions must ''pay the full amount of a filing fee.'' 28 U.S.C. §1915(b)(1). Prisoners who are unable to pay the full amount of the filing fee at the time that their actions or appeals are filed are generally required to pay part of the fee and then to pay the remainder of the fee in installments. 28 U.S.C. §1915(b). By contrast, Rule 24(a)(2) has provided that, after the district court grants a litigant's motion to proceed on appeal in forma pauperis, the litigant may proceed ''without prepaying or giving security for fees and costs.'' Thus, the PLRA and Rule 24(a)(2) appear to be in conflict.

Rule 24(a)(2) has been amended to resolve this conflict. Recognizing that future legislation regarding prisoner litigation is likely, the Committee has not attempted to incorporate into Rule 24 all of the requirements of the current version of 28 U.S.C. §1915. Rather, the Committee has amended Rule 24(a)(2) to clarify that the rule is not meant to conflict with anything required by the PLRA or any other statute.

Subdivision (a)(3). Rule 24(a)(3) has also been amended to eliminate an apparent conflict with the PLRA. Rule 24(a)(3) has provided that a party who was permitted to proceed in forma pauperis in the district court may continue to proceed in forma pauperis in the court of appeals without further authorization, subject to certain conditions. The PLRA, by contrast, provides that a prisoner who was permitted to proceed in forma pauperis in the district court and who wishes to continue to proceed in forma pauperis on appeal may not do so ''automatically,'' but must seek permission. *See, e.g., Morgan v. Haro*, 112 F.3d 788, 789 (5th Cir. 1997) (''A prisoner who seeks to proceed IFP on appeal must obtain leave to so proceed despite proceeding IFP in the district court.'').

Rule 24(a)(3) has been amended to resolve this conflict. Again, recognizing that future legislation regarding prisoner litigation is likely, the Committee has not attempted to incorporate into Rule 24 all of the requirements of the current version of 28 U.S.C. §1915. Rather, the Committee has amended Rule 24(a)(3) to clarify that the rule is not meant to conflict with anything required by the PLRA or any other statute.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note, except that ''a statute provides otherwise'' was substituted in place of ''the law requires otherwise'' in the text of the rule and conforming changes (as well as a couple of minor stylistic changes) were made to the Committee Note.

TITLE VII. GENERAL PROVISIONS

Rule 25. Filing and Service

(a) FILING.

(1) *Filing with the Clerk.* A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: Method and Timeliness.*

(A) *In General.* Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A brief or appendix.* A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(C) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed