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RULES OF PRACTICE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THE APPELLATE EXPERTS®

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SECOND CIRCUIT APPELLATE RULES

Federal Rules of Appellate Procedure (As amended on December 1, 2020)
with Second Circuit Local Rules and Internal Operating Procedures
(As amended on December 13, 2021)

UPDATED JANUARY 2023

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LOCAL RULES AND INTERNAL OPERATING PROCEDURES OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT (Effective December 13, 2021)

LOCAL RULES

Local Rule 1.1 Scope and Organization

These local rules (LRs) and internal operating procedures (IOPs) are adopted in accordance with 28 U.S.C. § 2071 and Rule 47 of the Federal Rules of Appellate Procedure (FRAP). To the extent practical, LRs and IOPs are numbered and titled to correspond to FRAP. When there is no FRAP counterpart: (1) an LR is numbered to correspond to FRAP 47, and (2) an IOP is lettered A, B, C, etc., and is located at the end of the LRs. In addition, counsel and parties should consult the court's instructions and practice guidelines available from the clerk's office and on the court's website.

Local Rule 3.1 Electronic Service of the Notice of Appeal

If a party to a civil action in the district court files a notice of appeal electronically in accordance with the Federal Rules of Civil Procedure and the district court's local rules, the district clerk may satisfy the service requirements of FRAP 3(d) as to a counseled party to the appeal by effecting service electronically.

Local Rule 4.1 Continuation of Counsel in Criminal Appeals

(a) **Continuation of Counsel.** A criminal defendant's counsel, whether retained or appointed, is responsible for representing the defendant on appeal unless relieved by this court. This responsibility includes complying with FRAP and all LRS and IOPs.

(b) **Motion to Withdraw – Frivolousness of Appeal.** Counsel who seeks to withdraw from representing a defendant on appeal on the ground that the appeal presents no non-frivolous issues must file a motion and brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), subsequent case law, and this court's instructions.

(c) **Motion to Withdraw – Adverse Decision.** Within 14 days after a decision by this court that is adverse to the defendant, appointed counsel may file a motion in this court to be relieved of the obligation to file a petition for a writ of certiorari with the U.S. Supreme Court if counsel has reasonable grounds to believe that the petition would have no likelihood of success. The motion must be accompanied by proof of service on the

defendant and the government. The motion must also state that counsel has explained to the defendant how to file a timely petition for certiorari pro se.

(d) **Motion to Withdraw – Other Grounds.** Counsel who seeks to withdraw from representing a defendant on appeal on other grounds must proceed by motion as follows:

(1) **Advice to Defendant.** Before moving to withdraw as appellate counsel, counsel must advise the defendant that (A) the defendant must promptly obtain other counsel unless the defendant desires to appear pro se, and (B) if the defendant is financially unable to obtain counsel, this court may appoint counsel under the Criminal Justice Act, 18 U.S.C. 3006A (CJA). If the defendant desires to appear pro se, counsel must advise the defendant in writing of the deadlines for docketing the record and filing the brief. If the defendant is represented by retained counsel and seeks appointment of new counsel on appeal, retained counsel must ensure that the defendant receives and completes the appropriate application forms.

(2) **Content of Motion.** A motion to withdraw must state the reasons for such relief and must be accompanied by one of the following:

(A) a document or statement showing that new counsel has been retained or appointed to represent the defendant;

(B) the defendant's completed application for appointment of counsel under the CJA or a showing that the defendant has already filed that application with the court;

(C) if the defendant is currently represented by appointed counsel, a request that substitute counsel be appointed under the CJA;

(D) the defendant's signed statement that the defendant has been advised that the defendant may retain new counsel or apply for appointment of counsel, and that the defendant does not wish to be represented by counsel but wishes to appear pro se; or

(E) a document or statement showing that exceptional circumstances prevent counsel from meeting any of the requirements stated in (A) to (D) above.

(3) **Procedure.** A motion to withdraw (A) must be accompanied by proof of service on the defendant and the government, and (B) is determined in accordance with FRAP 27.

(4) **Counsel Not Admitted to This Court.** Counsel not admitted to this court who seeks to withdraw under (d) must contact the clerk's office before filing the motion.

Local Rule 4.2 Duties Regarding Trial Court Motions

A party who has filed a notice of appeal must promptly notify this Court when a motion referenced in FRAP 4(a)(4), 4(b)(3), or 6(b)(2) is filed, and must notify this court within 14 days after entry of the order disposing of the last such remaining motion.

Local Rule 4.3 Duty Regarding the 1980 Hague Convention on the Civil Aspects of International Child Abduction

When a party files a notice of appeal in a case that includes a claim under the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act, 22 U.S.C. § 9001 et seq., the party must immediately notify this court of such a claim by letter.

Local Rule 6.1 Rules Applicable in Bankruptcy Cases

Second Circuit LRs and IOPs applicable to civil appeals are applicable in bankruptcy cases.

Local Rule 11.1 Duties Regarding the Record

(a) **Record Retained by District Clerk.** In all counseled appeals other than those described in (b), the district clerk retains the record on appeal, subject to FRAP 11(e), and forwards to the circuit clerk, within 14 days after the filing of the notice of appeal, a certified copy of the index of docket entries instead of the entire record. The appellant must do whatever is necessary to enable the district clerk to comply with this rule.

(b) **Appeal on Original Record.** An appellant authorized to appeal on the original record without an appendix in accordance with LR 30.1(e) must do whatever is necessary to enable the district clerk to send to the circuit clerk all relevant parts of the record, including transcripts and, if any, the certified administrative record.

Local Rule 11.2 Exhibits Retained by the Parties

If a party has retained custody of an exhibit offered or admitted in the district court, but has not filed the exhibit in any format with the district clerk, that party must continue to retain custody of the exhibit until this court issues the mandate, and must make it available if requested by the court or a party.

Local Rule 11.3 Duty of Court Reporters

(a) **Transcript Order Acknowledgments.** Upon receipt of a transcript information form (Form B in criminal appeals, Form D in counseled civil appeals, and Form D-P in pro se civil appeals), the court reporter must promptly complete the acknowledgment section and send it to the circuit clerk. If an appellant has ordered a transcript, the reporter's acknowledgment must include an estimated completion date, which date must be no later than 30 days after receipt of the transcript order form.

(b) **Extension of Time.**

(1) **Court Reporter's Duty to Seek.** A court reporter seeking an extension of time for filing the transcript must file an extension request with the circuit clerk and must serve the request on all parties. The request must specify the date of receipt of the transcript order, the proposed completion date, the amount of work that remains to be performed, the reasons for the delay, whether the reporter has previously sought an extension of time, and whether any prior order stated that no further extension would be allowed.

(2) **Clerk's Duties.** The circuit clerk must send to the reporter and all parties a copy of the order deciding a request for an extension.

(c) **Reporter's Default.** If the reporter does not file the transcript within the 30-day period, or any extension of that period, the appellant must notify the circuit clerk in writing, and must update the circuit clerk in 14-day intervals until the transcript is filed. The circuit clerk must notify the district judge, and take appropriate measures to obtain the reporter's compliance.

(d) **Reduction of Fees.** In accordance with the U.S. Judicial Conference resolution that mandates penalties for late delivery of a transcript, the following fee reductions apply:

(1) for a transcript not delivered within 30 days after receipt of the order, the reporter may charge only 90 percent of the prescribed fee;

(2) for a transcript not delivered within 60 days after receipt of the order, the reporter may charge only 80 percent of the prescribed fee; and

(3) for a transcript delivered within the time permitted by an extension granted under (b), the fee reductions set forth in this paragraph apply unless the extension order states that good cause exists for the reporter's delay and waives the fee reduction.

Local Rule 12.1 Appeal Docketing Requirements in Civil and Agency Cases

(a) **Timing.** All actions required under this rule must be completed within 14 days after the filing of a notice of appeal or a petition or application under FRAP 15, or the entry of an order granting permission to appeal under FRAP 5.

(b) **Docketing Requirements.**

(1) **Counseled Civil Cases.** A counseled appellant in a civil case must file Form C, Civil Appeal Pre-Argument Statement, along with the addenda required by this form; and Form D, Civil Appeal Transcript Information Form.

(2) **Pro Se Civil Cases.** A pro se appellant in a civil case must file Form D-P, Civil Appeal Transcript Information Form for Pro Se Appellants.

(3) **Counseled Agency Cases.** A counseled appellant in an agency case must File Form C-A, Agency Appeal Pre-Argument Statement, along with the Addenda required by this form.

(c) **Docketing Fee.** An appellant or petitioner must pay the docketing fee fixed by the U.S. Judicial Conference under 28 U.S.C. § 1913, unless the appellant or petitioner is seeking or has obtained leave to proceed in forma pauperis under 28 U.S.C. § 1915 and FRAP 24, and so notifies the circuit court.

(d) **Failure to Comply.** Failure to take any of the above actions may result in dismissal of the appeal.

Local Rule 12.2 Appeal Docketing Requirements in Criminal Cases

(a) **Docketing Requirements.** Within 14 days after the filing of a notice of appeal, an appellant in a criminal appeal must:

(1) file Form B, Criminal Appeal Transcript Information Form; and

(2) pay the docketing fee fixed by the U.S. Judicial Conference under 28 U.S.C. § 1913, unless the appellant has moved or obtained leave to proceed in forma pauperis under 28 U.S.C. § 1915 and FRAP 24, and so notifies the circuit court.

(b) **Failure to Comply.** Failure to take any of the above actions may result in dismissal of the appeal.

Local Rule 12.3 Acknowledgment and Notice of Appearance in All Appeals

(a) **Acknowledgment and Notice of Appearance Form.** Within 14 days after receiving a docketing notice from the circuit clerk assigning a docket number and enclosing a copy of the appellate docket sheet, all parties must file the Acknowledgment and Notice of Appearance Form. Counsel of record listed on the form must be admitted in this court, or have pending an application for admission under LR 46.1(a) or (d). This form satisfies the requirement of FRAP 12(b).

(b) **Notice of Appearance Form for Substitute, Additional, or Amicus Counsel.** An attorney, other than the initial counsel of record, who appears in a case in any capacity on behalf of a party or an amicus curiae must file the Notice of Appearance Form for Substitute, Additional, or Amicus Counsel at the time the attorney enters the case.

(c) **Failure to Comply.** The appellant's failure to take any of the above actions may result in dismissal of the appeal. The appellee's failure to take any of the above actions may bar the appellee from being heard on the appeal.

Local Rule 15.1 Electronic Payment of Filing Fee

If the petitioner is represented by counsel, the petitioner's attorney may remit the filing fee to the circuit clerk electronically in accordance with the instructions posted on the court's website. The attorney must (1) register as a Filing User under LR 25.1, (2) file the petition for review electronically with the fee, and (3) if not already admitted, seek admission to the court under LR 46.1 immediately upon filing the petition for review.

Local Rule 21.1 Writs; Electronic Payment of Filing Fee; Number of Paper Copies

(a) **Electronic Payment of Filing Fee.** If the petitioner is represented by counsel, the petitioner's attorney may remit the required filing fee to the circuit clerk electronically in accordance with the instructions posted on the court's website. The attorney must (1) register as a Filing User under LR 25.1, (2) file the petition for a writ electronically with the fee, and (3) if not already admitted, seek admission to the court under LR 46.1 immediately upon filing the petition for a writ.

(b) **Number of Copies.** If the petition for a writ of mandamus or prohibition or other extraordinary writ exceeds 50 pages, the petitioner must submit 3 paper copies of the petition to the clerk's office.

Local Rule 22.1 Certificate of Appealability

(a) **Request to This Court for a COA.** In a case governed by 28 U.S.C. § 2253 and FRAP 22(b), this court will not act on a request for a certificate of appealability (COA) unless the district court has denied a COA. If the district court denies a COA, the applicant must, within 28 days after the later of that denial or the filing of the notice of appeal, request a COA in this court. The request must include a copy of the district judge's order denying the COA, and a statement that (1) identifies each issue that the applicant intends to raise on appeal and the relevant facts, and (2) makes a substantial showing of a denial of a constitutional right as to each issue. A request to this court for a COA is decided without oral argument. The court ordinarily limits its consideration of the request to the issues identified in the request. The appeal may not proceed unless a COA has been issued.

(b) **Timing.** If a COA issues, the later of that date or the filing of the notice of appeal serves as the date of the notice of appeal for calculating time under FRAP and these Local Rules.

Local Rule 22.2 Second or Successive Applications Under § 2254 or § 2255

(a) **Transfer Required.** When an unauthorized second or successive application under 28 U.S.C. § 2254 or § 2255 is filed in district court, the district court will transfer it to the circuit court in accordance with 28 U.S.C. § 1631.

(b) **Notice to Applicant.** Upon transfer under (a), this court will send a notice to the applicant that the applicant must, within 45 days after the notice date, move in the circuit court for authorization under 28 U.S.C. § 2244 to file a second or successive application.

(c) **Motion Contents.** Any motion for authorization to file a second or successive application under 28 U.S.C. § 2254 or § 2255 must (1) use the appropriate Second Circuit form, and (2) attach copies of all prior applications for § 2254 or § 2255 relief and any resulting district court decisions, including any written opinions.

(d) **Failure to Comply.** Failure to comply with any of these requirements may result in denial of the motion.

Local Rule 24.1 Motion for In Forma Pauperis Status and Related Relief

A motion for leave to appeal in forma pauperis, for appointment of counsel, or for a transcript at public expense must include (1) the affidavit prescribed by FRAP 24(a)(1), and (2) a statement that identifies the relevant facts and makes a showing of likely merit as to each issue the appellant intends to present on appeal. Failure to comply with any of these requirements may result in denial of the motion and dismissal of the appeal.

Local Rule 25.1 Case Management/Electronic Case Filing (CM/ECF)

(a) Definitions and Scope.

(1) Definitions.

(A) Document. "Document" means any paper submitted to the court in a case.

(B) PDF. "PDF" means the electronic version, in Portable Document Format, of a document submitted to the court.

(C) Initiating Document. "Initiating" document means any document, including a petition for review of an agency decision; petition for a writ of mandamus, prohibition, or other extraordinary writ; successive habeas petition; or motion for leave to file an appeal; filed directly in this court to initiate a proceeding seeking consideration by this court.

(D) Filing User. "Filing User" means anyone who registers to file electronically under (b).

(E) Sealed Document. "Sealed document" means all or any portion of a document placed under seal by order of a district court or an agency or by order of this court upon the filing of a motion.

(2) Scope. This rule applies to all appeals filed on or after January 1, 2010 (i.e., appeals with a docket number beginning with "10-" or higher).

(b) Registration.

(1) Admitted Attorneys. An attorney admitted to practice in this court must register as a Filing User with PACER, the service that provides on-line access to United States appellate, district, and bankruptcy court records and documents nationwide.

(2) Non-admitted Attorneys. An attorney not admitted to practice in this court but who files a petition for review of an agency decision under LR 15.1, a petition for writ of mandamus or prohibition or other extraordinary writ under LR 21.1, or an attorney admission application under LR 46.1 must register as a Filing User with PACER.

(3) Pro se parties. A pro se party who wishes to file electronically must seek permission from the court by filing the court's CM/ECF Pro Se Filing User Request Form available on the court's website. A pro se party must register as a Filing User with PACER as soon as practicable after receiving permission.

(c) Electronic Filing Requirements.

(1) Documents Other than Initiating Documents. A Filing User must file every document, other than an initiating document, electronically in PDF in accordance with the CM/ECF instructions posted on the court's website.

(2) Initiating Documents. Unless filing under LR 15.1 or LR 21.1, an attorney who is not exempt under (j) must file an initiating document by emailing it to <newcases@ca2.uscourts.gov>.

(d) Timing of Electronic Filing.

(1) Documents Filed in CM/ECF. A document filed electronically in CM/ECF is considered filed as of the date and time indicated on the notice of docket activity ("NDA") that the court automatically generates following the filing transmission.

(2) Initiating Documents. An initiating document filed electronically under (c)(2) is considered filed as of the date and time indicated on the email submission.

(3) Technical Failure. Upon motion, the clerk may accept as timely filed a document untimely filed as the result of a technical failure.

(e) Format. A PDF must be text-searchable. A PDF need not include a manual signature.

(f) Signature. A Filing User's personal log-in and password constitute the Filing User's signature for any purpose for which a signature is required.

(g) Submission of Paper Copies. Unless the clerk requests or the relevant LR requires, and notwithstanding FRAP provisions addressing number of copies, a Filing User must not submit a paper copy of a document.

(h) Service.

(1) Acceptance of Service. Registration as a Filing User constitutes consent to electronic service of all documents.

(2) Documents Filed in CM/ECF. A document filed in CM/ECF is considered served upon another Filing User when that Filing User receives the NDA. A Filing User satisfies FRAP 25(d)'s proof of service requirements by completing the "service" section in CM/ECF when filing a document.

(3) Initiating Documents. A Filing User must serve an initiating document on another Filing User by email.

(4) Paper Copies. Service of a paper copy of a document is not required unless the recipient is not a Filing User and has not consented to other service.

(i) Hyperlinks. A document filed under this rule may contain hyperlinks to (i) other portions of the same document or to other documents filed on appeal; (ii) documents filed in the lower court or agency from which the record on appeal is generated; and (iii) statutes**,** rules, regulations, and opinions. A hyperlink to a cited authority does not replace standard citation format.

(j) Exemptions.

(1) Counsel. Upon motion and a showing of extreme hardship or exceptional circumstances, the clerk may exempt counsel in a particular case from the electronic filing requirements. If the clerk grants counsel an exemption, the clerk will determine the manner of filing and service.

(2) Sealed Documents. A sealed document or a document that is the subject of a motion to seal is exempt from the electronic filing requirement and must be filed with the clerk in the manner the court determines. Within 7 days after the sealed document is filed, a redacted version of the document must be electronically filed on the docket, unless the court orders otherwise.

(3) Oversized Documents. A document that exceeds 10 megabytes in size and cannot be reasonably divided into 10 or fewer separate parts, each not exceeding 10 megabytes in size, is exempt from the electronic filing requirement. The oversized document qualifying for the exemption must be filed on CD or DVD.

(A) Under this rule each volume of a multi-volume appendix constitutes a separate document.

(B) If any one volume of a multi-volume appendix qualifies for exemption from electronic filing, the entire appendix must be filed on CD or DVD. Each volume of a multi-volume appendix included on a CD or DVD must be identified with the number of the volume, the page numbers included in the volume, and the total number of volumes. (Example: Vol. 1 of 3 (1-300); Vol. 2 of 3 (301-600).)

Local Rule 25.2 Submission of PDF Documents

(a) Definitions and Scope.

(1) Definitions. For the purpose of this rule, the following definitions apply:

(A) "Document" means any paper submitted to the court in a case, other than an appendix as covered in (h).

(B) "PDF" has the same meaning as defined in LR 25.1(a)(1)(B).

(2) **Scope.** This rule applies to all appeals filed before January 1, 2010 (i.e., appeals with a docket number beginning with "09-" or lower), and any other appeal in which counsel is exempt from filing electronically or a pro se party does not file electronically under LR 25.1.

(b) **PDF Requirement.**

(1) **Counseled Parties.** In addition to filing the original document, a counseled party must submit a PDF of every document unless counsel explains why submitting a PDF of the particular document would constitute extreme hardship.

(2) **Pro Se Parties.** A party not represented by counsel is encouraged, but not required, to submit a PDF of every document, in addition to filing the original document.

(3) **Format.** Each PDF must be text-searchable. A PDF need not include a manual signature.

(4) **Submission of Paper Copies.** Unless the clerk requests or the relevant local rule requires, and notwithstanding FRAP provisions addressing number of copies, a party must not submit a paper copy of a document other than the original.

(c) **Email Submission.** A party must email a PDF to the electronic mailbox designated in (d).

(1) **Email Subject Line.** The email must include the following information in the header's "Subject" or "Re" line:

(A) the docket number; if a docket number has not yet been assigned, the (i) the name of the district court or agency appealed from, and (ii) the district court docket or agency number;

(B) the party's name;

(C) the party's designation in the case (e.g., appellant, petitioner);

(D) the type of document (e.g., form, letter); and

(E) the date of submission.

Example of a proper subject line:
01-2345-cv, ABC Corp, Appellant, Letter, 01/02/09.

(2) **Single Email Per Submission.** When a party submits a set of documents that are intended to be considered together, the party must submit the PDFs of all those documents in a single email.

(3) **Single PDF for Motion.** A party submitting a motion must incorporate the Form T-1080 Motion Information Statement, the memorandum of law, and all supporting documents into a single PDF.

(d) **Electronic Mailboxes.**

(1) **New Cases.** In new cases in which the circuit clerk has not yet issued a docketing notice, a counseled party must, and a pro se party may, submit a PDF to <newcases@ca2.uscourts.gov>.

(2) **Cases Involving Only Counseled Parties.** After the clerk has issued a docketing notice in a case involving only counseled parties, a counseled party must submit a PDF to the appropriate electronic mailbox, as determined by the two-letter case-type code at the end of the docket number, and subject to the following descriptions:

(A) ag, bk, op – <agencycases@ca2.uscourts.gov> – cases in which all parties have counsel and that involve an administrative agency, board, commission or office; tax court; bankruptcy; or original proceedings;

(B) cr – <criminalcases@ca2.uscourts.gov> – criminal cases in which all parties have counsel;

(C) cv – civil cases

(i) <agencycases@ca2.uscourts.gov> – civil cases in which all parties have counsel and one party is the United States or an official or agency of the United States;

(ii) <civilcases@ca2.uscourts.gov> – all other civil cases in which all parties have counsel; and

(D) pr – <priscases@ca2.uscourts.gov> – prisoner cases.

(3) **Cases Involving a Pro Se Party.** After the clerk has issued a docketing notice in a case involving one or more pro se parties, a counseled party must, and a pro se party may, submit a PDF to: <prosecases@ca2.uscourts.gov>, except that in a case involving a pro se prisoner, a counseled party must, and a pro se party may, submit a PDF to <priscases@ca2.uscourts.gov>.

(e) **Time for Email Submission.** A party must email the PDF no later than the time for filing the original.

(f) **Corrections.** If a party corrects a document that has been submitted as a PDF, the party must also email a corrected PDF. The email subject line must identify the document as a corrected version and set forth the information required in (c)(1) with the submission date of the corrected version.

(g) **Email Service.** A party submitting a PDF must also email it to all counseled parties and to pro se parties who have submitted PDFs.

(h) **Submission of an Appendix.** In addition to filing the required number of paper copies, a counseled party must submit and serve on all parties a text-searchable PDF of every appendix on a CD or DVD, unless counsel explains why submitting a PDF of the appendix would constitute extreme hardship. A pro se party is encouraged, but not required, to submit and serve a PDF of the appendix on the CD or DVD, in addition to filing the required number of paper copies. Each volume of a multi-volume appendix included on the CD or DVD must be identified as a separate, clearly-labeled document. (Example: Vol. 1 of 3 (1-300); Vol. 2 of 3 (301-600).)

(i) **PDF Not Provided; Unbound Copy Required.** A party who does not provide a PDF must file with the clerk one unbound copy of each document. The party may not staple or otherwise attach the unbound copy, but may use clips or rubber bands. When a party files only the original document and no copies, the original must be unbound.

Local Rule 25.3 Additional Paper Copies

When the clerk requests, a party must provide additional paper copies of any document filed.

Local Rule 27.1 Motions

(a) **Form, Contents, Number of Paper Copies.**

(1) **Form.** A motion must be in the form prescribed by FRAP 27.

(2) **Motion Information Statement.** The first page of the motion must be this court's Form T-1080 Motion Information Statement.

(3) **Attachments.** A movant must attach to Form T-1080 any affidavit or other document necessary to support the motion, and may attach a memorandum of law that complies with the length limits of FRAP 27(d)(2).

(4) **Number of Paper Copies.** If the motion exceeds 50 pages, the movant must submit 3 paper copies of the motion to the clerk's office.

(b) **Notification; Disclosure of Opponent's Position.** In a case in which all parties are represented by counsel, a motion must state: (1) that the movant has notified opposing counsel, or why the movant was unable to do so; (2) opposing counsel's position on the relief requested; and (3) whether opposing counsel intends to file a response to the motion.

(c) **Authority of Clerk to Decide Motions.** The clerk is authorized to decide routine, unopposed procedural motions.

(d) **Emergency Motions.** A motion seeking emergency or expedited relief must:

(1) be preceded by as much advance notice as possible to the clerk and to opposing counsel of the intent to file an emergency motion;

(2) be labeled "Emergency Motion";

(3) state the nature of the emergency and the harm that the movant will suffer if the motion is not granted; and

(4) state the date by which the movant believes the court must act.

(e) **Motion to File Oversized Brief.**

(1) **Motion Disfavored.** The court disfavors motions to file a brief exceeding the length permitted by LR 28.1.1 and 32.1(a)(4).

(2) **Explanation Required.** A party seeking to file an oversized brief must state the requested length and the reasons for exceeding FRAP's limitations.

(3) **Time to File.** A motion to file an oversized brief must be made at least 14 days before the brief is due. The court will deny an untimely motion absent extraordinary circumstances.

(f) **Motion to Extend the Time to File a Brief.**

(1) **Extraordinary Circumstance Required.** Absent an extraordinary circumstance, such as serious personal illness or death in counsel's immediate family, the court will not grant a motion to extend the time to file a brief. A deadline for a brief remains in effect unless the court orders otherwise.

(2) **Prior Motion.** A party seeking to extend the time to file a brief must disclose any prior motion for similar relief, the court's ruling on it, and whether any prior order stated that no further extension would be allowed.

(3) **Time to File.** A party seeking to extend the time to file a brief must move as soon as practicable after the extraordinary circumstance arises.

(g) **Reconsideration of Orders.** A motion for reconsideration of an order under FRAP 27(b) must be filed within 14 days after the date of the order. Response papers filed after the original motion was decided do not constitute a request to reconsider; a separate motion requesting that relief must be filed.

(h) **Sanctions.** The court may, after affording the party notice and an opportunity to be heard, impose sanctions against a party that fails to comply with this rule.

(i) **Motion to Reinstate Appeal.** A party that files a motion to reinstate the appeal following dismissal for failure to timely file a brief must do so within 14 days of the date of the order dismissing the appeal. The party's brief must be attached as an exhibit to the motion.

(j) **Motion to Abbreviate Name in Opinion or Summary Order.** A party in a proceeding covered by Federal Rule of Civil Procedure 5.2(c) may file a motion to abbreviate the party's name in an opinion or summary order to provide further privacy protection. The motion must be filed no later than the date appellant's brief is filed.

IOP 27.1 Oral Argument on Motions

If the court orders oral argument on a motion, the motion will ordinarily be heard on a Tuesday when the court is in session. If the court orders oral argument on an Emergency Motion, the clerk may set a hearing on any day the court is in session.

Local Rule 27.2 Certification of Questions of State Law

(a) **General Rule.** If state law permits, the court may certify a question of state law to that state's highest court. When the court certifies a question, the court retains jurisdiction pending the state court's response to the certified question.

(b) **Motion or Request.** A party may move to certify a question of state law by filing a separate motion or by including a request for certification in its brief.

Local Rule 28.1 Briefs

(a) **Form of Brief.** A brief must be concise, logically arranged with proper headings, and free of irrelevant matter. The court may disregard a brief that does not comply with this rule.

(b) **Appellant's Brief.** At the beginning of the statement of the case, an appellant's brief must:

(1) describe the nature of the case and the relevant procedural history;

(2) identify the judge or agency official who rendered the decision being appealed from;

(3) indicate the disposition below; and

(4) cite the decision or supporting opinion, if reported.

Local Rule 28.1.1 Cross-Appeals; Word Limitations

(a) **Appellant's Briefs.** The appellant's principal brief and the appellant's response-and-reply brief is acceptable if each contains no more than 14,000 words.

(b) **Appellee's Principal-and-Response Brief.** The appellee's principal-and-response brief is acceptable if it contains no more than 16,500 words.

(c) **Appellee's Reply Brief.** The appellee's reply brief is acceptable if it contains no more than 7,000 words.

Local Rule 29.1 Brief of an Amicus Curiae

(a) **Leave to File.** The court ordinarily will deny leave to file an amicus brief when, by reason of a relationship between a judge assigned to hear the proceeding and the amicus curiae or its counsel, the filing of the brief might cause the recusal of the judge.

(b) **Disclosure.** The required disclosure statement under FRAP 29(a)(4)(E) must appear in the first footnote on the first page of the brief.

(c) **Amicus Brief Length Limitation.** An amicus brief filed under FRAP 29(a) is acceptable if it is no more than one-half the maximum length authorized by these local rules for a party's principal brief.

Local Rule 30.1 Appendix

(a) **Contents of Appendix.** The contents of an appendix are limited to the materials set forth in FRAP 30(a)(1), except that the appendix must also include the notice of appeal or petition for review.

(b) **Number of Paper Copies.** A counseled party must submit 6 paper copies of an appendix in cases in which an appendix is required. A pro se party must submit 3 paper copies of its appendix in cases in which an appendix is required.

(c) **Deferred Appendix.** If the parties stipulate, or if the court on motion directs, the parties may file a deferred appendix as provided in FRAP 30(c).

(d) **Index for Separate Volume of Exhibits.** When reproducing exhibits in a separate volume, the index required by FRAP 30(e) must include a description of each exhibit sufficient to inform the court of its nature; designation solely by exhibit number or letter does not comply with this rule.

(e) Proceeding on the Original Record Without an Appendix.

(1) Authorized Classes of Cases. The procedure described in FRAP 30(f) for hearing appeals on the original record without requiring an appendix is authorized in the following classes of cases: (A) proceedings conducted in forma pauperis, (B) social security cases, and (C) immigration cases listed in LR 34.2(a)(1).

(2) Materials to be Included in the Record. The appellant must arrange to make part of the record all relevant transcripts and, in social security cases, the certified administrative record.

(3) Materials to be Attached to Appellant's Brief. The appellant must attach as an addendum to its principal brief the orders, opinions, and judgments being appealed.

(f) Sanctions. This court may, after affording the attorney notice and an opportunity to be heard, impose sanctions against an attorney who unreasonably and vexatiously increases litigation costs by including unnecessary material in the appendix.

(g) Appellee's Supplemental Appendix. In any case in which an appellant has not filed a joint appendix in compliance with FRAP 30, an appellee may file a supplemental appendix. The supplemental appendix must comply with FRAP 30 and LR 32.1(b). It must be filed with the appellee's brief.

Local Rule 31.1 Brief; Number of Paper Copies

In all cases, a party must submit 6 paper copies of each brief.

Local Rule 31.2 Briefing Schedule; Regular and Expedited Appeals Calendars

(a) Briefing Schedule. Except for appeals on the Expedited Appeals Calendar discussed in (b), the parties must submit scheduling requests for filing briefs in accordance with the procedures described below. The court ordinarily sets and "so orders" the requested deadlines as the firm filing dates for the parties' briefs.

(1) Scheduling Request.

(A) Appellant's Request. Within 14 days after the later of the appellant's receipt of the last transcript, the appellant's filing of the certificate that no transcript will be ordered, or the date the record is filed in FRAP 15 proceedings (the "ready date"), the appellant must notify the clerk in writing of the deadline it requests for appellant's brief. The deadline must be within 91 days after the ready date. If the appellant fails to submit a

scheduling request, the deadline for its brief is 40 days after the ready date.

(B) **Appellee's Request.** Within 14 days after the filing of the last appellant's brief, an appellee must notify the clerk in writing of the deadline it requests for appellee's brief. The deadline must be within 91 days after the filing of the last appellant's brief. If the appellee fails to submit a scheduling request, the deadline for its brief is 30 days after the filing of the last appellant's brief.

(C) **Cross-Appeals.** In a case in which a cross-appeal is filed, within 14 days after the filing of the last cross-appellant's brief, the appellant-cross-appellee must notify the clerk in writing of the deadline it requests for the appellant-cross-appellee's brief. The deadline must be within 60 days after the filing of the last cross-appellant's brief. If the appellant-cross-appellee fails to submit a scheduling request, the deadline for its brief is 30 days after the filing of the last cross-appellant's brief.

(D) **Request for a Later Deadline.** A party's scheduling request may propose a deadline later than the times set forth in (a)(1)(A)-(C) only if the case involves a voluminous record or extreme hardship would result. A request for a later deadline must explain the reasons why it is necessary.

(2) **Reply Brief.** A reply brief must be filed within 21 days after the filing of the last appellee's brief.

(3) **Tolling.** The filing of a dispositive motion, a motion to proceed in forma pauperis, or a stipulation under LR 42.1 tolls the time periods set forth in this rule until the motion is determined or the appeal is reinstated.

(b) Expedited Appeals Calendar.

(1) **Subject Proceedings.** The court maintains an Expedited Appeals Calendar (XAC) for appeals from threshold dismissals, defined as a judgment or order of a district court dismissing a complaint solely for:

(A) lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1);

(B) failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6); or

(C) filing a frivolous complaint or for any other ground specified in 28 U.S.C. § 1915(e)(2).

(2) **Placement.** The clerk identifies a case for placement on the XAC and, as soon as practicable, informs the parties. Promptly after receipt of such notification, any party, for good cause shown, may move to remove the case from the XAC. If the court grants the motion, briefing will proceed under (a)(1) to (3).

(3) **Briefing.** In a case placed on the XAC, the following briefing schedule applies:

(A) The appellant must file its brief within 35 days of the date of the clerk's notification of placement on the XAC.

(B) The appellee must file its brief within 35 days after the filing of the last appellant's brief.

(C) The appellant may submit a reply brief within 14 days after the filing of the last appellee's brief.

(c) **Motions.** A motion regarding briefing, including a motion to file an oversized brief or to extend the time to file a brief, is governed by FRAP 27 and LR 27.1.

(d) **Failure to File.** The court may dismiss an appeal or take other appropriate action for failure to timely file a brief or to meet a deadline under this rule.

Local Rule 32.1 Form of Brief and Appendix

(a) **Form of Brief.** Briefs must conform to FRAP 32(a), except as set forth below:

(1) **Cover.** The title appearing on the front cover of a brief must include the name of the party or parties for whom the brief is filed. The docket number of the case must appear in type at least one inch high.

(2) **Pamphlet Briefs.** If a litigant prefers to file a printed brief in pamphlet format, it must conform to the following specifications:

- Size of page: 6 1/8 by 9 1/4 inches.
- Sides used: both.
- Margins: at least one inch on all sides.
- Font size: 12-point type or larger, for text and footnotes.
- Spacing: 2-points or more leading between lines; 6-points or more
- between paragraphs.
- Other specifications: must conform to FRAP 32(a).

(3) **Sequential Numbering.** The pages of a brief must contain sequential numbering. A Filing User must adjust the PDF of the brief to recognize the Filing User's sequential numbering scheme in the PDF's page search field.

(4) Word Limitations.

(A) Principal Brief. A principal brief is acceptable if it contains no more than 14,000 words.

(B) Reply Brief. A reply brief is acceptable if it contains no more than 7,000 words.

(b) Form of Appendix. An appendix must conform to FRAP 32(b), except as set forth below:

(1) Cover. The docket number of the case must appear in type at least one inch high.

(2) Multi-volume Appendix. An appendix that exceeds 300 pages must be divided into separate volumes, each of which must not exceed 300 pages.

(3) Sequential Numbering. The pages of an appendix must contain sequential numbering. A Filing User must adjust the PDF of the appendix to recognize the Filing User's sequential numbering scheme in the PDF's page search field. The pages of an appendix may be printed on both sides.

(4) Tabs. Tabs may be used to separate documents in the appendix.

(5) Condensed Transcripts. An appendix may contain condensed transcripts, not to exceed 4 panels per page**.**

(6) Detailed Table of Contents. An appendix, and each volume therein, must contain a detailed table of contents, including the sequential page numbers where each document can be located. The table of contents must provide a description of each document that is sufficient to inform the court of its nature; designation solely by exhibit number or letter is insufficient.

(c) Special Appendix. If the appendix, exclusive of the orders, opinions, and judgments being appealed, exceeds 300 pages, the parties must file a Special Appendix that conforms to (b), and that contains the (1) orders, opinions, and judgments being appealed, and (2) the text, with appropriate citation, of any significant rule of law, including any constitutional provision, treaty, statute, ordinance, regulation, rule, or sentencing guideline. The Special Appendix may be an addendum at the end of a brief or a separately bound volume designated "Special Appendix."

Local Rule 32.1.1 Disposition by Summary Order

(a) **Precedential Effect of Summary Orders.** Rulings by summary order do not have precedential effect.

(b) **Citation of Summary Orders.**

(1) **Summary Orders Issued On or After January 1, 2007.** In a document filed with this court, a party may cite a summary order issued on or after January 1, 2007.

(2) **Summary Orders Issued Prior to January 1, 2007.** In a document filed with this court, a party may not cite a summary order of this court issued prior to January 1, 2007, except: (A) in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata; or (B) when a party cites the summary order as subsequent history for another opinion that it appropriately cites.

(c) **Citation Form.** When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order").

(d) **Service of Summary Orders on Pro Se Parties.** A party citing a summary order must serve a copy of it on any party not represented by counsel.

IOP 32.1.1 Summary Order

(a) **Use of Summary Orders.** When a decision in a case is unanimous and each panel judge believes that no jurisprudential purpose is served by an opinion (i.e., a ruling having precedential effect), the panel may rule by summary order.

(b) **Summary Order Legend.** Summary orders filed on or after January 1, 2007, must bear the following legend:

SUMMARY ORDER

> Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

Local Rule 32.2 Pro se Party Submission of a Brief, Appendix, or Other Paper Drafted by an Attorney; Disclosure of Attorney Assistance

A pro se party who submits a paper that an attorney has drafted in whole or substantial part must state at the beginning of the paper, "This document was drafted in whole, or substantial part, by an attorney." Unless the Court orders otherwise, the attorney's identity and address need not be disclosed.

Local Rule 33.1 Civil Appeals Mediation Program

(a) **Scope of Plan.** The Civil Appeals Mediation Program (CAMP) applies to all civil cases except proceedings in which at least one party appears pro se, matters initially placed on the court's Non-Argument Calendar, petitions for writs of mandamus or prohibition, and habeas corpus cases and proceedings under 28 U.S.C. § 2255.

(b) **Referral to Circuit Mediation.** When a case within CAMP's scope is docketed, the clerk refers it to the Circuit Mediation Office for review. At any time during the pendency of a case, including one outside CAMP's scope, a party may request referral to the Circuit Mediation Office or the Court may so order. The Circuit Mediation Office may recommend to the clerk the entry of orders governing the case.

(c) **Mediators.** The court employs mediators and may appoint attorneys to serve as volunteer mediators. Mediator disqualification is governed by the Code of Conduct for Judicial Employees.

(d) **CAMP Conference.** The court may direct counsel for the parties to participate in a conference to explore the possibility of settlement, narrow the issues, and discuss any matters that may expedite disposition of the appeal.

(1) **Counsel's Participation.** Before a CAMP conference, counsel must consult with the client and obtain as much authority as feasible to settle the case. At the conference, counsel must be prepared to discuss in depth the legal, factual and procedural issues of the case.

(2) **Client Participation.** A mediator may require a client to participate in a conference in person or by telephone.

(3) **Conference Location.** A mediator may hold a conference in person at the Circuit Mediation Office or at another location, or by telephone or video.

(4) **Survey.** After the conclusion of a CAMP proceeding, each party must complete the anonymous Post-Conference Survey and submit it electronically to this court's Director of Legal Affairs.

(e) **Confidentiality.** Information shared during a CAMP proceeding is confidential and is not included in court files or disclosed to the judges of this court except to the extent disclosed by an order entered as a result of a CAMP proceeding. The attorneys and other participants are prohibited from disclosing what is said in a CAMP proceeding to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurance that the recipient will honor confidentiality.

(f) **Grievance Procedure.** Any complaint regarding the handling of any CAMP proceeding must be submitted to the chief judge of the court.

(g) **Non-Compliance Sanctions.** The court may, after affording notice and an opportunity to be heard, impose sanctions on an attorney or party who does not participate in good faith in the CAMP program.

Local Rule 34.1 Oral Argument and Submission on Briefs

(a) **Oral Argument Statement.** Within 14 days after the filing of the last appellee's brief, each party must file an Oral Argument Statement Form. Failure to timely file the Oral Argument Statement Form signifies that the party does not seek oral argument.

(b) **Court's Determination Not to Hear Oral Argument.** The court may determine to take a case on submission, without oral argument, in accordance with FRAP 34(a)(2). If the court decides to take a case on submission, the clerk will notify the parties.

(c) **Number of Counsel.** Only one counsel may argue for each party unless the court orders otherwise.

(d) **Time Allotments.** The clerk notifies the parties of the argument time the court has allotted to each side. If there are multiple parties on the same side of an appeal, the court may require the parties to divide the time allotted to that side.

(e) **Postponement of Argument.** After a case has been set for oral argument, it may be postponed only by order of the court on a showing of extraordinary circumstances, and not by stipulation of the parties. Engagement of counsel in another tribunal (other than the U.S. Supreme Court) is not an extraordinary circumstance.

(f) **Exception.** This rule does not apply to a case placed on the Non-Argument Calendar under LR 34.2.

Local Rule 34.2 Non-Argument Calendar

(a) **Subject Proceedings.** The court maintains a Non-Argument Calendar (NAC) for the following classes of cases:

(1) **Immigration.** An appeal or petition for review, and any related motion, in which a party seeks review of the denial of:

(A) a claim for asylum under the Immigration and Nationality Act (INA);

(B) a claim for withholding of removal under the INA;

(C) a claim for withholding or deferral of removal under the Convention Against Torture; or

(D) a motion to reopen or reconsider an order involving one of the claims listed above.

(2) **Other.** Any other class of cases that the court identifies as appropriate for the NAC.

(b) **Placement**. The clerk identifies a proceeding for placement on the NAC and, as soon as practicable, informs the parties.

(c) **Oral Argument.** A proceeding on the NAC is decided without oral argument unless the court orders otherwise.

Local Rule 35.1 En Banc Procedure

(a) **Form of Petition.** If a party is simultaneously filing a petition for panel rehearing and a petition for rehearing en banc, both requests must be made in a single document.

(b) **Copy of Opinion or Summary Order Required.** A petition for rehearing en banc, or a combined petition for panel rehearing and for rehearing en banc, must include a copy of the opinion or summary order to which the petition relates, and must not include any other documents.

(c) **Number of Paper Copies.** If a petition for rehearing en banc exceeds 50 pages, the petitioner must submit 15 paper copies to the clerk's office.

(d) **Procedure After Amendment of Court Ruling.** If the court substantively amends its opinion or summary order, a petition (or an amended petition) for rehearing en banc may be filed within the time specified by FRAP 35(c), counted from the date of filing of the amended opinion or order. A petition for rehearing en banc filed before amendment of the court's ruling may, but need not, be amended.

(e) **Sanctions.** The court may, after affording notice and an opportunity to be heard, impose sanctions against a party that files a frivolous petition for rehearing en banc.

IOP 35.1 En Banc Poll and Decision

(a) **Judges Eligible to Request an En Banc Poll.** Only an active judge of the court or a senior judge who sat on the three-judge panel is eligible to request a poll of the active judges to determine whether a case should be heard or reheard en banc.

(b) **Judges Eligible to Vote in an En Banc Poll.** Only an active judge may vote to determine whether a case should be heard or reheard en banc and whether an en banc panel, once constituted, should be dissolved. A judge's status as an active or senior judge for the purpose of an en banc poll is determined on the date of entry of the en banc order.

(c) **Judges Eligible to Participate in an En Banc Hearing or Rehearing.** Only an active judge or a senior judge who sat on the three-judge panel is eligible to participate in the en banc hearing or rehearing. A judge's status as an active or senior judge is determined on the date of the hearing or rehearing en banc, i.e., on the date oral argument is heard or the case is submitted.

(d) **Judges Eligible to Participate in an En Banc Decision.** Only an active judge or a senior judge who either sat on the three-judge panel or took senior status after a case was heard or reheard en banc may participate in the en banc decision. A judge who joins the court after a case was heard or reheard en banc is not eligible to participate in the en banc decision.

Local Rule 38.1 Sanctions for Delay

The court may, after affording notice and an opportunity to be heard, impose sanctions on a party that: (a) fails to file a brief, the appendix, or any required form within the time specified by FRAP or a rule or order of this court, or (b) takes or fails to take any other action for the purpose of causing unnecessary delay.

Local Rule 39.1 Reproduction Costs

(a) Number of Necessary Copies. In addition to taxing the number of copies of the appendix and brief submitted under LRs 30.1 and 31.1, a party may tax paper copies served on a party under LR 25.1(h)(4) if proof that the paper copy was served is attached to the bill of costs.

(b) Taxable Rate. The cost of reproducing necessary copies of briefs or appendices is taxable at the lesser of the actual cost or the maximum rate set by the court and posted on the court's website under Fee Schedule.

Local Rule 39.2 Applications Under the Equal Access to Justice Act

A party making an application under 28 U.S.C. § 2412(d)(1)(B) must use this court's Form T-1080 Motion Information Statement.

Local Rule 40.1 Panel Rehearing Procedure

(a) Copy of Opinion or Summary Order Required. A petition for panel rehearing must include a copy of the opinion or summary order to which the petition relates, and must not include any other documents.

(b) Number of Paper Copies. If a petition for panel rehearing exceeds 50 pages, the petitioner must submit 3 paper copies of the petition to the clerk's office. If the petition for panel rehearing is simultaneously filed with a petition for rehearing en banc, the petitioner must submit the number of copies required by LR 35.1(c).

(c) Procedure After Amendment of Court Ruling. If the court substantively amends its opinion or summary order, a petition (or an amended petition) for panel rehearing may be filed within the times specified by FRAP 40(a)(1), counted from the date of filing of the amended opinion or order. A petition for panel rehearing filed before amendment of the court's ruling may, but need not, be amended.

(d) Sanctions. The court may, after affording notice and an opportunity to be heard, impose sanctions against a party that files a frivolous petition for panel rehearing.

Local Rule 40.2 Panel Reconsideration Procedure

When the court determines an appeal by issuing an order for which a FRAP 36 judgment is not entered, a party adversely affected may file a motion for panel reconsideration and a motion for reconsideration en banc that complies with FRAP 35 and 40 and LRs 35.1 and 40.1. No response may be filed unless the court orders.

Local Rule 42.1 Dismissal Without Prejudice

If the parties file an original or supplemental signed agreement for dismissal without prejudice to reinstatement, the agreement must specify the terms of reinstatement, including a date by which reinstatement must occur. The dismissal is not effective unless the court "so orders." Reinstatement occurs only upon written request by the date specified in the agreement.

Local Rule 42.2 Dismissal of Criminal Appeal

A stipulation or motion to voluntarily dismiss a counseled defendant's criminal appeal must be accompanied by the defendant's signed statement that (a) counsel has explained the effect of voluntary dismissal of the appeal, (b) the defendant understands counsel's explanation, and (c) the defendant desires to withdraw and voluntarily dismiss the appeal.

Local Rule 45.1 Clerk's Authority to Issue Orders

The clerk signs and enters, electronically or otherwise, all orders on behalf of the court.

Local Rule 46.1 Attorney Admission

(a) **Admission Requirements; Procedures.** Except as otherwise provided in these rules, an attorney who appears on behalf of a party or an amicus curiae in any capacity must be admitted to practice before this court, or have pending an application for admission, and must file a Notice of Appearance in accordance with LR 12.3.

(1) **Applying for Admission.** To request admission to the bar of this court, an attorney must complete an application composed of:

(A) the attorney admission application;

(B) the attorney admission oath; and

(C) the sponsor's motion for attorney admission.

(2) **Renewal of Admission; Failure to Renew; Inactive Status.** An attorney is admitted for a period of five years, and must renew admission every five years for an additional five-year period. Renewal requires submission of an attorney admission renewal application. An attorney who fails to renew admission within one month after the expiration of the five-year period is placed in inactive status. An attorney in inactive status must complete the renewal process to practice before the court. After 12 months in inactive status, an attorney is removed from the court's admission roll and must reapply for admission in accordance with (a)(1).

(3) **Submission of Admission or Renewal Application.** An attorney must submit an admission or renewal application electronically in PDF in accordance with the CM/ECF instructions posted on the Court's website.

(A) **Registration in CM/ECF.** Prior to submitting an admission application, an attorney must register as a Filing User in CM/ECF.

(B) **Signature.** The provision governing a Filing User's signature under LR 25.1(f) applies to submission of an attorney admission or renewal application.

(C) **Certification.** Electronic submission of an attorney admission application constitutes certification that the sponsor's motion for attorney admission and certificate of standing attached to the application are true and correct copies and that the applicant is maintaining the originals for production to the court upon request.

(D) **Exemption.** Upon an attorney's showing of extreme hardship or exceptional circumstances by letter, the clerk may exempt counsel from the electronic filing requirements under this rule.

(b) **Change in Contact Information.** An attorney admitted to practice in this court must promptly notify the clerk of a change in any of the contact information required on the attorney admission data form.

(c) **Fee.** An attorney applying for admission or renewal of admission must pay to the clerk electronically in accordance with the instructions posted on the court's website the fee set by the court and posted on the court's website.

(d) **Pro Hac Vice Admission.** An attorney may be admitted pro hac vice to appear in a particular proceeding without formally applying for admission or paying the admission fee. Pro hac vice admission will be considered on submission of a written motion to the court before filing a notice of appearance. To qualify, the attorney must be a member in good standing of a state or the District of Columbia bar and must be one of the following:

(1) a member of the bar of a district court within the circuit who has represented a

criminal defendant at trial and appears for that defendant on an appeal taken under 18 U.S.C. § 3006A;

(2) acting for a party proceeding in forma pauperis; or

(3) able to demonstrate exceptional circumstances justifying admission for the particular proceeding.

(e) Appearance and Argument by Eligible Law Students.

(1) Law Student Appearance. The court on motion may, with sufficient consent of the party or (for a government entity) counsel of record, permit an eligible law student to appear in this court under the supervision of an attorney.

(2) Supervising Attorney. The supervising attorney must be a member of the bar of this court and, with respect to the law student's proposed appearance before this court, must:

(A) file with this court the attorney's written consent to supervise the student;

(B) assume professional responsibility for the student's work;

(C) assist the student to the extent necessary; and

(D) introduce and appear with the student in all proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

(3) Law Student Eligibility. A law student is eligible to appear if:

(A) the student is enrolled in an ABA-accredited law school and has completed at least four full-time semesters of legal studies (or the equivalent), or has graduated and is awaiting the results of the first bar examination or bar admission process of any state;

(B) the law school certifies that the student is qualified to provide the legal representation permitted by this rule;

(C) the client does not pay any compensation or remuneration for the student's services; and

(D) the student certifies in writing that the student is familiar and will comply with the ABA's Model Rules of Professional Conduct, FRAP, the rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

Local Rule 46.2 Attorney Discipline

(a) Grievance Panel. All attorney grievance and discipline matters are initially handled by a panel of judges, the "Grievance Panel."

(b) Committee on Admissions and Grievances.

(1) Appointment of Committee Members, Chair, and Secretary.

(A) A standing committee of members of the bar, the "Committee on Admissions and Grievances," is appointed by the court to serve staggered three-year terms.

(B) The court designates a Committee member to serve as chair, and appoints a bar member to serve as secretary. The Committee's secretary is not entitled to vote on its proceedings.

(2) Referrals.

(A) The court's Grievance Panel may refer to the Committee, for investigation, hearing and report, the following types of matters:

(i) an accusation or evidence of attorney misconduct, including affirmative misconduct, negligent conduct, or conduct caused by or resulting from physical or mental infirmity, or the use of alcohol, drugs or other substances;

(ii) any other circumstance suggesting that an attorney may be unable to meet obligations to the court; or

(iii) any other situation in which the Grievance Panel seeks the guidance of the Committee, including matters relating to applications for admission or reinstatement to the court's bar, possible reciprocal discipline based on the imposition of discipline by another court or bar, or possible discipline based on an attorney's criminal conviction.

(B) The Committee may refer a matter to an appropriate attorney disciplinary authority for preliminary investigation, or may conduct a joint investigation with that authority. For the purpose of this rule, an attorney disciplinary authority includes any court, bar association, attorney admissions or discipline committee, government agency, or other licensing authority responsible for regulating the conduct of attorneys practicing law in that jurisdiction.

(3) Committee Proceedings.

(A) Investigation. Unless the Grievance Panel directs otherwise, the

Committee may commence an investigation of a matter referred to it before the provision of notice to the attorney. The Committee determines the appropriate extent and methods of investigation.

(B) **Notice of Charges and Order to Show Cause.** If the Committee determines to bring charges against an attorney, it will provide the attorney with a written notice of the charges and the reasons the conduct may warrant the imposition of discipline or other corrective measures, and will order the attorney to show cause why discipline or other corrective measures, either specified in the notice and order or to be later determined, should not be imposed. A notice and order is served on the attorney personally or by certified or registered mail.

(C) **Representation by Counsel.** An attorney subject to proceedings under this rule is entitled to be represented by counsel throughout the proceedings.

(D) **Attorney Answer to Notice of Charges and Order to Show Cause.** Unless the Committee directs otherwise, the attorney must respond to the notice of charges and order to show cause within 28 days after service by filing an answer, any supporting evidence and any request for a hearing.

(i) Absent a court order to the contrary, the attorney may examine all documents in the record before submitting an answer.

(ii) The answer must include the following information: (a) a list of all bars to which the attorney is admitted, including all bar numbers and other bar identification information; (b) a list of all cases pending before the court in which the attorney is involved; (c) a list of any pending or previous disciplinary proceedings, and any discipline imposed, by an attorney disciplinary authority; (d) a statement of the alleged facts that are controverted; (e) the basis on which any controverted facts are disputed; and (f) any additional facts that are relevant to the Committee's determinations on the need for discipline or other corrective measures, including facts relevant to defense or mitigation.

(iii) The attorney must produce all documents requested in the Committee's notice of charges and order to show cause.

(iv) The answer must be made under oath or in such other form that the penalties for perjury apply.

(v) A copy of the answer may, in the discretion of the Committee, be furnished to a complainant or to other persons whose participation is relevant to the proceeding.

(E) **Hearing Procedures.** After the attorney has answered the Committee's notice of charges and order to show cause, or after the time to answer has

expired, the Committee may hold a hearing to take testimony and receive other evidence, to hear argument, or both. If the Committee holds a hearing:

(i) the Committee must provide at least 14 days notice to the attorney of any hearing;

(ii) the attorney has the right to appear, to present witnesses and other evidence, and to confront and cross-examine under oath any witness against the attorney;

(iii) the Committee, or the person presiding over the hearing, may announce and be governed by any other rules of procedure warranted by the circumstances;

(iv) the attorney and all witnesses must testify under oath or affirmation; and

(v) a record and transcript of the hearing must be made.

(F) Subpoenas and Other Orders.

(i) Subpoenas and Orders Requiring Production of Evidence, Testimony, or Examination. The Committee or the attorney who is the subject of a proceeding before the Committee may apply to the Grievance Panel, on a showing of good cause, for a subpoena or other order requiring (a) the production of relevant documents or other evidence in the possession of third parties or the attorney, (b) the presence and testimony of relevant witnesses or the attorney at a deposition or hearing, or (c) a witness or the attorney to submit to a physical or mental examination by a suitably licensed or certified examiner.

(ii) Protective Orders. The Committee, the attorney, or any other affected person may apply to the Grievance Panel for a protective order.

(iii) Sanction Orders. The Committee, the attorney, or any other affected person may apply to the Grievance Panel for an order sanctioning a person who fails to obey a Committee or Grievance Panel order or who violates the Committee's or the Court's confidentiality rules.

(G) Burden of Proof. A finding of misconduct must be supported by clear and convincing evidence. A finding as to any other issue, including issues pertaining to the imposition of discipline or other corrective measures, must be supported by a preponderance of the evidence.

(H) **Exception to Procedures.** In a particular matter, the Grievance Panel or the Committee may determine that one or more of the procedures described in this rule are unnecessary or inappropriate, in which case it will so advise the attorney.

(I) **Effect of Attorney's Incapacity, Death, or Actual or Proffered Resignation on Committee Proceedings.** Once a matter has been referred to the Committee by the Grievance Panel, the Committee in the first instance determines the effect of the subject attorney's incapacity, death, or actual or proffered resignation on Committee proceedings. That determination is then incorporated into the Committee's report to the Grievance Panel.

(4) **Committee Report.**

(A) **Filing Procedure.** The Committee must file with the clerk the record of its proceedings, a report containing its findings and recommendations, and any separate or dissenting statements of Committee members. The clerk retains the report under seal after furnishing the Grievance Panel with copies. The Committee may, at its discretion, inform a complainant or other interested party that the report has been filed with the court. The clerk mails a copy of the report to the attorney and makes the record of the proceedings available to the attorney.

(B) **Committee Recommendations.** The Committee may recommend to the Grievance Panel that the attorney be:

(i) removed from the bar of the court;

(ii) if not a member of the bar of the court, precluded from becoming a member or from appearing in future cases before the court;

(iii) suspended from practice before the court, for either an indefinite or a specified period of time;

(iv) publicly or privately reprimanded;

(v) monetarily sanctioned;

(vi) removed from the court's pro bono or Criminal Justice Act panels;

(vii) referred to another attorney disciplinary authority, law enforcement agency, or other agency or organization;

(viii) subject to other disciplinary or corrective measures as the circumstances may warrant, including any combination of the preceding possible measures; or

(ix) not subject to discipline and the charges dismissed.

(C) Attorney Response to Committee Report. Within 21 days after the filing of the report, the attorney must file a response conforming to the requirements of FRAP 27(d). The response may oppose, seek to mitigate, or waive objection to the report. The Grievance Panel may request that the Committee reply to the attorney's response.

(5) Decision by the Court. After receipt of the attorney's responding statement and any Committee reply (or after expiration of the time for the filing of the statement and reply), the Grievance Panel, or another panel of the court as directed by the Grievance Panel, rules on the matter within a reasonable time by majority vote.

(6) Confidentiality. All matters referred to, all proceedings conducted by, and all records possessed by the Committee remain confidential, unless the Grievance Panel orders otherwise, or the Committee acts under (b)(2)(B) or (b)(7). The Committee may make recommendations to the Grievance Panel concerning confidentiality issues, including the possible need for a protective order or an order sanctioning the violation of a confidentiality rule, or the desirability of making public, in whole or part, a matter that is otherwise confidential under these rules. The Committee may recommend public disclosure, or notification to a particular person or entity, in order to protect the public, the administration of justice, or the legal profession.

(7) Procedure to Disclose Information to a New York State Attorney Disciplinary Authority. A disciplinary authority of a New York State supreme court appellate division may request, from the Grievance Panel or the Committee, expedited disclosure of confidential records for use by that disciplinary authority in its own investigation or proceeding. The request shall be made in writing and submitted to the Grievance Panel. The request should, to the extent practicable, identify the nature of the pending investigation or proceeding and the specific records sought. The request may also seek deferral of notice of the request for so long as the matter is under investigation or consideration by the appellate division disciplinary authority. Upon receipt of the request, the Grievance Panel may determine the request or take any other action it deems appropriate. Prior to taking such action, the Grievance Panel shall seek the assurance of the appellate division disciplinary authority that any confidential records disclosed to the appellate division disciplinary authority in response to the request shall not be used for any purpose other than the investigation or proceeding pending before the disciplinary authority.

(c) Reciprocal Suspension or Disbarment.

(1) Notification Requirement. An attorney admitted to practice in this court who is disbarred, suspended, publicly censured, or otherwise disciplined by an attorney disciplinary authority must file with the clerk a copy of that disciplinary order within 28 days. For the purpose of this rule, an attorney who resigns from the bar of a state or court while under investigation for alleged misconduct is deemed disbarred by that state or court, and the attorney's resignation, along with any

acknowledgment or acceptance of that resignation by the state or court, is deemed an order of disbarment.

(2) **Reciprocal Order.** When the court receives a copy of an order entered by an attorney disciplinary authority disbarring or suspending an attorney from practice, the clerk enters an order disbarring or suspending the attorney from practice before this court on comparable terms and conditions. This court's order becomes effective 28 days after it is filed, unless the court orders otherwise.

(3) **Motion to Modify or Vacate.** Within 21 days after the filing of this court's order, the attorney may move to modify or vacate the order. The motion will be decided by the Grievance Panel, unless referred to the Committee. The timely filing of a motion stays the court's order until the motion is determined. Unless good cause is shown, an untimely motion will not be considered.

(d) **Attorney Convicted of Crime.**

(1) **Notification Requirement.** An attorney admitted to practice in this court who has pled guilty to or been found guilty of a crime (a "guilty verdict") must notify the clerk in writing within 28 days after entry of the guilty verdict.

(2) **Response to Notification.**

(A) When the court receives notification of a guilty verdict for a serious crime, as defined below, the clerk: (i) immediately enters an order suspending the attorney, and (ii) serves a copy of the order on the attorney by mail at the attorney's last known address.

(B) When the court receives notification of a guilty verdict for a crime that is not a serious crime, the clerk forwards the relevant documents to the Grievance Panel, which determines whether to enter a suspension order, commence a disciplinary proceeding, or refer the matter to the Committee.

(C) The term "serious crime" means a federal or state felony, or a federal or state crime other than a felony that includes as a necessary element – as determined by the statutory or common law definition of the crime in the jurisdiction where the plea or verdict has been entered – any of the following: (i) interference with the administration of justice; (ii) false statement under oath; (iii) misrepresentation; (iv) fraud; (v) willful failure to file an income tax return; (vi) deceit; (vii) bribery; (viii) extortion; (ix) misappropriation; (x) theft; or (xi) an attempt, or conspiracy, or solicitation of another to commit a serious crime.

(3) **Evidentiary Effect.** A guilty verdict for any crime is clear and convincing evidence of conduct unbecoming a member of the bar.

(4) **Motion to Modify or Vacate.** The attorney may move to modify or vacate a suspension or other disciplinary order under (d). The motion will be decided by

the Grievance Panel, unless referred to the Committee.

(5) **Reinstatement.** An attorney suspended under (d)(2) will be reinstated upon the filing of a clerk's certificate showing reversal of the underlying conviction, although the Grievance Panel may continue any proceeding then pending against the attorney.

(6) **Disbarment.** A suspension order under (d)(2)(A) will be converted to a disbarment order upon exhaustion of all direct appeals from a criminal conviction, unless the court orders otherwise.

Local Rule 46.3 Appeal from District Court Attorney Disciplinary Order

(a) **Civil Appeal.** An appeal taken from an attorney disciplinary order entered by a district court judge or district court attorney disciplinary authority is a civil appeal under FRAP 3.

(b) **Appearance on Behalf of the District Court Judge or Attorney Disciplinary Authority.** The district court judge or attorney disciplinary authority may appear by counsel, or without counsel, through a brief, a statement or an amicus curiae brief filed by the judge or authority.

(c) **Service of Papers.** The appellant must serve all papers on the district court clerk.

(d) **Oral Argument.** An appeal under this section is decided without oral argument unless the court orders otherwise.

(e) **Applicable Rules.** All provisions of FRAP and these LRs are applicable to the review of a district court attorney disciplinary order, except LR 33.1.

Local Rule 47.1 Death Penalty Cases

(a) **Defined.** A death penalty case is an appeal or other proceeding to which the person under sentence of death is a party, and which challenges, defends, or otherwise relates to the validity or execution of a decreed death sentence.

(b) **Certificate of Death Penalty Case.** Within 7 days after initiation in this court or a district court of this circuit of a proceeding challenging a federal or state court judgment imposing a death sentence, the government and each party to that proceeding who was sentenced to death must file with the circuit clerk a Certificate of Death Penalty Case form.

(c) **Stay of Execution and Motion to Vacate an Order Granting Stay of a Federal or State Court Judgment.**

(1) **Automatic Stay.** In any case in which a death sentence has been imposed by a

federal or state court within the circuit, execution of the death sentence is automatically stayed upon (A) the filing of a direct appeal from a judgment imposing a death sentence, or (B) the filing of a notice of appeal from the denial of either the first application for a writ of habeas corpus or the first motion under 28 U.S.C. § 2255. The clerk must promptly enter an order implementing the stay. Unless vacated or modified, the stay provided by this subparagraph remains in effect until the issuance of this court's mandate. A party seeking to extend the stay of execution pending the filing of a petition for certiorari must also seek to stay the mandate under FRAP 41.

(2) Other Stays; Duration. Any judge of a panel assigned to a death penalty case may order a stay of any duration up to the issuance of the mandate. A party seeking to extend the stay of execution pending the filing of a petition for certiorari must also seek to stay the mandate under FRAP 41.

(3) Stays in Relation to a Petition for Rehearing.

(A) A petition for rehearing, when accompanied by a petition for rehearing en banc, is circulated simultaneously to all active judges and the panel assigned to the death penalty case. A judge participating in the petition for rehearing en banc may immediately vote on a stay of execution of a death sentence, without waiting for the assigned panel to act on the petition for rehearing.

(B) A stay of execution of a death sentence pending disposition of a petition for rehearing, when accompanied by a petition for rehearing en banc, is granted upon the affirmative vote of any two judges eligible to participate in rehearing en banc.

(4) Documents Required for Motions for Stay or to Vacate Stay. On a motion for a stay of execution of a death sentence or to vacate a stay, the movant must attach a copy of each document listed below (if it exists) to the original and to each copy of the motion, except in the following circumstances: (A) if time does not permit, in which case the movant must file the required attachments as soon as possible; or (B) if the motion reports the stated intention of the State or the U.S. Attorney not to oppose a temporary stay for the purpose of deciding the motion, in which case the movant must file the necessary attachments within 10 days after filing the motion.

- The indictment or other accusatory instrument;
- The judgment of conviction containing the sentence of death;
- The application or complaint filed in the district court;
- The opinion of the district court setting forth the reasons for granting or denying relief;

- The district court judgment granting or denying relief;
- The district court order granting or denying a stay, and the statement of reasons for its action;
- The certificate of appealability or order denying a certificate of appealability;
- Each state or federal court opinion or judgment bearing on the issues presented in the motion in cases in which the appellant was a party;
- The docket entries of the district court; and
- The notice of appeal.

(5) **Emergency Motion.** An emergency motion for a stay must be filed in accordance with LR 27.1(d). The motion must contain a brief account of this court's prior actions, if any, and the name of the judge or judges involved in those prior actions.

(6) **Filing with the Clerk.** All stay motions must be filed with the clerk. If the court orders a stay of execution, the clerk will issue a written order in the name of the court specifying the duration of the stay.

(7) **Off-Hours Filing.** When a notice of appeal is filed in a death penalty case, the clerk designates a staff member to receive emergency stay motions during nonbusiness hours. The staff member immediately advises the panel assigned to the death penalty case of the filing of an emergency stay motion.

(8) **Limits on Stays of Execution.** Notwithstanding any provision of this paragraph (c), this court will not grant or maintain stays of execution except in accordance with federal statutes or other governing law.

IOP 47.1 Death Penalty Cases; Administration

(a) **Monitoring of Death Penalty Cases.** The clerk is authorized to monitor any case within this circuit with a scheduled execution date, and to communicate with all parties and relevant state and federal courts. If the parties submit documents to the clerk before filing a notice of appeal, the clerk will docket the documents under a miscellaneous docket. The clerk closes the miscellaneous docket case upon the opening of a regularly docketed death penalty case, or upon other final disposition of the case without its reaching this court.

(b) Death Penalty Case Pool and Panels.

(1) Death Penalty Case Pool. The death penalty case pool consists of all active judges of the court and those senior judges who have filed with the clerk a statement of willingness to serve on death penalty case panels.

(2) Death Penalty Case Panel. On receipt of a notice of appeal or a request for a certificate of appealability, or other application to this court for relief in a death penalty case, the clerk dockets the case and assigns it to a death penalty case panel.

(3) Selection. The clerk assigns judges to death penalty case panels by random drawing from the death penalty case pool. If a judge is unable to serve, that judge's name returns to the pool after the drawing of a replacement. If a random drawing results in the selection of three senior judges, the clerk sets aside the third senior judge's name and continues drawing until the selection of an active judge's name, after which the clerk returns the third senior judge's name, and the names of any senior judges drawn thereafter, to the pool.

(4) Rotation. A judge who serves on a death penalty case panel is not eligible to serve again until the pool is exhausted. When the pool is exhausted, the clerk prepares a new death penalty case pool and selects death penalty case panels from the pool in like manner.

(5) Replacement. If any judge serving on a death penalty case panel is unable to continue to serve, the clerk draws a replacement from the death penalty case pool, and returns the replaced judge's name to the pool.

(6) Duties of Death Penalty Case Panel. A panel assigned to a particular death penalty case handles all matters pertaining to that case, including the direct appeals of co-defendants, at least to the extent that they involve issues in common.

(c) Request for Certificate of Appealability. The clerk initially refers a request for a certificate of appealability to a single judge of the panel assigned to a death penalty case, who has authority to issue the certificate. If the single judge denies the certificate, the clerk refers the application to the full panel for disposition by majority vote.

INTERNAL OPERATING PROCEDURES

IOP A Name

The name of the court is "United States Court of Appeals for the Second Circuit." *See* 28 U.S.C. §§ 41, 43(a).

IOP B Seal

The seal of the court is:

IOP C Website

The court maintains an Internet website at www.ca2.uscourts.gov. The website provides information about the organization and operation of the court, including announcements and notices about rule changes. The website also contains links to the court's calendar, docket, audio recordings of oral arguments, decisions, rules, instruction booklets, and all of the forms identified in the local rules.

IOP D Terms, Sessions

The court holds a continuous annual term commencing in August or September as the court may designate, and ending the day before the first day of the next term. The court holds sessions in New York, New York, at times it designates, and at other locations and times as the court directs. *See* 28 U.S.C. §§ 46, 48.

IOP E Quorum

(a) A quorum is a majority of a panel or of the court en banc. *See* 28 U.S.C. § 46. If less than a quorum is present at any court session, any judge who attends may adjourn the session, or, if no judge is present, the clerk may adjourn the session.

(b) After a matter has been assigned to a three-judge panel, if for any reason a panel judge ceases to participate in consideration of the matter, the two remaining judges may – if they agree – decide the matter, or may request the clerk to designate a third judge by random selection. If a third judge is designated, the clerk will advise the parties. Additional briefs and argument are not permitted unless the court orders otherwise.

IOP F Clerk's Office; Mail; Hours

The clerk's office is located at 40 Foley Square, New York, New York 10007, and the mailing address is the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007. The office is open from 9:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays, legal holidays, and any other days the chief judge may designate.

IOP G Fees

The clerk charges fees and costs in accordance with 28 U.S.C. § 1913, as posted on this court's website. When fees are payable to this court, payee name is "United States Court of Appeals for the Second Circuit."

IOP H Library

This court's library is open to all federal court personnel, federal government lawyers and their staff, and members of the federal bar. The library is open during such hours as reasonable needs require and is governed by such regulations as the circuit librarian, with the approval of the court, may prescribe. Books and other materials may not be removed from the building.

IOP I Circuit Judicial Administration

(a) **Judicial Council.** The Second Circuit Judicial Council, as authorized by 28 U.S.C. § 332, is composed of the chief circuit judge, the six most senior active circuit judges, and the six chief district judges of the circuit. The chief circuit judge regularly convenes council meetings to set circuit judicial policy and to consider and take required action on any matter affecting the administration of justice within the circuit.

(b) **Circuit Executive.** In accordance with 28 U.S.C. § 332(e), the circuit executive performs administrative work for the judicial council and carries out the duties the council delegates to the circuit executive.

(c) **Judicial Conference.**

(1) **Purpose.** In accordance with 28 U.S.C. § 333, the chief judge may periodically convene a circuit judicial conference to consider the business of the courts and to advise means of improving the administration of justice within the circuit.

(2) **Composition.** The chief judge may invite only judges to the conference, or may also invite members of the bar in accordance with rules established by the circuit judicial council. The chief judge may designate a portion of the conference as an executive session, attended by only the judges and other individuals that the chief judge invites.

(3) **Administration.** Subject to the direction of the chief judge and the judicial council, the judicial conference is administered by the circuit executive, who may be assisted by court staff and by a planning committee of judges and individual members of the bar, selected at the discretion of the chief judge.

APPENDIX

PART A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
CRIMINAL JUSTIC ACT PLAN

Effective: March 9, 2022

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the Guide to Judiciary Policy, Volume 7A, the United States Court of Appeals for the Second Circuit adopts this Plan for furnishing representation in the Court of Appeals for any person financially unable to obtain adequate representation consistent with the CJA.

I. STATEMENT OF POLICY

The objectives of this Plan are to attain the goal of equal justice under the law for all persons; to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and the Guide, Vol. 7A, in a way that meets the needs of this Court.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

To ensure compliance with this Plan, the Court, the Clerk of Court, all federal public defender or community defender organizations, attorneys provided by a bar association or legal aid agency, and private attorneys appointed under the CJA must comply with the Guide, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan. The Court will also ensure that a current copy of this Plan is made available on the Court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys ("CJA panel").

II. PREPARATION AND MAINTENANCE OF CJA PANEL

A. Appointment to the CJA Panel

1. The Court administers this Plan with the assistance of the Court's CJA Committee and the Court-appointed CJA Attorney Advisory Group ("AAG").

The AAG primarily reviews applications for membership on the CJA panel and otherwise promotes the furnishing of representation pursuant to this Plan. The AAG consists of the Attorney-in-Charge of the Appeals Bureau of the Federal Defenders of New York and twelve other attorneys selected by the Court for terms not to exceed three years who will collectively represent all the districts in the Circuit. The members of the AAG must be admitted to practice in this Court and may not be members of the CJA panel.

2. In death penalty appeals, the Chair of the CJA Committee must consult with the Chair of the AAG and either the relevant district's Federal Public Defender organization or the Defender Services Office of the Administrative Office of the United States Courts (AO) regarding the appointment of learned counsel and additional counsel.

3. A private attorney seeking to be included on the CJA panel must apply for membership on the panel. When seeking applications to the panel, the Court publishes an announcement on the Second Circuit Court of Appeals website with application instructions. Applicants must be members in good standing of the bar of the Court, and must have demonstrated experience in and knowledge of Title 18 and the habeas corpus provisions of Title 28 of the United States Code, the Federal Rules of Appellate Procedure (FRAP), the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Court's Local Rules (LRs) and Internal Operating Procedures (IOPs), the United States Sentencing Guidelines, and other relevant federal law.

4. The Court appoints attorneys to the CJA panel upon appropriate recommendation from the Committee, after consultation with the AAG. Panel members are selected based on demonstrated qualification, skill, and dedication. One factor in selection is whether the applicant maintains an office within the Circuit.

5. CJA panel members serve for a term not to exceed three years, but may be removed by the Court prior to the expiration of their term. Terms are staggered so that the terms of approximately one-third of panel members expire each year. Upon expiration of his or her term, a CJA panel member must reapply for membership to continue as a member of the CJA panel.

6. The Clerk of Court maintains a list of CJA panel members. Attorneys appointed to the CJA panel must notify the Clerk of Court within 48 hours of any changes in business address, business telephone number, e-mail address, or employment.

B. Removal from the CJA Panel

1. The Court may remove a CJA panel member from the CJA panel if it determines that the member has failed to satisfactorily fulfill the obligations of panel membership, including the duty to afford competent counsel, or that the member has engaged in other conduct that renders inappropriate the attorney's continued service on the CJA panel.

2. The Court may remove a CJA panel member for refusing to serve as appointed counsel for three separate cases during the membership term.

3. A CJA panel member is suspended automatically if the member is disbarred or suspended by any state or federal bar, or is arrested for, charged with, or convicted of a crime. A CJA panel member must notify the Clerk of Court in writing within 24 hours of any such suspension, disbarment, arrest, or filing of criminal charges or conviction. *See also* LR 46.2. Disbarment or suspension by any state or federal bar or conviction of a crime also constitutes grounds for automatic removal from the CJA panel.

C. Complaints concerning the conduct of CJA panel members should be submitted to the Clerk of Court. If the CJA Committee determines that a complaint alleges facts that, if true, would warrant consideration of removal of the CJA panel member, or that other facts exist potentially warranting removal of a panel member, the CJA Committee may direct the AAG to review the complaint, or make such other inquiry as it deems appropriate, and to issue a report of its findings and recommendations to the Committee.

D. CJA panel members may select, with acquiescence from the Chief Judge, a member of the CJA panel to serve as the CJA panel representative to the Court.

III. DETERMINATION OF NEED FOR APPOINTED COUNSEL

A. In all cases in which the district court found the defendant to be financially unable to obtain adequate representation, the Court may accept this finding and appoint or continue an attorney without further proof, except as noted in FRAP 24(a)(3). If the defendant appears pro se, the Clerk of Court must notify the defendant that he or she has a right to the appointment of an attorney under the CJA.

B. When a request for the appointment of an attorney under the CJA is made for the first time on appeal, the Court must find that the CJA applicant is financially unable to retain counsel consistent with the Guide, Vol. 7A § 210.40.

C. The Court may, at any time after the appointment of counsel, re-examine the financial status of a CJA client[1]. If the Court finds that a CJA client is financially able to obtain counsel or make partial payment for the CJA client's representation, the appointment should be terminated, or partial payment required. If a CJA attorney learns any information indicating that a CJA client can make payment in whole or in part for legal services, the CJA attorney must report such information promptly to the Clerk of Court so that appropriate action may be taken.

[1] "CJA client" is used throughout this Plan to refer to a person for whom counsel has been appointed under the CJA.

IV. APPOINTMENT OF COUNSEL

A. Counsel appointed under the CJA to represent a CJA client in the district court must continue such representation on appeal unless relieved by order of the Court. *See* LR 4.1.

B. In all cases on appeal in which the CJA requires appointment of an attorney, the Court must appoint a CJA panel member to represent the defendant within a reasonable time after the appeal is docketed.

C. When the Court determines that the appointment of an attorney who is not a member of the CJA panel is appropriate, the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the CJA client.

D. Retained counsel, regardless of membership on the CJA panel, may seek to be appointed under the CJA but must provide financial documentation as specified in Section III.

E. In appeals involving more than one defendant entitled to representation under the CJA, the Court should normally appoint separate CJA counsel to represent each defendant unless the circumstances do not so warrant.

F. The Court may, at any point in the appellate proceedings, substitute one appointed counsel for another. Total compensation to all counsel is subject to the maximum permitted by the CJA. Appointed counsel replaced by such substitution must, absent the Court's approval of interim payment, await the final disposition of the appeal before submitting a claim for compensation.

V. DUTIES OF APPOINTED COUNSEL

A. CJA trial counsel must advise a defendant of the right to appeal and of the obligation to file a timely notice of appeal. CJA trial counsel must file such notice of appeal, unless the CJA client states that a notice of appeal should not be filed. When appropriate, CJA trial counsel must also file CJA Form 24 with the district court for the furnishing of the reporter's transcript at the expense of the United States.

B. A CJA attorney must file an Oral Argument Statement Form in compliance with LR 34.1(a). It is expected that a CJA attorney will request oral argument in most criminal appeals. A CJA attorney must appear for any scheduled oral argument unless excused by the Court.

C. A CJA attorney must furnish all papers relating to the CJA client's appeal to the client, including all the Court's opinions and orders.

D. A CJA attorney may use and claim compensation for the services of other attorneys as follows:

1. In non-capital cases, a CJA attorney may use and claim compensation for the services of an associate or partner. A CJA attorney may use and claim compensation for the services of an unaffiliated attorney only with prior Court authorization. The CJA attorney is expected to serve as the lead attorney throughout the representation. Claims for compensation must not exceed the maximum compensation allowed by the CJA.

2. In capital cases, a CJA attorney may use and claim compensation for the services of attorneys who work in association with them, with prior Court authorization, provided that the use of such additional counsel diminishes the total cost of representation or is required to meet time limits. *See* Guide, Vol. 7A § 620.10.

E. In the event of a decision adverse to a CJA client in this Court, the CJA attorney must: promptly transmit to the CJA client a copy of the Court's decision; advise the CJA client in writing of the right to file a petition for panel rehearing or rehearing en banc in this Court and a petition for a writ of certiorari with the United States Supreme Court; inform the CJA client of the CJA attorney's opinion as to the merit and likelihood of success of such petitions; and if requested to do so, file such petitions. A CJA attorney who has reasonable grounds to believe that a petition would have no likelihood of success may file a motion to withdraw under LR 4.1. In the event the CJA attorney moves to withdraw after the CJA client has requested that a petition for rehearing or rehearing en banc be filed, the attorney must include in the motion to withdraw a request on behalf of the CJA client for an extension of time of 30 days for the CJA client to petition pro se for rehearing or rehearing en banc. If the Court relieves the CJA attorney, he or she must, within 48 hours after such motion is granted, so advise the CJA client in writing and inform the CJA client concerning the procedures for filing a petition for panel rehearing, rehearing en banc, and a writ of certiorari pro se.

F. If an adverse party petitions for panel rehearing, rehearing en banc, or a writ of certiorari to review a judgment of this Court, the CJA attorney must take all necessary steps to oppose the petition. Unless the Court requests, no response to a petition for panel rehearing or rehearing en banc is permitted to be filed. FRAP 35(e), 40(a)(3).

G. A CJA attorney must continue to represent a CJA client in the district court upon remand unless relieved.

VI. WITHDRAWAL OR RELEASE OF APPOINTED COUNSEL

A. A CJA attorney who represented a CJA client in the district court and who wishes to be relieved from representing the CJA client on appeal must follow the requirements of LR 4.1. The district court may also relieve counsel appointed under the CJA by substituting new counsel. Once the notice of appeal is filed, only the Court of Appeals may assign or relieve counsel.

B. A CJA attorney who seeks to be relieved on the grounds that there is no

nonfrivolous issue to be raised on appeal must follow the procedures of *Anders v. California*, 386 U.S. 738 (1967).

C. A CJA attorney seeking to withdraw following an adverse decision of this Court and to be relieved of the obligation to file a petition for a writ of certiorari with the U.S. Supreme Court based upon reasonable grounds to believe that the petition would have no likelihood of success must follow the requirements of LR 4.1(c).

D. A CJA client seeking to have a CJA attorney relieved or to have substitute CJA counsel appointed must file a motion setting forth compelling reasons for the requested action and giving a detailed account of the facts justifying the request. The Court will deny the motion absent compelling circumstances.

VII. PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

A. A CJA attorney may request or accept payment from or on behalf of a CJA client for representation in this Court only upon prior authorization of the Court and pursuant to the requirements of the Act. *See* 28 U.S.C. § 3006A(f).

B. A CJA attorney seeking compensation for the representation of a CJA client in this Court must submit the relevant CJA eVoucher in accordance with the rules, regulations, and forms promulgated by the AO. Unless a judge otherwise orders, a claim for compensation and reimbursement of expenses must be submitted no later than 45 days after [i] a mandate has issued; [ii] termination of the case in the district court or in the Court of Appeals if the appeal is from an interlocutory order or results in remand to the district court; or [iii] termination of the representation if the representation is terminated before issuance of the mandate or termination of the case and a motion for interim payment is filed. The Clerk of Court must forward all approved statements to the AO for payment.

C. The maximum hourly rate must not exceed the amount provided by statute and Judicial Conference policy.

D. The maximum payment for counsel per case must not exceed the amount provided by statute and Judicial Conference policy unless authorized by the Court as described in Section VII(E) of this Plan.

E. Upon application, a judge of this Court may certify compensation in excess of the compensation maximums set by statute and Judicial Conference policy. A CJA attorney submitting a voucher in excess of the compensation maximum must submit CJA Form 27. The certifying judge must forward the application for excess compensation to the Chief Judge or Chief Judge's designee along with a recommendation for approval or denial.

F. On motion of a CJA attorney, a judge of this Court may authorize interim payments when necessary and appropriate in a specific case. The Chief Judge or the Chief

Judge's designee must approve the interim payment.

G. A judge reviewing a pending voucher who intends to reduce a claim for compensation will provide the CJA attorney prior notice of the proposed reduction with a statement of reasons. Reductions in claimed compensation should be limited to: mathematical errors; instances in which work billed was not compensable; instances in which work was not undertaken or completed; and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. CJA counsel may submit a response within 10 days of the notice. CJA counsel may appeal a voucher reduction determination to the Court's CJA Independent Review Committee ("IRC"). The IRC will consist of a senior circuit judge, the Chair of the AAG, and two other members of the AAG selected by the AAG Chair in consultation with the senior judge. The CJA case-budgeting attorney will serve ex officio to act as an administrative coordinator. The IRC establishes procedures for reviewing vouchers consistent with the *Guide*, Vol. 7A § 230.33.40 and the requirements under 18 U.S.C. § 3006(A)(d). The IRC files a report and recommendation to the Chief Judge, and the Chief Judge's determination is final.

H. Only an appointed attorney may claim compensation under the CJA. An appointed attorney may claim compensation for an affiliated or unaffiliated attorney, consistent with the Guide, Vol. 7A §§ 230.53.10, 620.10 and Section V(D) of this Plan. The total compensation provided for the representation of the CJA client must remain within the maximum compensation allowed by the CJA.

I. When expert services are required, a CJA attorney must consult with the Second Circuit's case budgeting attorney.

J. Reasonable out-of-pocket expenses may be claimed if itemized and suitably documented. Supporting documentation is required for single item expenses of $50 or more.

K. CJA counsel is entitled to reimbursement for expenses reasonably incurred for travel consistent with the Guide, Vol. 7A § 230.60 and § 230.63.40.

VIII. MISCELLANEOUS

A. The forms prepared and furnished by the AO must be used, where applicable, in all proceedings under this Plan.

B. The Court will make such reports on the implementation of the CJA as prescribed by the Judicial Conference of the United States or a committee thereof.

C. This Plan is intended only as a description of the procedures this Court will follow; it does not create any rights as against any individual or institution.

D. The Court may make amendments to this Plan as needed.

PART B

SECOND CIRCUIT GUIDELINES CONCERNING CAMERAS IN THE COURTROOM

Pursuant to a resolution of the Judicial Conference of the United States adopted on March 12, 1996, authorizing each court of appeals to "decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt," the Court hereby adopts the following Guidelines:

1. **Exercise of local option.** From the date of these Guidelines until further order of this Court, proceedings of the Court conducted in open court may be covered by the media using a television camera, sound recording equipment, and a still camera (hereafter referred to a "camera coverage"), subject to these Guidelines.

2. **Applicable guidelines.** Camera coverage must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference, and these Guidelines of the Second Circuit Court of Appeals.

3. **Eligible proceedings.** Camera coverage is allowed for all proceedings conducted in open court, except for criminal matters. See Fed. R. Crim. P. 53, 54(a). For purposes of these Guidelines, "criminal matters" include not only direct appeals of criminal convictions but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as a habeas corpus petition). Camera coverage is not permitted for pro se matters, whether criminal or civil. On any day when camera coverage is to occur, the Clerk's Office will endeavor to schedule civil and non-pro se matters ahead of criminal and pro se matters. Camera coverage operators will remain seated, away from their equipment, and their equipment will be turned off, during criminal and pro se proceedings.

4. **News media pooling.** Camera coverage will be permitted by any person or entity regularly engaged in the gathering and dissemination of news (hereinafter "news media"). If coverage is sought by more than one person or entity, a pool system must be used (one for still photography and one for radio and television). It will be the responsibility of the news media to resolve any disputes among them as to which personnel will operate equipment in the courtroom. In the absence of an agreement, camera coverage will not be permitted for that day's proceedings. The television pictures, audio signals, and still photographs of court proceedings made by pool personnel must be made available to any news media requesting them upon payment of a reasonable fee to the employer of the pool personnel to share the costs of the pool personnel.

5. **Educational institutions.** The Court may also authorize the coverage of court proceedings and access to pooled coverage by educational institutions.

6. **Prior notification requirement.** News media interested in camera coverage of any court proceeding must notify the Court's calendar clerk no later than noon two days preceding the day of the proceeding to be covered (i.e., notification must be made by noon on Tuesday to cover a proceeding on Thursday, or by noon Friday for the following Monday). A calendar of the following week's cases is made public by the Court each Thursday. For good cause shown, relief from this notification requirement may be granted by the presiding judge of a panel.

7. **Discretion of Panel.** The panel assigned to hear oral argument will retain the authority, in its sole discretion, to prohibit camera coverage of any proceeding, and will normally exercise this authority upon the request of any member of the panel.

8. **Technical restrictions.** Only two television cameras and one still camera will be permitted in the courtroom. The television cameras and the still camera must each be mounted on a tripod and remain at a fixed location along a side wall of the courtroom throughout the proceeding. The still camera must either be capable of silent operation (shutter and film advance) or be enclosed in a sound-muffling device (so-called "blimp"). No artificial lighting is permitted. An unobtrusive microphone may be mounted at the attorney's lectern and in front of each judge. A sound technician may be present in the courtroom with unobtrusive sound-mixing equipment. The Clerk's Office will designate a location for a device outside the courtroom to enable news media to obtain "feeds" of video and audio signals. All camera coverage equipment must be set up prior to the opening of a day's proceedings and may not be removed until after the conclusion of the day's proceedings. If done unobtrusively, film used by the still camera operator and film or tape used by the video camera operator may be removed from the courtroom at the conclusion of the oral argument of a particular case. Operators of camera coverage equipment in the courtroom will wear business attire.

   When operational, the Court's videoconferencing equipment may be used for purposes of camera coverage.

9. **Authority of presiding judge.** The presiding judge of the panel may direct the cessation of camera coverage or the removal of camera coverage personnel from the courtroom in the event of noncompliance with these Guidelines.

10. **Personnel to contact.** The Court’s Calendar Supervisor, or alternate designated in her absence, can be reached at (212) 857-8591 or 8596.

Adopted March 27, 1996
Updated October 1, 2019

FEDERAL RULES

OF

APPELLATE PROCEDURE

WITH FORMS

DECEMBER 1, 2022

Printed for the use
of

THE COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

117TH CONGRESS
2nd Session

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No. 9

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OF

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FOREWORD

This document contains the Federal Rules of Appellate Procedure together with forms, as amended to December 1, 2022. The rules and forms have been promulgated and amended by the United States Supreme Court pursuant to law, and further amended by Acts of Congress. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 28, United States Code, following the particular rule to which they relate.

Chairman, Committee on the Judiciary.

DECEMBER 1, 2022.

AUTHORITY FOR PROMULGATION OF RULES

TITLE 28, UNITED STATES CODE

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648, eff. Dec. 1, 1988; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988; amended Pub. L. 103–394, title I, §104(e), Oct. 22, 1994, 108 Stat. 4110.)

§2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988.)

§2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

(Added Pub. L. 88–623, §1, Oct. 3, 1964, 78 Stat. 1001; amended Pub. L. 95–598, title II, §247, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 103–394, title I, §104(f), Oct. 22, 1994, 108 Stat. 4110; Pub. L. 109–8, title XII, §1232, Apr. 20, 2005, 119 Stat. 202.)

HISTORICAL NOTE

The Supreme Court prescribes Federal Rules of Appellate Procedure pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV ''Rules Enabling Act'' of Pub. L. 100–702 (approved November 19, 1988, 102 Stat. 4648), effective December 1, 1988, and section 2075 of Title 28. Pursuant to section 2074 of Title 28, the Supreme Court transmits to Congress (not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective) a copy of the proposed rule. The rule takes effect no earlier than December 1 of the year in which the rule is transmitted unless otherwise provided by law.

Prior to enactment of Pub. L. 100–702, the Supreme Court promulgated Federal Rules of Appellate Procedure pursuant to section 3772 of Title 18 and sections 2072 and 2075 of Title 28 of the United States Code. Pursuant to this authority the Rules of Appellate Procedure were adopted by order of the Court on December 4, 1967, transmitted to Congress by the Chief Justice on January 15, 1968, and became effective on July 1, 1968 (389 U.S. 1063; Cong. Rec., vol. 114, pt. 1, p. 113, Exec. Comm. 1361; H. Doc. 204, 90th Cong.). Effective December 1, 1988, section 3772 of Title 18 and former section 2072 of Title 28 were repealed and supplanted by new sections 2072 and 2074 of Title 28, see first paragraph of Historical Note above.

By the same order, the Court abrogated several rules relating to appellate procedure formerly contained in the Rules of Criminal Procedure for the District Courts and the Rules of Civil Procedure for the District Courts.

Amendments were adopted by the Court by order dated March 30, 1970, transmitted to Congress by the Chief Justice on the same day, and became effective July 1, 1970 (398 U.S. 971; Cong. Rec., vol. 116, pt. 7, p. 9861, Exec. Comm. 1838; H. Doc. 91–290). The amendments affected Rules 30(a), (c) and 31(a).

Additional amendments were adopted by the Court by order dated March 1, 1971, transmitted to Congress by the Chief Justice on the same day, and became effective July 1, 1971 (401 U.S. 1029; Cong. Rec., vol. 117, pt. 4, p. 4629, Exec. Comm. 341; H. Doc. 92–57). The amendments affected Rules 26(a) and 45(a).

An additional amendment was adopted by the Court by order dated April 24, 1972, transmitted to Congress by the Chief Justice on the same day, and became effective October 1, 1972 (406 U.S. 1005; Cong. Rec., vol. 118, pt. 11, p. 14262, Exec. Comm. 1903; H. Doc. 92–285). The amendment affected Rule 9(c).

Additional amendments were adopted by the Court by order dated April 30, 1979, transmitted to Congress by the Chief Justice on the same day, and became effective August 1, 1979 (441 U.S. 969; Cong. Rec., vol. 125, pt. 8, p. 9366, Exec. Comm. 1456; H. Doc. 96–112). The amendments affected Rules 1(a), 3(c), (d), (e), 4(a), 5(d), 6(d),

7, 10(b), 11(a), (b), (c), (d), 12, 13(a), 24(b), 27(b), 28(g), (j), 34(a), (b), 35(b), (c), 39(c), (d), and 40.

Section 210 of Public Law 98–473 (approved October 12, 1984, 98 Stat. 1987) amended Rule 9(c).

Additional amendments were adopted by the Court by order dated March 10, 1986, transmitted to Congress by the Chief Justice on the same day (475 U.S. 1153; Cong. Rec., vol. 132, pt. 3, p. 4267, Exec. Comm. 2971; H. Doc. 99–179), and became effective July 1, 1986. The amendments included new Rules 3.1, 5.1, and 15.1, and affected Rules 3(d), 8(b), 10(b), (c), 11(b), 12(a), 19, 23(b), (c), 24(a), 25(a), (b), 26(a), (c), 28(c), (j), 30(a), (b), (c), 31(a), (c), 34(a), (e), 39(c), (d), 43(a), (c), 45(a), (b), (d), and 46(a), (b).

Section 7111 of Public Law 100–690 (approved November 18, 1988, 102 Stat. 4419) amended Rule 4(b).

Additional amendments were adopted by the Court by order dated April 25, 1989, transmitted to Congress by the Chief Justice on the same day (490 U.S. 1125; Cong. Rec., vol. 135, pt. 6, p. 7542, Exec. Comm. 1058; H. Doc. 101–53), and became effective December 1, 1989. The amendments affected Rules 1(a), 3(a), 26(a), 27(a), and 28(g) and included new Rules 6 and 26.1 and a new Official Form 5.

Additional amendments were adopted by the Court by order dated April 30, 1991, transmitted to Congress by the Chief Justice on the same day (500 U.S. 1007; Cong. Rec., vol. 137, pt. 7, p. 9721, Ex. Comm. 1192; H. Doc. 102–79), and became effective December 1, 1991. The amendments affected Rules 4(a), 6, 10(c), 25(a), 26(a), 26.1, 28(a), (b), (h), 30(b), and 34(d).

Additional amendments were adopted by the Court by order dated April 22, 1993, transmitted to Congress by the Chief Justice on the same day (507 U.S. 1059; Cong. Rec., vol. 139, pt. 6, p. 8127, Ex. Comm. 1100; H. Doc. 103–72), and became effective December 1, 1993. The amendments affected Rules 3, 3.1, 4, 5.1, 6, 10, 12, 15, 25, 28, and 34, and Forms 1, 2, and 3.

Additional amendments were adopted by the Court by order dated April 29, 1994, transmitted to Congress by the Chief Justice on the same day (511 U.S. 1155; Cong. Rec., vol. 140, pt. 7, p. 8903, Ex. Comm. 3082; H. Doc. 103–247), and became effective December 1, 1994. The amendments affected Rules 1, 3, 5, 5.1, 9, 13, 21, 25, 26.1, 27, 28, 30, 31, 33, 35, 38, 40, 41, and 48.

Additional amendments were adopted by the Court by order dated April 27, 1995, transmitted to Congress by the Chief Justice on the same day (514 U.S. 1137; Cong. Rec., vol. 141, pt. 8, p. 11745, Ex. Comm. 809; H. Doc. 104–66), and became effective December 1, 1995. The amendments affected Rules 4, 8, 10, and 47.

Additional amendments were adopted by the Court by order dated April 23, 1996, transmitted to Congress by the Chief Justice on the same day (517 U.S. 1255; Cong. Rec., vol. 142, pt. 6, p. 8831, Ex. Comm. 2489; H. Doc. 104–203), and became effective December 1, 1996. The amendments affected Rules 21, 25, and 26.

Section 103 of Public Law 104–132 (approved April 24, 1996, 110 Stat. 1218) amended Rule 22.

Additional amendments were adopted by the Court by order dated April 24, 1998, transmitted to Congress by the Chief Justice on the same day (523 U.S. 1147; Cong. Rec., vol. 144, pt. 6, p. 8652,

Ex. Comm. 9072; H. Doc. 105–269), and became effective December 1, 1998. The amendments affected Rules 1 to 48 and Form 4.

Additional amendments were adopted by the Court by order dated April 29, 2002, transmitted to Congress by the Chief Justice on the same day (535 U.S. 1123; Cong. Rec., vol. 148, pt. 5, p. 6813, Ex. Comm. 6622; H. Doc. 107–206), and became effective December 1, 2002. The amendments affected Rules 1, 4, 5, 21, 24, 25, 26, 26.1, 27, 28, 31, 32, 36, 41, 44, and 45 and included a new Official Form 6.

Additional amendments were adopted by the Court by order dated March 27, 2003, transmitted to Congress by the Chief Justice on the same day (538 U.S. 1071; Cong. Rec., vol. 149, pt. 6, p. 7689, Ex. Comm. 1496; H. Doc. 108–59), and became effective December 1, 2003. The amendments affected Forms 1, 2, 3, and 5.

Additional amendments were adopted by the Court by order dated April 25, 2005, transmitted to Congress by the Chief Justice on the same day (544 U.S. 1151; Cong. Rec., vol. 151, pt. 7, p. 8784, Ex. Comm. 1907; H. Doc. 109–24), and became effective December 1, 2005. The amendments affected Rules 4, 26, 27, 28, 32, 34, 35, and 45, and added new Rule 28.1.

Additional amendments were adopted by the Court by order dated April 12, 2006, transmitted to Congress by the Chief Justice on the same day (547 U.S. 1221; Cong. Rec., vol. 152, pt. 6, p. 7213, Ex. Comm. 7318; H. Doc. 109–106), and became effective December 1, 2006. The amendments affected Rule 25 and added new Rule 32.1.

An additional amendment was adopted by the Court by order dated April 30, 2007, transmitted to Congress by the Chief Justice on the same day (550 U.S. 983; Cong. Rec., vol. 153, pt. 8, p. 10611, Ex. Comm. 1374; H. Doc. 110–24), and became effective December 1, 2007. The amendment affected Rule 25.

Additional amendments were adopted by the Court by order dated March 26, 2009, transmitted to Congress by the Chief Justice on March 25, 2009 (556 U.S. 1291; Cong. Rec., vol. 155, pt. 8, p. 10210, Ex. Comm. 1263; H. Doc. 111–28), and became effective December 1, 2009. The amendments affected Rules 4, 5, 6, 10, 12, 15, 19, 22, 25, 26, 27, 28.1, 30, 31, 39, and 41, and added new Rule 12.1.

Additional amendments were adopted by the Court by order dated April 28, 2010, transmitted to Congress by the Chief Justice on the same day (559 U.S. 1119; Cong. Rec., vol. 156, pt. 6, p. 8139, Ex. Comm. 7474; H. Doc. 111–112), and became effective December 1, 2010. The amendments affected Rules 1, 4, and 29, and Form 4.

Additional amendments were adopted by the Court by order dated April 26, 2011, transmitted to Congress by the Chief Justice on the same day (563 U.S. 1045; Cong. Rec., vol. 157, pt. 6, p. 7770, Ex. Comm. 1663; H. Doc. 112–30), and became effective December 1, 2011. The amendments affected Rules 4 and 40.

Additional amendments were adopted by the Court by order dated April 16, 2013, transmitted to Congress by the Chief Justice on the same day (569 U.S. 1125; Cong. Rec., vol. 159, pt. 5, p. 6968, Ex. Comm. 1493; H. Doc. 113–27), and became effective December 1, 2013. The amendments affected Rules 13, 14, 24, 28, and 28.1 and Form 4.

An additional amendment was adopted by the Court by order dated April 25, 2014, transmitted to Congress by the Chief Justice on the same day (572 U.S. 1161; Cong. Rec., vol. 160, pt. 11, p. 15506,

Ex. Comm. 7577; H. Doc. 113–161), and became effective December 1, 2014. The amendment affected Rule 6.

Additional amendments were adopted by the Court by order dated April 28, 2016, transmitted to Congress by the Chief Justice on the same day (578 U.S. 1031; Cong. Rec., vol. 162, pt. 4, p. 5467, Ex. Comm. 5234; H. Doc. 114–129), and became effective December 1, 2016. The amendments affected Rules 4, 5, 21, 25, 26, 27, 28, 28.1, 29, 32, 35, and 40, and Forms 1, 5, and 6, added Form 7, and added Appendix: Length Limits Stated in the Federal Rules of Appellate Procedure.

An additional amendment was adopted by the Court by order dated April 27, 2017, transmitted to Congress by the Chief Justice on the same day (581 U.S.——; Cong. Rec., vol. 163, p. H4175, Daily Issue, Ex. Comm. 1257; H. Doc. 115–35), and became effective December 1, 2017. The amendment affected Rule 4.

Additional amendments were adopted by the Court by order dated April 26, 2018, transmitted to Congress by the Chief Justice on the same day (584 U.S.——; Cong. Rec., vol. 164, p. H3927, Daily Issue, Ex. Comm. 4788; H. Doc. 115–121), and became effective December 1, 2018. The amendments affected Rules 8, 11, 25, 26, 28.1, 29, 31, 39, and 41, and Forms 4 and 7.

Additional amendments were adopted by the Court by order dated April 25, 2019, transmitted to Congress by the Chief Justice on the same day (587 U.S.——; Cong. Rec., vol. 165, p. H7864, Daily Issue, Ex. Comm. 2226; H. Doc. 116–68), and became effective December 1, 2019. The amendments affected Rules 3, 5, 13, 21, 25, 26, 26.1, 28, 32, and 39.

Additional amendments were adopted by the Court by order dated April 27, 2020, transmitted to Congress by the Chief Justice on the same day (590 U.S.——; Cong. Rec., vol. 166, p. H1964, Daily Issue, Ex. Comm. 4268; H. Doc. 116–119), and became effective December 1, 2020. The amendments affected Rules 35 and 40.

Additional amendments were adopted by the Court by order dated April 14, 2021, transmitted to Congress by the Chief Justice on the same day (593 U.S.——; Cong. Rec., vol. 167, p. H2124, Daily Issue, Ex. Comm. 983; H. Doc. 117–30), and became effective December 1, 2021. The amendments affected Rules 3 and 6, replaced Form 1 with Forms 1A and 1B, and amended Form 2.

Additional amendments were adopted by the Court by order dated April 11, 2022, transmitted to Congress by the Chief Justice on the same day (596 U.S.——; Cong. Rec., vol. 168, p. H4447, Daily Issue, Ex. Comm. 3748; H. Doc. 117–111), and became effective December 1, 2022. The amendments affected Rules 25 and 42.

Committee Notes

Committee Notes prepared by the Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States, explaining the purpose and intent of the amendments are set out in the Appendix to Title 28, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Committee Notes, are set out in the House documents listed above.

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FEDERAL RULES OF APPELLATE PROCEDURE

Effective July 1, 1968, as amended to December 1, 2022

TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Definition; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) Definition. In these rules, 'state'[1] includes the District of Columbia and any United States commonwealth or territory.

(c) Title. These rules are to be known as the Federal Rules of Appellate Procedure.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 2. Suspension of Rules

On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

Rule 3. Appeal as of Right—How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

[1] So in original.

(4) An appeal by permission under 28 U.S.C. §1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as ''all plaintiffs,'' ''the defendants,'' ''the plaintiffs A, B, et al.,'' or ''all defendants except X'';

(B) designate the judgment—or the appealable order—from which the appeal is taken; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

(6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

(8) Forms 1A and 1B in the Appendix of Forms are suggested forms of notices of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding

pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk sends copies, with the date of sending. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 14, 2021, eff. Dec. 1, 2021.)

[Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case] (Abrogated Apr. 24, 1998, eff. Dec. 1, 1998)

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14

days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) **Effect of a Motion on a Notice of Appeal.**

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) **Motion for Extension of Time.**

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.**

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Effect of a Motion on a Notice of Appeal.**

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) **Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) **Jurisdiction.** The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Pub. L. 100–690, title VII, §7111, Nov. 18, 1988, 102 Stat. 4419; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2017, eff. Dec. 1, 2017.)

Rule 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; 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; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 25, 2019, eff. Dec. 1, 2019.)

[Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5)] (Abrogated Apr. 24, 1998, eff. Dec. 1, 1998)

Rule 6. Appeal in a Bankruptcy Case

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) **Applicability of Other Rules.** These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d)(1) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b), but with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13–20, 22–23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to ''Forms 1A and 1B in the Appendix of Forms'' must be read as a reference to Form 5;

(C) when the appeal is from a bankruptcy appellate panel, ''district court,'' as used in any applicable rule, means ''appellate panel''; and

(D) in Rule 12.1, ''district court'' includes a bankruptcy court or bankruptcy appellate panel.

(2) **Additional Rules.** In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) **Motion for Rehearing.**

(i) If a timely motion for rehearing under Bankruptcy Rule 8022 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) If a party intends to challenge the order disposing of the motion—or the alteration or amendment of a judgment, order, or decree upon the motion—then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) **The Record on Appeal.**

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8009—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) **Making the Record Available.**

(i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available in place of the redesignated record. But any party may request at any time during the pendency of the appeal that the redesignated record be made available.

(D) **Filing the Record.** When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(c) Direct Review by Permission Under 28 U.S.C. § 158(d)(2).

(1) **Applicability of Other Rules.** These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3–4, 5(a)(3), 6(a), 6(b), 8(a), 8(c), 9–12, 13–20, 22–23, and 24(b) do not apply;

(B) as used in any applicable rule, ''district court'' or ''district clerk'' includes—to the extent appropriate—a bankruptcy court or bankruptcy appellate panel or its clerk; and

(C) the reference to ''Rules 11 and 12(c)'' in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).

(2) **Additional Rules.** In addition, the following rules apply:

(A) **The Record on Appeal.** Bankruptcy Rule 8009 governs the record on appeal.

(B) **Making the Record Available.** Bankruptcy Rule 8010 governs completing the record and making it available.

(C) **Stays Pending Appeal.** Bankruptcy Rule 8007 applies to stays pending appeal.

(D) **Duties of the Circuit Clerk.** When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(E) **Filing a Representation Statement.** Unless the court of appeals designates another time, within 14 days after entry of the order granting permission to appeal, the attorney who sought permission must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 14, 2021, eff. Dec. 1, 2021.)

Rule 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

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

Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) **Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) **Motion in the Court of Appeals; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other security in the district court.

(b) Proceeding Against a Security Provider. If a party gives security with one or more security providers, each provider submits to the jurisdiction of the district court and irrevocably appoints the district clerk as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly send a copy to each security provider whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Pub. L. 98–473, title II, § 210, Oct. 12, 1984, 98 Stat. 1987; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(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 district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) **Partial Transcript.** Unless the entire transcript is ordered:

(A) the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) **Reporter's Duty to Prepare and File a Transcript.** The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party

must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties. The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record for a Preliminary Motion in the Court of Appeals. If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order—

the district clerk must send the court of appeals any parts of the record designated by any party.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice

of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) Notice to the Court of Appeals. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

(As added Mar. 26, 2009, eff. Dec. 1, 2009.)

TITLE III. APPEALS FROM THE UNITED STATES TAX COURT

Rule 13. Appeals from the Tax Court

(a) Appeal as of Right.

(1) **How Obtained; Time for Filing a Notice of Appeal.**

(A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(2) **Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by sending it to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to §7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(3) **Contents of the Notice of Appeal; Service; Effect of Filing and Service.** Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(4) **The Record on Appeal; Forwarding; Filing.**

(A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the appeal is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals.

(B) If an appeal is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(b) Appeal by Permission. An appeal by permission is governed by Rule 5.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 14. Applicability of Other Rules to Appeals from the Tax Court

All provisions of these rules, except Rules 4, 6–9, 15–20, and 22–23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 16, 2013, eff. Dec. 1, 2013.)

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

(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.

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

Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

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

Rule 16. The Record on Review or Enforcement

(a) Composition of the Record. The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions From or Misstatements in the Record. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 17. Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing. The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) Filing—What Constitutes.

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 18. Stay Pending Review

(a) Motion for a Stay.

(1) **Initial Motion Before the Agency.** A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) **Motion in the Court of Appeals.** A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) Bond. The court may condition relief on the filing of a bond or other appropriate security.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 20. Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3–14 and 22–23, apply to the review or enforcement of an agency order. In these rules, ''appellant'' includes a petitioner or applicant, and ''appellee'' includes a respondent.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

TITLE V. EXTRAORDINARY WRITS

Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file the petition with the circuit clerk and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition must be titled ''In re [name of petitioner].''

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk and serving it on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 25, 2019, eff. Dec. 1, 2019.)

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22. Habeas Corpus and Section 2255 Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. §2253, appeal to the court of appeals from the district court's order denying the application.

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. §2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. §2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. §2254 or §2255 (if any), along with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

(As amended Pub. L. 104–132, title I, §103, Apr. 24, 1996, 110 Stat. 1218; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec 1, 2009.)

Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(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.)

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 from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding. 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):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(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; Apr. 16, 2013, eff. Dec. 1, 2013.)

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) **Nonelectronic Filing.**

(i) **In General.** For a paper not filed electronically, 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.

(ii) **A Brief or Appendix.** A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) **Inmate Filing.** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. §1746—or a notarized statement—setting out the date of deposit and stating

that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or

• the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) **Electronic Filing and Signing.**

(i) **By a Represented Person—Generally Required; Exceptions.** A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) **By an Unrepresented Person—When Allowed or Required.** A person not represented by an attorney:

• may file electronically only if allowed by court order or by local rule; and

• may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) **Signing.** A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(iv) **Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

(3) **Filing a Motion with a Judge.** If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) **Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) **Privacy Protection.** An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Nonelectronic service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail; or

(C) by third-party commercial carrier for delivery within 3 days.

(2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing.

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 11, 2022, eff. Dec. 1, 2022.)

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Period Stated in Hours.** When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) **Inaccessibility of the Clerk's Office.** Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) **"Last Day" Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(A)(ii), and 25(a)(2)(A)(iii)—and filing by mail under Rule 13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) **"Next Day" Defined.** The ''next day'' is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **"Legal Holiday" Defined.** ''Legal holiday'' means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served, and the paper is not served electronically on the party or delivered to the party on the date stated in the proof of service, 3 days are added after the period would otherwise expire under Rule 26(a).

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 26.1. Disclosure Statement

(a) Nongovernmental Corporations. Any nongovernmental corporation that is a party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) Organizational Victims in Criminal Cases. In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) Bankruptcy Cases. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

(1) identifies each debtor not named in the caption; and

(2) for each debtor that is a corporation, discloses the information required by Rule 26.1(a).

(d) Time for Filing; Supplemental Filing. The Rule 26.1 statement must:

(1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing;

(2) be included before the table of contents in the principal brief; and

(3) be supplemented whenever the information required under Rule 26.1 changes.

(e) Number of Copies. If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, an original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(As added Apr. 25, 1989, eff. Dec. 1, 1989; amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 27. Motions

(a) In General.

(1) **Application for Relief.** An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) **Contents of a Motion.**

(A) **Grounds and relief sought.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) **Accompanying documents.**

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) **Documents barred or not required.**

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) **Response.**

(A) **Time to file.** Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) **Request for affirmative relief.** A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) **Reply to Response.** Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals

may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Length Limits; Number of Copies.

(1) **Format.**

(A) **Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) **Cover.** A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) **Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) **Paper size, line spacing, and margins.** The document must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) **Typeface and type styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) **Length Limits.** Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must not exceed 2,600 words; and

(D) a handwritten or typewritten reply to a response must not exceed 10 pages.

(3) **Number of Copies.** An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(g)(1).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms ''appellant'' and ''appellee.'' To make briefs clear, counsel should use the parties' actual names or

the designations used in the lower court or agency proceeding, or such descriptive terms as ''the employee,'' ''the injured person,'' ''the taxpayer,'' ''the ship,'' ''the stevedore.''

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7(A)–(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the

proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

(3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;
(B) the statement of the issues;
(C) the statement of the case; and
(D) the statement of the standard of review.

(4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) **Type-Volume Limitation.**

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it:

(i) contains no more than 13,000 words; or
(ii) uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if it:

(i) contains no more than 15,300 words; or
(ii) uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 21 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.

(As added Apr. 25, 2005, eff. Dec. 1, 2005; amended Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability.** This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) **When Permitted.** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) **Motion for Leave to File.** The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance under Rule 32(g)(1), if length is computed using a word or line limit.

(5) **Length.** Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(6) **Time for Filing.** An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) **Reply Brief.** Except by the court's permission, an amicus curiae may not file a reply brief.

(8) **Oral Argument.** An amicus curiae may participate in oral argument only with the court's permission.

(b) During Consideration of Whether to Grant Rehearing.

(1) **Applicability.** This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

(2) **When Permitted.** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) **Motion for Leave to File.** Rule 29(a)(3) applies to a motion for leave.

(4) **Contents, Form, and Length.** Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) **Time for Filing.** An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) **Excluded Material.** Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) **Costs of Appendix.** Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) Deferred Appendix.

(1) **Deferral Until After Briefs Are Filed.** The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) **References to the Record.**

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) Appeal on the Original Record Without an Appendix. The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 21 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; 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; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) **Reproduction.**

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) **Binding.** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) **Paper Size, Line Spacing, and Margins.** The brief must be on 8½ by 11 inch paper. The text must be double-spaced, but

quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) **Typeface.** Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) **Type Styles.** A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) **Length.**

(A) **Page Limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(B) **Type-Volume Limitation.**

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½ by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) **Motion.** The form of a motion is governed by Rule 27(d).

(2) **Other Papers.** Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(f) Items Excluded from Length. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- cover page;
- disclosure statement;
- table of contents;
- table of citations;
- statement regarding oral argument;
- addendum containing statutes, rules, or regulations;
- certificate of counsel;
- signature block;
- proof of service; and
- any item specifically excluded by these rules or by local rule.

(g) Certificate of Compliance.

(1) **Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as ''unpublished,'' ''not for publication,'' ''non-precedential,'' ''not precedent,'' or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(As added Apr. 12, 2006, eff. Dec. 1, 2006.)

Rule 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The

court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

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

Rule 34. Oral Argument

(a) In General.

(1) **Party's Statement.** Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) **Standards.** Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response. The length limits in Rule 35(b)(2) apply to a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2020, eff. Dec. 1, 2020.)

Rule 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion—but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion—or the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 38. Frivolous Appeal—Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

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

Rule 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must—within 14 days after entry of judgment—file with the circuit clerk and serve an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 25, 2019, eff. Dec. 1, 2019.)

Rule 40. Petition for Panel Rehearing

(a) Time to File; Contents; Response; 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, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(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) **Response.** Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.

(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. Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten 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; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2020, eff. Dec. 1, 2020.)

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 by order.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate Pending a Petition for Certiorari.

(1) **Motion to Stay.** 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 petition would present a substantial question and that there is good cause for a stay.

(2) **Duration of Stay; Extensions.** The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

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

(4) **Issuance of Mandate.** The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

(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; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 42. Voluntary Dismissal

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals.

(1) **Stipulated Dismissal.** The circuit clerk must dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.

(2) **Appellant's Motion to Dismiss.** An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(3) **Other Relief.** A court order is required for any relief under Rule 42(b)(1) or (2) beyond the dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.

(c) Court Approval. This Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

(d) Criminal Cases. A court may, by local rule, impose requirements to confirm that a defendant has consented to the dismissal of an appeal in a criminal case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 11, 2022, eff. Dec. 1, 2022.)

Rule 43. Substitution of Parties

(a) Death of a Party.

(1) **After Notice of Appeal Is Filed.** If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) **Before Notice of Appeal Is Filed—Potential Appellant.** If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) **Before Notice of Appeal Is Filed—Potential Appellee.** If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) **Identification of Party.** A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) **Automatic Substitution of Officeholder.** When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

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

Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute. If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

Rule 45. Clerk's Duties

(a) General Provisions.

(1) **Qualifications.** The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the

clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

(1) **The Docket.** The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) **Calendar.** Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) **Other Records.** The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

Rule 46. Attorneys

(a) Admission to the Bar.

(1) **Eligibility.** An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) **Application.** An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

''I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.''

(3) **Admission Procedures.** On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) **Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) **Procedure.** The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) **Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

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

Rule 47. Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. §2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

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

APPENDIX OF FORMS

Form 1A. Notice of Appeal to a Court of Appeals From a Judgment of a District Court

United States District Court for the _____

District of _____

Docket Number _____

A.B., Plaintiff
v.
C.D., Defendant
} Notice of Appeal

_____(name all parties taking the appeal)* appeal to the United States Court of Appeals for the _____ Circuit from the final judgment entered on ____ (state the date the judgment was entered).

(s)_____
Attorney for _____
Address: _____

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration with this Notice of Appeal.*]

*See Rule 3(c) for permissible ways of identifying appellants.

(As added Apr. 14, 2021, eff. Dec. 1, 2021.)

Form 1B. Notice of Appeal to a Court of Appeals From an Appealable Order of a District Court

United States District Court for the _____

District of _____

Docket Number _____

A.B., Plaintiff
v.
C.D., Defendant
} Notice of Appeal

_____(name all parties taking the appeal)* appeal to the United States Court of Appeals for the _____ Circuit from the order _____ (describe the order) entered on ____(state the date the order was entered).

(s)_____
Attorney for _____
Address: _____

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration with this Notice of Appeal.*]

*See Rule 3(c) for permissible ways of identifying appellants.

(As added Apr. 14, 2021, eff. Dec. 1, 2021.)

Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court

United States Tax Court

Washington, D.C.

Docket No._____

A.B., Petitioner

v.

Commissioner of Internal Revenue, Respondent } Notice of Appeal

_____(here name all parties taking the appeal)* appeal to the United States Court of Appeals for the _____ Circuit from the decision entered on _____ (state the date the decision was entered).

(s)_____

Attorney for _____

Address: _____

*See Rule 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 14, 2021, eff. Dec. 1, 2021.)

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the _____ Circuit

A.B., Petitioner

v.

XYZ Commission, Respondent } Petition for Review

_____(here name all parties bringing the petition)*_____ hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on _____, 20__.

(s)_____,

Attorney for Petitioners

*Address:*_____

*See Rule 15.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 4. Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

UNITED STATES DISTRICT COURT
for the
<_____> DISTRICT OF <_____>

<Name(s) of plaintiff(s)>,	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	Case No. <Number>
<Name(s) of defendant(s)>,	)	
	)	
Defendant(s)	)	
	)	

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion	**Instructions**
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are:

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	$	$	$	$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			$
			$
			$

4. *How much cash do you and your spouse have? $_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) $	(Value) $	(Value) $
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	**Other assets**	**Other assets**
(Value) $	(Value) $	(Value) $
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
	$	$
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	**Relationship**	**Age**

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	**Your Spouse**
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? [ ] Yes [ ] No Is property insurance included? [ ] Yes [ ] No	$	$

Utilities (electricity, heating fuel, water, sewer, and telephone)	$	$
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$
Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	$	$
Life:	$	$
Health:	$	$
Motor vehicle:	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments) (specify):	$	$
Installment payments		
Motor Vehicle:	$	$
Credit card (name):	$	$
Department store (name):	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	**$**	**$**

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

[ ] Yes [ ] No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* [ ] Yes [ ] No

If yes, how much? $ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *State the city and state of your legal residence.*

Your daytime phone number: (___) _____

Your age: _____ *Your years of schooling:* _____

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 26, 2018, eff. Dec. 1, 2018.)

Form 5. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel

United States District Court for the _____
District of _____

In re

_____,
Debtor

_____,
Plaintiff
v.

_____,
Defendant

File No. _____

Notice of Appeal to United States Court of Appeals for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, 20____ [here describe the judgment, order, or decree]

_____

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____
Signed _____
Attorney for Appellant
Address: _____
_____

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.*]

(As added Apr. 25, 1989, eff. Dec. 1, 1989; amended Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 28, 2016, eff. Dec. 1, 2016.)

Form 6. Certificate of Compliance With Type-Volume Limit

Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [*insert Rule citation; e.g., 32(a)(7)(B)*]] [the word limit of Fed. R. App. P. [*insert Rule citation; e.g., 5(c)(1)*]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [*insert applicable Rule citation, if any*]]:

☐ this document contains [*state the number of*] words, **or**

☐ this brief uses a monospaced typeface and contains [*state the number of*] lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

☐ this document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*], **or**

☐ this document has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

(s)_____

Attorney for _____

Dated: _____

(As added Apr. 29, 2002, eff. Dec. 1, 2002; amended Apr. 28, 2016, eff. Dec. 1, 2016.)

Form 7. Declaration of Inmate Filing

_____

[*insert name of court; for example*,

United States District Court for the District of Minnesota]

A.B., Plaintiff
v.
C.D., Defendant
} Case No._____

I am an inmate confined in an institution. Today, _____ [*insert date*], I am depositing the _____ [*insert title of document; for example*, ''*notice of appeal*''] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §1746; 18 U.S.C. §1621).

Sign your name here_____

Signed on _____[*insert date*]

[***Note to inmate filers:*** *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).*]

(As added Apr. 28, 2016, eff. Dec. 1, 2016; amended Apr. 26, 2018, eff. Dec. 1, 2018.)

Appendix:
Length Limits Stated in the
Federal Rules of Appellate Procedure

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, 35, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
Permission to appeal	5(c)	∘ Petition for permission to appeal ∘ Answer in opposition ∘ Cross-petition	5,200	20	Not applicable
Extraordinary writs	21(d)	∘ Petition for writ of mandamus or prohibition or other extraordinary writ ∘ Answer	7,800	30	Not applicable
Motions	27(d)(2)	∘ Motion ∘ Response to a motion	5,200	20	Not applicable
	27(d)(2)	∘ Reply to a response to a motion	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	32(a)(7)	∘ Principal brief	13,000	30	1,300
	32(a)(7)	∘ Reply brief	6,500	15	650

	Rule	Document type	Word limit	Page limit	Line limit
Parties' briefs (where cross-appeal)	28.1(e)	∘ Appellant's principal brief ∘ Appellant's response and reply brief	13,000	30	1,300
	28.1(e)	∘ Appellee's principal and response brief	15,300	35	1,500
	28.1(e)	∘ Appellee's reply brief	6,500	15	650
Party's supplemental letter	28(j)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	29(a)(5)	∘ Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief
	29(b)(4)	∘ Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Rehearing and en banc filings	35(b)(2) & 40(b)	∘ Petition for hearing en banc ∘ Petition for panel rehearing; petition for rehearing en banc	3,900	15	Not applicable

(As added Apr. 28, 2016, eff. Dec. 1, 2016.)

○