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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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**NOTICE OF PROPOSED AMENDMENTS TO LOCAL RULE 34.0
AND INTERNAL OPERATING PROCEDURE VIII**

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes to amend Local Rule 34.0(c)(2) (“Rebuttal”) to conform to current practice. The court also provides notice that it proposes to delete Internal Operating Procedure VIII.D. (“Rebuttal”) to eliminate any inconsistency and because it is unnecessary given the rule. The subsections of Internal Operating Procedure VIII will be renumbered accordingly.

A copy of the proposed amended local rule and the proposed amended internal operating procedure is attached. Deletions are indicated in ~~strike-out~~ print; additions are indicated in *italic* print, and omitted sections are indicated by “* * *”.

The Court of Appeals invites public comments on the proposed amendments. Comments should be submitted by December 17, 2009, and addressed to:

Office of the Clerk
U.S. Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210

November 17, 2009

Richard Cushing Donovan, Clerk

Local Rule 34.0. Oral Argument

* * *

(c) Argument.

* * *

- (2) **Rebuttal.** ~~Although Fed. R. App. P. 34(c) permits an appellant both to open and conclude the argument, the court holds the view that seldom is counsel well served by an advance reservation of time for rebuttal. Not only does such action reduce the limited time allotted but is likely merely to allow repetitious argument. Counsel are expected to cover all anticipated issues in their arguments in chief. Should unexpected matters arise, such as the need for factual correction, the court is prepared to give counsel who have not reserved time a brief additional period for real rebuttal.~~ *Allowance of time for rebuttal is within the discretion of the presiding judge, but often appellant will be allowed to reserve a few minutes on request made at the outset of opening argument. However, counsel is expected to cover all anticipated issues in opening argument. Reserved rebuttal time is for the purpose of answering contentions made in the other side's oral argument. Any time allowed to be reserved by the presiding judge will be deducted from that party's allotted time for opening argument.*

Internal Operating Procedure VIII. Oral Argument

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- ~~**D. Rebuttal.** Extended rebuttal is not encouraged, and the court normally expects rebuttal to be used only where an unexpected matter has been raised and then usually not more than a minute is allowed.~~

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