LOCAL RULES AND INTERNAL OPERATING PROCEDURES OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT (Effective December 1, 2016)

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 in 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.

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 14 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. 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). 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.

(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

AMENDED PLAN TO IMPLEMENT THE CRIMINAL JUSTICE ACT OF 1964

Effective Date January 29, 2002
As Amended June 18, 2010

I. AUTHORITY

The United States Court of Appeals for the Second Circuit, in accordance with the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, 21 U.S.C. § 848(q) [repealed], the guidelines for the Administration of the Criminal Justice Act, Vol. VII, Guide to Judiciary Policies and Procedures, and the Federal Rules of Appellate Procedure, hereby adopts this Plan for furnishing representation in the Court of Appeals for eligible persons financially unable to obtain adequate representation in accordance with the Act.

II. STATEMENT OF POLICY

The Plan shall be administered so that those accused of criminal conduct and who are financially unable to pay for legal representation will be provided with legal representation before this Court.

The Judicial Council, in promulgating the amended Plan set forth below, recognizes that while the Criminal Justice Act provides for limited compensation, attorneys chosen pursuant to the Plan to represent indigents are rendering a public and social service of the greatest importance. The Bar has traditionally represented with high dedication persons unable to pay any compensation for such representation. Services performed for eligible persons qualifying under the Plan will continue to be rendered by members of the Bar, essentially in their capacity as officers of the Courts and in keeping with the high traditions of the legal profession and its vital role in society. We also recognize that despite the nominal compensation provided by the Act, such services will be performed with devotion and vigor so that the lofty ideal - equality before the law for all persons - will be achieved. With this recognition of the importance of representation for indigents, we are confident that all segments of the Bar will accept as part of their professional obligations the need to render the most competent services in each and every phase of criminal and habeas corpus proceedings and that the organized Bar will be encouraged into increased activity with respect to the administration of criminal justice.

III. DEFINITIONS

A. **CJA** - the Criminal Justice Act, 18 USC § 3006A.

B. **CJA client** - a person for whom counsel has been appointed under the CJA.

C. **CJA attorney** - an attorney who is appointed to represent an eligible person under the CJA.

D. **CJA Panel member** - an attorney appointed to the CJA Panel of the Second Circuit Court of Appeals.

E. **CJA applicant** - a person applying for representation under the CJA.

F. **The or This Court** - the United States Court of Appeals for the Second Circuit.

G. **The CJA Committee** - the Court's CJA and Pro Bono Committee.

IV. DETERMINATION OF NEED FOR APPOINTED COUNSEL

A. Notice to Defendant

Whenever in forma pauperis status is ordered by the District Court of this Court in either a criminal appeal in which a defendant appears pro se or in a § 2255 habeas appeal in which the petitioner appears pro se, the Clerk of the Court shall forthwith notify the defendant or petitioner that he or she has the right to be represented and that counsel may be appointed for the defendant or petitioner. The foregoing notice shall also be given in all such appeals taken by the United States.

B. Request for Attorney on Appeal

In cases where a request for the appointment of an attorney under the Act is made for the first time on appeal, the Chief Judge or the Chief Judge's designee, before making the appointment, shall inquire into and make a finding as to whether the CJA applicant is financially able to employ counsel. In making the determination, such forms as may be prepared and furnished by the Administrative Office of the United States Courts shall be utilized for the purpose of eliciting permanent information.

In cases where the CJA applicant is found by the district court to be financially unable to employ counsel, the Court of Appeals may accept this finding and appoint or continue an attorney without further proof. *But see* Fed. R. App. P. 24(a).

C. Partial Payment

If a CJA applicant's net financial resources are insufficient to pay fully for retained counsel, counsel may be appointed under the Act, and the CJA applicant may be directed to make partial payment of attorney's fees to the Clerk of Court under the guidelines as established by the Judicial Conference.

D. Re-examination of Financial Status

The Court may at any time after appointment of counsel, re-examine the financial status of a CJA client. 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 to be made. If a CJA attorney learns any information indicating that a CJA client or someone on the CJA client's behalf can make payment in whole or in part for legal services, it shall be the CJA attorney's duty to report such information promptly to the Court so that appropriate action may be taken.

V. CJA ATTORNEY ADVISORY GROUP

A. Authority and Composition

A CJA Attorney Advisory Group will be appointed by the Court to assist the Court and the CJA Committee in reviewing applications for membership on the CJA Panel and to otherwise promote the furnishing of representation pursuant to this Plan. The CJA Attorney Advisory Group shall consist of the Attorney-in-Charge of the Appeals Bureau of Federal Defenders of New York, Inc. and 12 other attorneys selected by the Court for terms not to exceed three years who will collectively represent all of the districts in the Circuit. The members of the CJA Attorney Advisory Group must be admitted to practice in this Court and may not be members of the CJA Panel. Appointments to the Panel shall be made so that the terms of approximately one-third of the Panel members expire at the conclusion of each Term of Court.

B. Meetings, Terms and Duties

The Attorney Advisory Group shall review applications filed by attorneys seeking to fill vacancies on the CJA Panel. The Advisory Group shall consider the qualifications and experience of the applicants and recommend to the CJA Committee those applicants it deems qualified to fill the vacancies.

C. Death Penalty Cases

A CJA Death Penalty Attorney Advisory Group will be appointed by the Court to assist the Court and the CJA Committee in reviewing applications for membership on the Death Penalty CJA Panel.

VI. CJA PANEL

A. Maintaining the CJA Panel List

The Clerk of Court, under the direction and supervision of the Chief Judge or the Chief Judge's designee, shall maintain the list of the CJA Panel members that will supplement the services of the Federal Public Defender and Community Defender Offices within this Circuit. The list of CJA Panel members shall include the name of each attorney and the current business address and telephone number of the attorney. Attorneys accepted for service on the CJA Panel must notify the Clerk of Court, in writing, within 48 hours of any changes in business address, business telephone number, e-mail address, or employment.

B. Appointments

Appointments to the CJA Panel shall be made by the Court upon appropriate recommendation from the CJA Committee after consultation with the Attorney Advisory Group.

C. Applications

1. Submission Requirements

All private attorneys seeking to be included on the CJA Panel must submit to the Clerk of Court an application and a resume. Applications for membership shall be submitted on the Court's form for Application for Appointment to the CJA Panel, available in the Clerk's Office. The Attorney Advisory Group will review these materials. Applicants must be members in good standing of the Bar of this Court, must maintain an office within the Circuit, 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, the Federal Rules of Criminal Procedures, the Federal Rules of Evidence, the Local Rules and Internal Operating Procedures of the Court of Appeals for the Second Circuit, and the United States Sentencing Guidelines. The Court will set and publicize an annual application period for appointment to the CJA Panel.

2. Term of Appointment

CJA Panel members shall serve for a term not to exceed three years but may be removed by the Court prior to the expiration of their term. See Section D, Removal; See also Section VII, Release of Appointed Counsel. Upon expiration of the term of a CJA Panel member, the CJA Panel member must reapply for membership if he or she wishes to continue as a member of the CJA Panel Application for renewal shall be made on the Court's form for Application for Renewal of Membership on the CJA Panel, available in the Clerk's Office. Panel members will be selected on the basis of demonstrated qualification, skill and dedication. Because of the limited size of the CJA Panel, the Court will not be able to appoint every qualified applicant to the Panel, but the Court will make an

effort to rotate membership on the CJA Panel in order to ensure that new applicants are given an opportunity to serve.

D. Removal

1. Court's Discretion

A CJA Panel member may be removed from the CJA Panel whenever the Court, in its discretion, determines that the member has failed to fulfill satisfactorily the obligations of Panel membership, including the duty to afford competent counsel, or has engaged in other conduct that renders inappropriate his or her continued service on the CJA Panel.

2. Refusal of Assignments

The Court may remove a CJA Panel member for refusing three times to accept an appointment during the membership term.

3. Automatic Removal or Suspension

A CJA Panel member will be suspended automatically if the member is disbarred or suspended by any state or federal bar or arrested for, charged with, or convicted of a crime. A CJA Panel member is obligated to notify the Clerk of Court, in writing, within 24 hours of any such suspension, disbarment, arrest, filing of criminal charges or conviction (*See also* Local Rule 46.2).

Disbarment or suspension by any state or federal bar or conviction of a crime are grounds for automatic removal from the CJA Panel.

4. Complaints

All complaints concerning the conduct of a CJA Panel member shall be forwarded 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 Committee may direct the Attorney Advisory Group to review the complaint, or brief, make such inquiry as it deems appropriate, and issue a report of its findings and recommendations to the Court. The Court has the authority at any time to remove an attorney from the CJA Panel or to take such other action as it deems appropriate.

VII. APPOINTMENT OF COUNSEL

A. General

In all cases on appeal in which the appointment of an attorney by the Court of Appeals under the Act is required, the Court shall appoint a CJA Panel member to represent a CJA client. The appointment of counsel shall be made within a reasonable time after the appeal is docketed. The selection of counsel shall be the sole and exclusive responsibility of the Court, and no CJA applicant or CJA client will be permitted to select his or her own attorney from the Panel or otherwise; and no attorney or CJA Panel member shall have the right to be selected to represent a CJA applicant or CJA client.

B. Non-Panel Member Appointments

When the Court determines that the appointment of an attorney who is not a member of the CJA Panel is appropriate in the interest of justice, judicial economy, or some other compelling circumstance warranting such appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed to represent the CJA client.

C. Retained Counsel

Retained counsel, whether or not a member of the Panel, may seek to be appointed under the Act. Such application must be supported by financial documentation as specified in Section IV herein.

D. Multiple CJA Clients

In appeals involving more than one CJA client, separate counsel may be appointed to represent each client. Where circumstances warrant, one attorney may be appointed to represent multiple CJA clients.

E. Substitution of Counsel

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 Act. Appointed counsel replaced by such substitution shall, absent the Court's approval of interim payment, await the final disposition of the appeal before submitting a claim for compensation. *See* Section X (B), infra..

VIII. RELEASE OF APPOINTED COUNSEL

A. Appointed CJA Attorneys

Counsel appointed under the Act to represent a CJA client in the district court shall continue such representation on appeal unless or until relieved by order of the Court of Appeals.

B. Relief of Trial Counsel

If CJA counsel who acted in the district court wishes to be relieved from representing a CJA client on appeal, he or she shall file with the Clerk of the Court of Appeals, and serve upon a CJA client and all other counsel in the case, a motion seeking to be relieved and stating the grounds in support of the motion. Counsel seeking to be relieved nevertheless shall continue to represent the CJA client on appeal unless or until relieved by the Court of Appeals (*See* Local Rule 4.1). The district court may also relieve counsel appointed under the Act provided the district court substitutes counsel as provided in the Act. Once the notice of appeal is filed, however, only the Court of Appeals may assign or relieve counsel on appeal.

C. CJA Client Seeking to Relieve Counsel

A CJA client seeking to have a CJA attorney relieved and/or the appointment of a substitute CJA attorney must file a typed or legibly handwritten motion, including a sworn affidavit (under penalties of perjury), setting forth compelling reasons for the substitution and giving a detailed account of the facts justifying the request. Such motion shall not be granted absent compelling circumstances.

IX. DUTIES OF APPOINTED COUNSEL

A. General

CJA Panel members must be reasonably available, *see also* § VI (D) (2) supra, to accept assignments. Upon assignment to represent a CJA client, a CJA attorney shall provide representation in accordance with the Canons of Professional Responsibility and the provisions of this Plan.

B. Advice of Rights and Filing of Transcript

In all cases where trial counsel has acted in the district court under the CJA, such trial counsel shall advise the CJA client of the right to appeal to the United States Court of Appeals and of the obligation to file a timely notice of appeal, and shall file such notice of appeal if requested to do so, unless the CJA client states that the notice of appeal should not be filed. Where appropriate, trial counsel shall also file with the district court the CJA Form 24 for the furnishing of the reporter's transcript at the expense of the United States.

C. Writ of Certiorari

In the event of a decision adverse to the CJA client in this Court, the CJA attorney shall 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 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 in obtaining such a writ, and if requested to do so, petition the Supreme Court for certiorari. Despite a CJA client's directive to file a writ, if a CJA

attorney has reasonable grounds to believe that a petition for certiorari would have no likelihood of success, the CJA attorney may file with this Court a motion to be relieved and serve a copy on the CJA client and other counsel within ten days of the filing of an adverse decision of this Court. If the Court relieves the CJA attorney, he or she shall, 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 a writ of certiorari pro se.

If an adverse party petitions for a writ of certiorari to review a judgment of this Court, the CJA attorney shall take all necessary steps to oppose the petition.

D. Furnishing Documents

A CJA attorney must furnish the client with copies of all papers filed in the matter with the Court that relate to the CJA client's appeal, including all opinions and orders of the Court.

E. Oral Argument

The CJA attorney shall file an Oral Argument Statement in compliance with Local Rule 34.1(a). It is expected that oral argument will be requested in most criminal cases. The CJA attorney shall appear for any scheduled oral argument unless excused by the Court.

F. No Delegation of Authority

CJA counsel shall not delegate any non-ministerial tasks in connection with representation of a CJA client to any person other than a partner, associate, paralegal, student or regular employee of the law firm or clinical program of which the Panel member is a partner, associate or affiliate without the written consent of the CJA client and the Court.

G. Representation Upon Remand

The CJA attorney must continue to represent a CJA client in the district court upon remand unless relieved. The fact that a CJA attorney limits his or her practice to appellate work, or that proceedings in the district court on remand will be distant from the CJA attorney's office, will ordinarily be adequate grounds justifying the relief of the CJA attorney upon remand.

H. Anders

If a CJA attorney seeks to be relieved on the grounds that there is no nonfrivolous issue to be raised on the appeal, the CJA attorney must follow the procedures of *Anders v. California,* 386 U.S. 738 (1967).

I. No Other Reimbursement

No CJA attorney shall accept a payment from or on behalf of the CJA client in this Court without prior authorization by a United States Circuit Judge on the form provided for such purpose. All such authorized payments shall be received subject to the terms contained in such order and pursuant to the provisions of subsection (f) of the Act.

X. PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

A. What to Submit

No CJA attorney shall be compensated for the representation of a CJA client in this Court except upon the submission of the attorney's voucher in accordance with the rules, regulations and forms promulgated by the Administrative Office of the United States Courts. Unless another means for compensation was specifically approved, such voucher must be accompanied by a written statement specifying the time expended, services rendered, and exact expenses for which reimbursement is sought while the case was pending in this Court.

B. Time to Submit

Unless a judge of the court so orders, a claim for attorney's fees, expenses, and services must be submitted no later than 45 days after a mandate has issued. If the appeal is from an interlocutory order or results in remand to the district court, the claim shall be timely if submitted within 45 days of the termination of the case in the district court or in the Court of Appeals. In the event of termination of the representation prior to the issuance of the mandate or the termination of the case, a motion for interim payment shall be timely if submitted within 45 days of the termination of the representation. *See* Section VII (E), supra.

C. Maximum Hourly Rates

The maximum hourly rates currently shall be $125.00 for in-court work and out-of-court work.

D. Maximum Compensation

For representation of a party on a direct appeal from a judgment of conviction in a felony, misdemeanor or habeas corpus case, the total compensation allowed, excluding approved expenses, shall not exceed $5,200, except on appeals taken from the Eastern District and Southern District of New York for which the maximum compensation shall not exceed $7,000 except as described in Section E below. Different limits apply to death penalty federal habeas corpus petitions and federal capital prosecutions.

E. Excess Payments

Payments for representation on appeal in excess of the above limitations may be made for extended or complex representation whenever a judge of the Court certifies that the amount of such excess payment is necessary to provide fair compensation and such excess payment is also approved by the Chief Judge of the Second Circuit or the Chief Judge's designee.

F. Interim Payment

A judge of this Court may authorize interim payment where the judge determines it is appropriate upon the filing of a motion by a CJA attorney. The Chief Judge or the designee of the Chief Judge may arrange for interim payments.

G. Payment

The Clerk of Court shall forthwith forward all approved statements to the Administrative Office of the United States Courts for payment.

XI. CJA COMPENSATION GUIDELINES

A. Writ of Certiorari

Where time and expense for preparation of a Petition for a Writ of Certiorari to the United States Supreme Court has been claimed, a copy of the Petition must accompany the voucher. Vouchers for the CJA attorney's time and expenses involved in the preparation of a Petition are subject to separate compensation limits in the same amounts as listed in Section X (D) supra.

B. Compensation of Associate Attorneys

Compensation may be provided under the CJA for services furnished by a partner, associate or affiliate of the appointed CJA attorney, but the total compensation provided for the representation of the CJA client shall be within the limits described in Section X (D) supra. Such services shall not be compensated unless the participation of such partner, associate or affiliate has been approved in advance by a judge of this court.

C. Excess Voucher

A CJA attorney submitting a voucher in excess of the maximum allowable compensation is required to submit along with a CJA voucher a memorandum detailing how time was spent and why excess payment is warranted.

D. Maximum Compensation

The maximum allowable compensation rates are detailed in Section X of this Plan. A judge of the court who heard the case shall forward a CJA attorney's application for excess compensation to the Chief Judge or Chief Judge's designee, with a

recommendation for approval or denial. Excess compensation will not be paid unless it is approved by the Chief Judge or the Chief Judge's designee.

E. Reimbursement of Expenses

1. Travel and Transportation

Reimbursement for travel and transportation expenses shall be consistent with § 230.60 of Volume 7, Part A, Chapter 2 of the Guide to Judiciary Policies and Procedures. See also Volume 19, Chapter 4 of the Guide to Judiciary Policies and Procedures (employee travel regulations). Reimbursement shall be limited to the most economical means of travel and transportation reasonably available. Reimbursement may be claimed only for expenses actually incurred. In all cases, a copy of the ticket used or the bill or receipt must be attached to the voucher for compensation. Travel time to and from court (or the place where the service is rendered) may not be claimed if the round trip is less than one hour.

a. Commercial Carrier

Reimbursement for transportation by commercial carrier will be limited to economy class accommodations unless unavailable in an emergency. If compensation is claimed at a rate exceeding the economy rates, a detailed explanation in writing must be provided.

b. Automobile Transportation

If travel is by automobile, the total mileage shall not exceed the fare authorized for travel by economy air travel, except in an emergency, or for other unusual circumstances. Travel reimbursement for a privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, tolls and tunnel fares.

c. Meals and Lodging

CJA attorneys will be reimbursed for reasonable actual expenses incurred for meals and lodging within allowable limits. CJA attorneys will not be given a fixed per diem sum. Counsel should be guided by prevailing limitations for travel and subsistence expenses of federal employees. The Clerk of Court can advise attorneys of these limitations. A copy of the hotel or motel bill must be attached to the voucher. Attorneys traveling to attend oral argument will be reimbursed for no more than one and one half days of lodging and meals, absent an order of the Court in compelling circumstances.

d. Photocopying

Actual costs for reasonable printing services for appendices will be paid if a copy of the bill is submitted. For in-house printing or copying, a maximum of $0.20 per page will be paid. The maximum per page limit is subject to periodic change by

directive of the Judicial Conference of the United States. Actual costs for printing of briefs and brief covers will be paid for reasonable printing services if a copy of the bill is submitted. The costs of other forms of reproduction will not be reimbursable including typeset printing.

e. Courier Service

For delivery of items that could be mailed, expenses will be reimbursed only if a satisfactory explanation is given why normal mail service was not utilized. In non-emergency cases, routine documents such as briefs and motions should be prepared early enough to permit use of the regular mail.

f. Miscellaneous

CJA Panel members will be permitted to incur only the most reasonable rates for postage, telephone calls, and brief supplies. Supporting documentation is required for single item expenses of $50 or more.

XII. FORMS

The forms prepared and furnished by the Administrative Office shall be used, where applicable, in all proceedings under this Plan.

XIII. RULES AND REPORTS

The Court shall submit a report on the appointment of counsel under the Act to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference may specify. This Plan shall be subject to such rules and regulations of the Judicial Conference of the United States governing the operation of such plans under the Act as may be issued from time to time.

XIV. OPERATION OF THE PLAN

This Plan incorporates the Guidelines for the Administration of the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) by reference.

XV. NO RIGHTS CREATED

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.

XVI. AMENDMENTS

Amendments to this Plan may be made from time to time by the Court, subject to the approval of the Judicial Council of the Second Circuit.

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 Calendar Team can be reached at (212) 857-8595.

Adopted March 27, 1996