United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303

John Ley
Clerk of Court

www.ca11.uscourts.gov

August 1, 2014

MEMORANDUM

We are pleased to enclose revisions to the Eleventh Circuit Rules and Internal Operating Procedures (IOPs) effective August 1, 2014.

The revisions:

- Provide that counsel using the Electronic Case Files (ECF) system must file appendices both electronically and in paper. 11th Cir. R. 30-1; 11th Cir. R. 30-2.

- Add a new rule requiring attorneys who have been granted an exemption from the use of the ECF system to provide this Court with an electronic appendix. 11th Cir. R. 30-3.

- Provide that separator pages should be used in the electronic appendix in place of indexing tabs. IOP 1, Indexing Tabs on an Appendix (following FRAP 30).

- Amend various IOPs to eliminate the need for revisions every time fees are changed in the Court of Appeals Miscellaneous Fee Schedule. IOP - Payment of Fees (following FRAP 3); IOP 1, Appeals by Permission (following FRAP 5); IOP - Payment of Fees (following FRAP 13); IOP 1, Payment of Fees (following FRAP 15); IOP - Payment of Fees (following FRAP 21); IOP - Prison Litigation Reform Act (following FRAP 24).

- Revise IOP 2, Payment Returned or Denied for Insufficient Funds (following FRAP 46), in light of changes to the wording in the Court of Appeals Miscellaneous Fee Schedule.

A List of Replacement Pages on the following page indicates the pages that have changed since the last revision. We welcome comments and suggestions concerning our local rules and internal operating procedures.

John Ley
Clerk of Court

LIST OF REPLACEMENT PAGES

Replacement Pages to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Discard	*Insert*
Cover Page (April 2014)	Cover Page (August 2014)
Table of Contents: 15 and 16	Table of Contents: 15 and 16
Table of Contents: 23 and 24	Table of Contents: 23 and 24
31 and 32	31 and 32
37 and 38	37 and 38
57 and 58	57 and 58
61 and 62	61 and 62
71 and 72	71 and 72
77 through 80	77 through 80
113 through 118	113 through 118
175 and 176	175 and 176
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UNITED STATES

COURT OF APPEALS

for the

ELEVENTH CIRCUIT

- FEDERAL RULES OF APPELLATE PROCEDURE
- ELEVENTH CIRCUIT RULES
- *INTERNAL OPERATING PROCEDURES*

August 2014

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RULES OF THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(cite as 11th Cir. R.)

Both the court of appeals, by action of a majority of the circuit judges in regular service (see generally 28 U.S.C. chapters 3, 13, 15, 21, 47, 57, and Federal Rules of Appellate Procedure 47), and the judicial council of the circuit (membership of which has been fixed pursuant to statute to include nine active circuit judges, one active judge from each of the nine district courts, and the circuit chief judge) have certain responsibilities for the effective and expeditious administration of justice within the circuit. Contained herein are rules relevant to the court of appeals adopted by the court and by action of the judicial council.

The United States Court of Appeals for the Eleventh Circuit has adopted these rules pursuant to Federal Rules of Appellate Procedure (FRAP) 47. They supplement the provisions of law and FRAP. To properly proceed in this court, counsel should read and follow FRAP, these rules, and the court's Internal Operating Procedures (IOP) which describe the internal workings of the clerk's office and the court. Although there are necessary exceptions, an effort has been made by the court not to duplicate in the Circuit Rules or the IOPs either FRAP or each other. Circuit rules not inconsistent with FRAP govern. The word "appeal" as used in these rules and IOPs includes, where appropriate, any proceeding in this court, including petitions for review and applications for enforcement of agency orders, and writs of mandamus and prohibition, and other extraordinary writs.

Available addenda as adopted by the court are:

ONE: Rules for Conduct of and Representation and Participation at the Eleventh Circuit Judicial Conference

TWO: Procedures in Proceedings for Review of Orders of the Federal Energy Regulatory Commission

FIVE: Non-Criminal Justice Act Counsel Appointments

SEVEN: Regulations of the United States Court of Appeals for the Eleventh Circuit for the Selection and Appointment or the Reappointment of Federal Public Defenders

EIGHT: Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit

NINE: Regulations of the U.S. Court of Appeals for the Eleventh Circuit for the Selection and Appointment or the Reappointment of Bankruptcy Administrators

The judicial council of the Eleventh Circuit pursuant to its statutory authority has appointed a circuit executive (11th Cir. R. 47-2), adopted rules for the conduct of complaint proceedings under 28 U.S.C. §§ 351-364 (Addendum Three), adopted a plan and guidelines under the Criminal Justice Act (11th Cir. R. 24-1 and Addendum Four), and adopted rules and regulations for selection and appointment of bankruptcy judges (Addendum Six).

Available addenda as adopted by the judicial council are:

THREE: Rules for Judicial-Conduct and Judicial-Disability Proceedings with Eleventh Circuit Judicial Conduct and Disability Rules

FOUR: Eleventh Circuit Plan under the Criminal Justice Act and Guidelines for Counsel Supplementing the Eleventh Circuit Plan under the Criminal Justice Act

SIX: Rules and Regulations of the Judicial Council and the United States Court of Appeals for the Eleventh Circuit for the Selection of Nominees, the Appointment of Bankruptcy Judges, and the Reappointment of Bankruptcy Judges

The rules, internal operating procedures, and addenda are available on the Internet at www.ca11.uscourts.gov.

FEDERAL RULES OF APPELLATE PROCEDURE
with
ELEVENTH CIRCUIT RULES
and
INTERNAL OPERATING PROCEDURES

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FEDERAL RULES OF APPELLATE PROCEDURE

Effective July 1, 1968, as amended to December 1, 2013

with

ELEVENTH CIRCUIT RULES
and
INTERNAL OPERATING PROCEDURES

TITLE I. APPLICABILITY OF RULES

FRAP 1. Scope of Rules; Definition; Title

(a) Scope of Rules.

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

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

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

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

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

FRAP 2. Suspension of Rules

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

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

* * * *

11th Cir. R. 2-1 Court Action. In lieu of the procedures described in the Eleventh Circuit Rules and Internal Operating Procedures, the court may take such other or different action as it deems appropriate.

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

FRAP 3. Appeal as of Right — How Taken

(a) Filing the Notice of Appeal.

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

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

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

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

(b) Joint or Consolidated Appeals.

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

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

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

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

(B) designate the judgment, order, or part thereof being appealed; and

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

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

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

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

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

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

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

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

* * * *

I.O.P. - Payment of Fees. When the notice of appeal is filed in the district court, counsel must pay to the district court clerk, pursuant to FRAP 3(e), the court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, plus the district court filing fee required by 28 U.S.C. § 1917. Upon receipt of a copy of a notice of appeal, the clerk of the court of appeals will transmit to counsel a notice advising of other requirements of the rules. See FRAP 13, 15, and 21 for information on payment of fees for Tax Court appeals, petitions for review of agency orders or writs of mandamus or other writs.

Cross-Reference: FRAP 12, 13, 15, 21

FRAP 4. Appeal as of Right — When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

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

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

(i) the United States;

(ii) a United States agency;

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

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

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

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

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

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

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

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

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

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

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

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

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

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

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

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

(5) Motion for Extension of Time.

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

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

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

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

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

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

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

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

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

(7) Entry Defined.

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

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

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

- **the judgment or order is set forth on a separate document, or**
- **150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).**

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

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

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

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

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

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

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

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

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

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

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

(i) for judgment of acquittal under Rule 29;

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

(iii) for arrest of judgment under Rule 34.

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

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

(ii) the entry of the judgment of conviction.

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

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

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a

notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

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

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

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

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

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

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

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; May 1, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011.)

* * * *

I.O.P. - Timely Filing Required. Except for notices of appeal filed by inmates of correctional institutions as provided in FRAP 4(c), notices of appeal must be timely filed in the office of the clerk of the district court.

Cross-Reference: Fed.R.Civ.P. 54, 58, 79(a); 28 U.S.C. § 1292

FRAP 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district court action.

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

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

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

(1) The petition must include the following:

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

(B) the question itself;

(C) the relief sought;

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

(E) an attached copy of:

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

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

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

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

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

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

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

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

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

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

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

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

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11th Cir. R. 5-1 Certificate Required. The petition and answer shall contain a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

* * * *

I.O.P. -

1. Appeals by Permission. When the petition is granted, counsel must pay to the district court clerk the court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, plus the district court filing fee required by 28 U.S.C. § 1917.

2. Pro Hac Vice Admission. When an application to appear pro hac vice is granted while a petition for permission to appeal is pending, the attorney's pro hac vice admission continues in effect for the appeal if the petition is granted. See 11th Cir. R. 46-4.

Cross-Reference: FRAP 3, 26.1

FRAP 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

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

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

(1) Applicability of Other Rules. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

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

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

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in any applicable rule, means "appellate panel."

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

(A) Motion for rehearing.

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree — but before disposition of the motion for rehearing — becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 — excluding Rules 4(a)(4) and 4(b) — measured from the entry of the order disposing of the motion.

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

(B) The record on appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

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

(iii) The record on appeal consists of:

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

(C) Forwarding the record.

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) Filing the record. Upon receiving the record — or a certified copy of the docket entries sent in place of the redesignated record — the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

I.O.P. - Direct Appeal. The Judicial Council of the Eleventh Circuit has not established a bankruptcy appellate panel. A direct appeal from a bankruptcy court to the court of appeals is available only as authorized by statute. See 28 U.S.C. § 158(d).

Cross-Reference: FRAP 3, 4

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

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

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

FRAP 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

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

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

(B) approval of a supersedeas bond; or

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

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

(A) The motion must:

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

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

(B) The motion must also include:

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

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

(iii) relevant parts of the record.

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

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

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

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

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

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

* * * *

11th Cir. R. 8-1 Motions. Motions for stay or injunction pending appeal must include a copy of the judgment or order from which relief is sought and of any opinion or findings of the district court, and shall otherwise comply with the rules.

11th Cir. R. 8-2 Motion for Reconsideration. A motion to reconsider, vacate, or modify an order granting or denying relief under FRAP 8 must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing.

* * * *

I.O.P. - Proof of Service Required. Motions for stay or injunction pending appeal must include proof of service on all parties appearing below.

Cross-Reference: FRAP 27

FRAP 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

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

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

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

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

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

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Oct. 12, 1984; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

* * * *

11th Cir. R. 9-1 Motions. Motions for release or for modification of the conditions of release must include a copy of the judgment or order from which relief is sought and of any opinion or findings of the district court.

* * * *

I.O.P. - Proof of Service Required. Motions for release or for modification of the conditions of release must include proof of service on all parties appearing below.

Cross-Reference: FRAP 23, 27

FRAP 10. The Record on Appeal

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

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

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

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

(i) the order must be in writing;

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

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

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

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

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

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

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

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

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

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

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

(e) Correction or Modification of the Record.

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

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

(A) on stipulation of the parties;

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

(C) by the court of appeals.

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

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

* * * *

11th Cir. R. 10-1 Ordering the Transcript - Duties of Appellant and Appellee. Appellant's written order for a transcript or certification that no transcript will be ordered, as required by FRAP l0(b), shall be on a form prescribed by the court of appeals. Counsel and pro se parties shall file the form with the district court clerk and the clerk of the court of appeals, and send copies to the appropriate court reporter(s) and all parties, in conformance with instructions included on the form. The form must be filed and sent as indicated above within 14 days after filing the notice of appeal or after entry of an order disposing of the last timely motion of a type specified in FRAP 4(a)(4).

If a transcript is to be ordered by counsel appointed under the Criminal Justice Act, and counsel has not yet submitted to the district judge for approval a CJA Form 24, "Authorization and Voucher for Payment of Transcript," counsel shall attach to the transcript order form filed with the district court an original completed and signed CJA 24 form requesting authorization for government payment of the transcript. The district court clerk will submit the CJA 24 to the appropriate district judge for a ruling.

If an appellee designates additional parts of the proceedings to be ordered, orders additional parts of the proceedings, or moves in the district court for an order requiring appellant to do so, as provided by FRAP 10(b), a copy of such designation, transcript order, or motion shall be simultaneously sent to the clerk of this court in addition to being filed and served on other parties as provided by FRAP l0(b).

* * * *

I.O.P.- Ordering the Transcript. The transcript order form prescribed by the court of appeals may be obtained from the court's website at www.ca11.uscourts.gov. Financial arrangements for payment of the costs of the transcript which are satisfactory to the reporter must be made before the transcript order is complete and signed by appellant.

FRAP 11. Forwarding the Record

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

(b) Duties of Reporter and District Clerk.

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

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

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

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

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

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

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

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

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

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

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

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

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

- **for dismissal;**
- **for release;**
- **for a stay pending appeal;**
- **for additional security on the bond on appeal or on a supersedeas bond; or**
- **for any other intermediate order —**

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

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

* * * *

11th Cir. R. 11-1 Duties of Court Reporters; Extensions of Time. In each case in which a transcript is ordered, the court reporter shall furnish the following information on a form prescribed by the clerk of this court:

(a) acknowledge that the reporter has received the order for the transcript and the date of the order;

(b) state whether adequate financial arrangements have been made under CJA or otherwise;

(c) state the number of trial or hearing days involved in the transcript and an estimate of the number of pages;

(d) give the estimated date on which the transcript is to be completed.

The court reporter shall notify the ordering party and the clerk of this court at the time that ordered transcripts are filed in the district court. A court reporter who requests an extension of time for filing the transcript beyond the 30 day period fixed by FRAP 11(b) shall file a written application with the clerk of the court of appeals on a form provided by the clerk of this court and shall specify in detail the amount of work that has been accomplished on the transcript, list all outstanding transcripts due to this and other courts and the due date for filing each and set forth the reasons which make an extension of time for filing the transcript appropriate. The court reporter shall certify that the court reporter has sent a copy of the application to both the Chief District Judge of that district, to the district judge who tried the case, and to all counsel of record. In some cases this court may require written approval of the request by the appropriate district judge. The clerk of the court of appeals shall also send a copy of the clerk's action on the application to both the appropriate Chief District Judge and the district judge. If the court reporter files the transcript beyond the 30 day period fixed by FRAP 11(b) without having obtained an extension of time to do so, the clerk of the court of appeals shall so notify the appropriate Chief District Judge as well as the district judge.

11th Cir. R. 11-2 Certification and Transmission of Record - Duties of District Court Clerk. The clerk of the district court is responsible for determining when the record on appeal is complete for purposes of the appeal. Upon completion of the record the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. Whether the record is in electronic or paper form, the clerk of the district court shall certify to the parties on appeal and to the clerk of this court that the record (including the transcript or parts thereof designated for inclusion, and all necessary exhibits) is complete for purposes of appeal. Unless the required certification can be transmitted to the clerk of this court within 14 days from the filing by appellant of a certificate that no transcript is necessary or 14 days after the filing of the transcript of trial proceedings if one has been ordered, whichever is later, the clerk of the district court shall advise the clerk of this court of the reasons for delay and request additional time for filing the required certification. Upon notification from this court that the brief of the appellee has been filed, the clerk of the district court shall forthwith transmit those portions of the original record that are in paper.

11th Cir. R. 11-3 Preparation and Transmission of Exhibits - Duties of District Court Clerk. The clerk of the district court is responsible for transmitting with the record to the clerk of this court a list of documents correspondingly numbered and identified with reasonable definiteness. Contraband, weapons, or currency shall not be sent except by court order. The clerk of the district court must make advance arrangements with the clerk of the court of appeals prior to sending any exhibit containing wiring or electronic components (such as a beeper, cellular phone, etc.). Exhibits of unusual size or weight which are contained in a box larger than 14 3/4" x 12" x 9 ½" shall not be transmitted by the clerk of the district court until and unless directed to do so by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual size or weight. If transmittal has been authorized, a party may be requested to personally transfer oversized exhibits to the clerk of the court of appeals.

11th Cir. R. 11-4 Form of Paper Record. When the record on appeal is in paper, the record shall be bound securely with durable front and back covers in a manner that will facilitate reading. The clerk of the district court or bankruptcy court as applicable shall index the record by means of document numbers in consecutive order. In civil appeals, including bankruptcy and prisoner (civil and habeas) appeals, to facilitate use of the record by the court and by counsel, the district court or bankruptcy court as applicable shall affix indexing tabs bearing those document numbers to identify orders and significant filings. Indexing tabs are not required to be affixed to records in criminal appeals.

* * * *

I.O.P. -

1. Duties of Court Reporters; Extensions of Time. The appellant is not required to seek extensions of time for filing the transcript if the reporter cannot prepare it within 30 days from receipt of the appellant's purchase order. The matter of filing the transcript is between the reporter, the clerk of the Eleventh Circuit, the clerk of the district court, and the district judge. Counsel will be informed when an extension of time is allowed on request made by the court reporter.

2. Preparation of Paper Record; Duties of District Court Clerk. When the record on appeal is in paper, at the time that the record is complete for purposes of appeal and before transmitting certification that the record is complete, the district court will assemble the record into one or more volumes, and identify by a separate document number each filing contained therein. Each volume of the record should generally contain less than 250 pages. The district court docket sheet, so numbered, will be provided to the parties upon request to facilitate citation to the original record by reference to the file copies maintained by the parties. Prior to transmitting the record to the clerk of the court of appeals, the district court docket sheet shall be marked to identify by number the volume into which documents have been placed, and the cover of each volume of the record shall indicate the volume number and the document numbers of the first and last document contained therein (e.g., Vol. 2, Documents 26 - 49). The district court docket sheet, so marked, will be included in the record transmitted to the clerk of the court of appeals. Transcripts will be sequentially arranged in separate numbered volumes, with volume numbers noted on the docket sheet index. In civil appeals, including bankruptcy and prisoner (civil and habeas) appeals, standard commercially-available indexing tabs or their equivalent which extend beyond the edge of the page shall be affixed to the first page of orders and of significant filings in the record to identify and assist in locating the papers. Tabs should be visible and staggered in sequence from top to bottom along the right-hand side. Tab numbers should correspond to the document numbers assigned by the district court.

3. Preparation and Transmission of Exhibits. In many districts, by local practice, discovery material is not filed with the clerk. Furthermore, exhibits may sometimes be returned to the parties. Parties are expected to notify the district court of any exhibits which they believe should be transmitted to the court of appeals, and if not then on file with the district court, to provide said exhibits to the district court clerk. Contraband or dangerous exhibits shall not be sent except by court order.

If audio or videotapes were offered into evidence at trial, such tapes and any transcripts shall be retained by the district court clerk during the period in which a notice of appeal may be

timely filed and transmitted to the court of appeals with the record on appeal in accordance with FRAP 11 and the corresponding circuit rules.

Ordinarily, oversized exhibits must be transmitted at the expense of the party requesting same, following approval from the clerks of the court of appeals and the district court. Requests to transmit oversized exhibits are discouraged. In lieu of arranging for transmittal by the district court of oversized physical exhibits, parties are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. The clerk of the court of appeals may dispose of oversized exhibits without further notice unless a party makes arrangements with the clerk for their return within thirty (30) days after issuance of mandate.

Cross-Reference: FRAP 16

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

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

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

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

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

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11th Cir. R. 12-1 Filing the Record. In an appeal from a district court in which a transcript is ordered, the record is deemed completed and filed on the date the court reporter files the transcript with the district court. In an appeal from a district court in which there was no hearing below (including an appeal from summary judgment), or all necessary transcripts are already on file, or a transcript is not ordered, the record is deemed completed and filed on the date the appeal is docketed in the court of appeals pursuant to FRAP 12(a). The provisions of this rule also apply to the review of a Tax Court decision. [See 11th Cir. R. 31-1 for the time for serving and filing briefs.]

* * * *

I.O.P.-

1. Docketing an Appeal. Appeals are immediately docketed upon receipt of the notice of appeal and district court docket entries. A general docket number is assigned and all counsel and pro se parties are so advised. Failure to pay the docket fee does not prevent the appeal from being docketed but is grounds for dismissal of the appeal by the clerk under the authority of 11th Cir. R. 42-1.

2. Appearance of Counsel Form. An Appearance of Counsel Form is the required form for the Representation Statement required to be filed by FRAP 12(b). See 11th Cir. R. 46-5.

Cross-Reference: FRAP 3, 13, 46

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

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

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

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

* * * *

11th Cir. R. 12.1-1 Indicative Ruling by the District Court.

(a) A party who files a motion in the district court that the district court lacks authority to grant because an appeal is pending must, within 14 days after filing the motion, serve and file a motion in this court to stay the appeal until the district court rules on the motion before it. If this court stays the appeal, the party who filed the motion in the district court must, unless this court orders otherwise, file written status reports at 30-day intervals from the date of this court's order informing this court of the status of the district court proceedings.

(b) If the motion filed in the district court is one that does not request substantive relief from the order or judgment under appeal, such as a motion to correct a clerical error pursuant to Fed.R.Civ.P. 60(a), any party to the appeal may file a motion for a limited remand to give the district court authority to rule on the motion, without waiting for the district court to signify its intentions on the motion. A response and reply may be filed in compliance with FRAP 27 and the corresponding local rules of this court.

(c) If the motion filed in the district court requests substantive relief from the order or judgment under appeal, such as a motion to modify a preliminary injunction or a motion for relief from judgment pursuant to Fed.R.Civ.P. 60(b), the district court may consider whether to grant or deny the motion without obtaining a remand from this court.

(1) If the district court determines that the motion should be denied, the district court may deny the motion without a remand by this court.

(2) If the district court determines that the motion should be granted, the district court should enter an order stating that it intends to grant the motion if this court returns jurisdiction to it.

(i) Any appellant or cross-appellant may file an objection to remand with this court within 14 days after entry of the district court's order.

(ii) If no objection to remand is filed with this court within 14 days after entry of the district court's order, this court may remand the case in full to the district court for entry of an order granting relief and will direct the clerk to close the appeal. Any such order shall constitute an express dismissal of the appeal for purposes of FRAP 12.1.

(iii) If an objection to remand is filed with this court within 14 days after entry of the district court's order, that objection will be treated as a motion for the court to retain jurisdiction. A response and reply may be filed in compliance with FRAP 27 and the corresponding local rules of this court. Upon consideration of the objections and any responses and replies, the court will determine whether to retain jurisdiction over the appeal.

(iv) If the district court enters an order on remand that fails to grant the relief the district court had stated it would grant, any appellant or cross-appellant may, within 30 days after entry of the district court's order, file a motion in this court to reopen and reinstate the closed appeal.

(d) With respect to any motion described in section (c) of this rule, if the district court determines that the motion raises a substantial issue that warrants further consideration, the district court should enter an order so stating. The district court may without a remand conduct such further proceedings as are necessary to determine whether the motion should be granted or denied.

(1) While such proceedings are pending in the district court, the appeal will remain stayed unless this court orders otherwise.

(2) If the district court thereafter determines that the motion should be denied, the district court may deny the motion without a remand by this court.

(3) If the district court thereafter determines that the motion should be granted, the provisions of section (c)(2) of this rule apply.

(e) Upon the district court's entry of any order addressing any motion described in FRAP 12.1, the parties must promptly notify this court of such order.

TITLE III. APPEALS FROM THE UNITED STATES TAX COURT

FRAP 13. Appeals from the Tax Court

(a) Appeal as of Right.

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

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

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

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

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

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

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

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

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

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

* * * *

I.O.P. - Payment of Fees. When the notice of appeal is filed in the Tax Court, counsel must pay to the Tax Court the court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. Upon receipt of a copy of a notice of appeal, the clerk of the court of appeals will transmit to counsel a notice advising of other requirements of the rules.

Cross-Reference: FRAP 3, 10, 11, 12

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

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

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

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

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

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition — using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application. The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention. Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion — or other notice of intervention authorized by statute — must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) Payment of Fees. When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

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

* * * *

11th Cir. R. 15-1 Procedures in Proceedings for Review of Orders of the Federal Energy Regulatory Commission. This court has adopted special rules for these proceedings. See Addendum Two.

11th Cir. R. 15-2 Petitions for Review and Applications for Enforcement. A copy of the order(s) sought to be reviewed or enforced shall be attached to each petition or application which is filed. In an immigration appeal, the petitioner or applicant shall also attach a copy of the Immigration Judge's order and the Notice to Appear.

11th Cir. R. 15-3 Answer to Application for Enforcement. An answer to an application for enforcement may be served on the petitioner and filed with the clerk within 21 days after the application is filed.

11th Cir. R. 15-4 Motion for Leave to Intervene. A motion for leave to intervene or other notice of intervention authorized by applicable statute may be filed within 30 days of the date on which the petition for review is filed.

* * * *

I.O.P. -

1. Payment of Fees. The court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, is due upon filing of the petition. Checks should be made payable to Clerk, U.S. Court of Appeals, Eleventh Circuit. Applications to file a petition in forma pauperis are governed by FRAP 24(b).

2. Notice of Origin. Counsel are requested to advise the clerk, at the time of filing, of the petitioner's place of residence, principal place of business, domicile, or other information concerning place of origin.

3. Federal Energy Regulatory Commission Proceedings. Because these matters usually involve multiple parties before the court, it has adopted special procedures of (a) simplifying and defining issues, (b) agreeing on an appendix and record, (c) assigning joint briefing responsibilities and scheduling briefs, and (d) such other matters as may aid in the disposition of the proceeding. See 11th Cir. R. 15-1 and Addendum Two.

4. National Labor Relations Board Original Contempt Proceedings.

a. Assignment to Panel - When the Board files a petition for adjudication of a respondent for civil contempt of a previously issued order or mandate of this court, the clerk normally refers it back to the original panel which previously heard or decided the matter on its merits. That panel, through the initiating judge, is then responsible for issuance of all preliminary orders including among others the order to show cause fixing the time for filing a response to the pleadings or answer.

If the former panel determines that good reason exists for not assuming direction of the matter (e.g., death or retirement of a panel member or serious legal issue warranting all active judge determination in the event of a visiting judge on the panel), the clerk is notified and under the direction of the chief judge selects by lot a panel of active judges.

b. Where Evidentiary Hearing Required - If the matter indicates that disputed issues of fact are involved requiring an evidentiary hearing, the initiating judge of the panel at that stage usually enters for the panel the Board's proposed order of reference of the matter for hearing before a special master. The order specifies the nature of the conditions, the hearing, the master's powers and duties, the filing of the master's report, including findings of fact, conclusions, and recommendations of the special master.

c. Proceedings After Master's Report - Once the special master's report is filed, the parties are advised thereof and of the order of reference fixing the time for filing of any objections, responses to objections, and supporting briefs in support or opposition thereto. When ripe for submission the matter is usually then handled by the court under its usual procedures.

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

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

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

* * * *

11th Cir. R. 15.1-1 Failure to Prosecute. In an enforcement proceeding, if a party adverse to the National Labor Relations Board fails to file or correct the brief or appendix within the time permitted by the rules, the court may take such action as it deems appropriate including, but not limited to, entry of judgment enforcing the Board's order.

FRAP 16. The Record on Review or Enforcement

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

(1) the order involved;

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

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

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

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

* * * *

11th Cir. R. 16-1 Form of Record. The record on appeal shall be bound securely with durable front and back covers in a manner that will facilitate reading. The agency shall index the record by means of document numbers in consecutive order.

Cross-Reference: FRAP 10

FRAP 17. Filing the Record

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

(b) Filing — What Constitutes.

(1) The agency must file:

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

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

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

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

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

* * * *

11th Cir. R. 17-1 Certified Extracts of the Record. If a certified list of documents comprising the record is filed in lieu of the formal record, petitioner shall obtain from the agency, board, or commission a certified copy of the portions of the record relied upon by the parties in their briefs, to be numbered and indexed and filed within 21 days from the date of filing of respondent's brief, with a front and back durable (at least 90#) cover. The front cover shall contain the information specified in 11th Cir. R. 28-1(a) and be captioned "Certified Extracts of the Record."

FRAP 18. Stay Pending Review

(a) Motion for a Stay.

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

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

(A) The motion must:

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

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

(B) The motion must also include:

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

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

(iii) relevant parts of the record.

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

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

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

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

* * * *

11th Cir. R. 18-1 Motions. Motions for stay or injunction pending review must include a copy of the decision or order from which relief is sought and of any opinion or findings of the agency.

11th Cir. R. 18-2 Motion for Reconsideration. A motion to reconsider, vacate, or modify an order granting or denying relief under FRAP 18 must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing.

* * * *

I.O.P. - Proof of Service Required. Motions for stay or injunction pending review must include proof of service on all parties appearing below.

Cross-Reference: FRAP 27

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

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

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

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

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

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

TITLE V. EXTRAORDINARY WRITS

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

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

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

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

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

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

(iv) the reasons why the writ should issue.

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

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

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

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

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

(3) Two or more respondents may answer jointly.

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

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

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

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

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

(d) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

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

* * * *

11th Cir. R. 21-1 Writs of Mandamus and Prohibition and Other Extraordinary Writs.

(a) As part of the required showing of the reasons why the writ should issue, the petition should include a showing that mandamus is appropriate because there is no other adequate remedy available.

(b) The petition shall include a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

(c) The petition shall include a proof of service showing that the petition was served on all parties to the proceeding in the district court, and that a copy was provided to the district court judge. Service is the responsibility of the petitioner, not the clerk.

* * * *

I.O.P. - Payment of Fees. The court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, is due upon filing of the petition. Checks should be made payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

Cross-Reference: FRAP 26.1

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22. Habeas Corpus and Section 2255 Proceedings

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

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

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

* * * *

11th Cir. R. 22-1 Certificate of Appealability. In all cases brought pursuant to 28 U.S.C. §§ 2241, 2254, or 2255, a timely notice of appeal must be filed.

(a) A party must file a timely notice of appeal even if the district court issues a certificate of appealability. The district court or the court of appeals will construe a party's filing of an application for a certificate of appealability, or other document indicating an intent to appeal, as the filing of a notice of appeal. If the notice of appeal or its equivalent is filed in the court of appeals, the clerk of that court will note the date it was received and send it to the district court, pursuant to FRAP 4(d).

(b) If the district court denies a certificate of appealability, a party may seek a certificate of appealability from the court of appeals. In the event that a party does not file an application for such

a certificate, the court of appeals will construe a party's filing of a timely notice of appeal as an application to the court of appeals for a certificate of appealability.

(c) An application to the court of appeals for a certificate of appealability may be considered by a single circuit judge. The denial of a certificate of appealability, whether by a single circuit judge or by a panel, may be the subject of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing en banc.

11th Cir. R. 22-2 Length of Application for a Certificate of Appealability. An application to the court of appeals for a certificate of appealability and a brief in support thereof (whether or not they are combined in a single document) collectively may not exceed the maximum length authorized for a party's principal brief [See FRAP 32(a)(7)]. A response and brief opposing an application is subject to the same limitations.

11th Cir. R. 22-3 Application for Leave to File a Second or Successive Habeas Corpus Petition or Motion to Vacate, Set Aside or Correct Sentence.

(a) Form. An applicant seeking leave to file a second or successive habeas corpus petition or motion to vacate, set aside or correct sentence must use the appropriate form provided by the clerk of this court, except in a case in which the sentence imposed is death. In a death sentence case, the use of the form is optional.

(b) Finality of Determination. Pursuant to 28 U.S.C. § 2244(b)(3)(E), the grant or denial of an authorization by a court of appeals to file a second or successive habeas corpus petition or a motion pursuant to 28 U.S.C. § 2255 is not appealable and shall not be the subject of a petition for panel rehearing or a petition for rehearing en banc.

11th Cir. R. 22-4 Petitions in Capital Cases Pursuant to 28 U.S.C. §§ 2254 and 2255.

(a) Stay Cases

(1) The following rules shall apply to cases brought pursuant to 28 U.S.C. §§ 2254 and 2255 in which a court has imposed a sentence of death, execution has been ordered, a United States District Court has denied a motion to stay execution pending appeal, and the petitioner has appealed to this court and has applied for a stay of execution. Except as changed by these rules the provisions of 11th Cir. R. 27-1 shall apply.

(2) Upon the filing of the notice of appeal in a case where the district court has denied a stay, the clerk of the district court shall immediately notify the clerk of this court by telephone of such filing.

(3) A motion for stay of execution and application for a certificate of appealability (if not granted by the district court) shall be filed with the clerk of this court together with documents required by 11th Cir. R. 27-1.

(4) Upon receipt of the notice of appeal and motion for stay (and application for a certificate of appealability, if not granted by the district court), the clerk shall docket the appeal and assign it to

a panel constituted by the court from a roster of the active judges of the court maintained for the purposes of these rules. The clerk shall notify the judges of the panel of their assignment by telephone or other expeditious means. The panel to which the appeal is assigned shall handle all matters pertaining to the motion to stay, application for a certificate of appealability, the merits, second or successive petitions, remands from the Supreme Court of the United States, and all incidental and collateral matters, including any separate proceedings questioning the conviction or sentence.

(5) The panel shall consider an application for a certificate of appealability, shall determine whether oral argument will be heard on the motion to stay, and shall determine all other matters pertaining to the appeal.

(6) If the district court has refused to grant a certificate of appealability, and this court also denies a certificate of appealability, no further action need be taken by the court.

(7) If a certificate of appealability is granted by the district court or by this court, the panel may grant a temporary stay pending consideration of the merits of the appeal if necessary to prevent mooting the appeal.

(b) Non-Stay Cases

(1) Applications, petitions, and appeals in capital cases that are not governed by section (a) of this rule shall proceed under the Federal Rules of Appellate Procedure, the Eleventh Circuit Rules, and the usual policies of this court. The ordinary briefing schedule for appeals will be followed to the extent feasible.

(c) Application for an Order Authorizing Second or Successive Habeas Corpus Petition. An application in the court of appeals for an order authorizing the district court to consider a second or successive habeas corpus petition shall be assigned to the panel constituted under section (a)(4) of this Rule to consider habeas corpus appeals, petitions or other related matters with respect to the same petitioner.

* * * *

I.O.P. -

1. Certificate of Appealability. Consistent with FRAP 2, the court may suspend the provisions of 11th Cir. R. 22-1(c) and order proceedings in accordance with the court's direction.

2. Oral Argument in Capital Cases. The presiding judge of the panel will notify the clerk at the appropriate time whether or not there will be oral argument in the case, and if so, the date for oral

argument and the amount of oral argument time allotted to each side. A capital case appeal will include oral argument on the merits unless the panel decides unanimously that oral argument is not needed.

Cross-Reference: FRAP 27; 28 U.S.C. §§ 2244, 2254, 2255; Rules 9 and 11 of the Rules Governing Section 2254 and Section 2255 Cases in the United States District Courts.

FRAP 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

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

(c) Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

(d) Modification of the Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

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

Cross-Reference: FRAP 9

FRAP 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

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

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

(B) claims an entitlement to redress; and

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

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

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

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

(B) a statute provides otherwise.

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

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

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

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

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

was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding. A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 16, 2013, eff. Dec. 1, 2013.)

* * * *

11th Cir. R. 24-1 Appeals In Forma Pauperis and Under the Criminal Justice Act.

(a) To meet the requirements of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A, the judicial council of this circuit has adopted a plan that supplements the various plans that have been adopted by the United States district courts of this circuit by providing for representation on appeal of parties financially unable to obtain adequate representation. The circuit's CJA plan, and the guidelines for counsel, appear as Addendum Four to these rules.

(b) If counsel was appointed for a party in the district court under the Criminal Justice Act, the party may appeal without prepaying costs and without establishing the right to proceed in forma pauperis. 18 U.S.C. § 3006A(d)(6). This policy also applies to all in forma pauperis appeals from judgments of conviction.

11th Cir. R. 24-2 Motion for Leave to Proceed on Appeal In Forma Pauperis. A motion for leave to proceed on appeal in forma pauperis may be filed in the court of appeals within 30 days after service of notice of the action of the district court denying leave to proceed on appeal in forma pauperis.

* * * *

I.O.P. - Prison Litigation Reform Act. In all civil appeals by prisoners, the Prison Litigation Reform Act of 1995 (hereinafter "the Act"), 28 U.S.C. § 1915 (as amended), requires payment of the court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, plus the district court filing fee required by 28 U.S.C. § 1917, payable to the clerk of the United States District Court

where the prisoner/appellant filed the notice of appeal. Likewise, prior to the filing of a petition for a writ of mandamus (or other writ) the Act requires payment of the court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit. If a prisoner is unable to pay the required fee in full at the time of filing a notice of appeal or petition for a writ, the appropriate district court (if a notice of appeal is filed) or this court (if a petition for a writ is filed) may allow the prison or other institution of confinement to pay the fee in installments from the prisoner's account.

TITLE VII. GENERAL PROVISIONS

FRAP 25. Filing and Service

(a) Filing.

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

(2) Filing: Method and Timeliness.

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

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

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

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

(C) Inmate filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) Electronic filing. A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) Filing a Motion with a Judge. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) Clerk's Refusal of Documents. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

11th Cir. R. 25-1 Filings from Party Represented by Counsel. When a party is represented by counsel, the clerk may not accept filings from the party.

11th Cir. R. 25-2 Filing of Papers Transmitted by Alternate Means. The clerk may specially authorize the filing of papers transmitted by alternate means in emergencies and for other compelling circumstances. In such cases, signed originals must thereafter also be furnished by conventional means. Provided that the clerk had given prior authorization for transmission by alternate means and the papers conform to the requirements of FRAP and circuit rules, the signed originals will be filed *nunc pro tunc* to the receipt date of the papers transmitted by alternate means. The court may act upon the papers transmitted by alternate means prior to receipt of the signed originals.

11th Cir. R. 25-3 Electronic Case Files (ECF) System.

(a) Electronic Filing and Service. It is mandatory that all counsel of record use the court's Electronic Case Files (ECF) system. Documents must be filed and served electronically by counsel in accordance with the procedures adopted by the court and set forth in the Eleventh Circuit Guide to Electronic Filing. The Eleventh Circuit Guide to Electronic Filing, and information and training materials related to electronic filing, are available on the court's website at www.ca11.uscourts.gov.

(b) Exemption. Upon motion and a showing of good cause, the court may exempt an attorney from the electronic filing requirements and authorize filing and service by means other than the use of the ECF system. The motion, which need not be filed or served electronically, must be filed at least 14 days before the brief, petition, or other document is due. Also see 11th Cir. R. 31-5.

11th Cir. R. 25-4 Information and Signature Required. All papers filed, including motions and briefs, must contain the name, office address, and telephone number of an attorney or a party

proceeding pro se, and be signed by an attorney or by a party proceeding pro se. Inmate filings must be signed by the inmate and should contain name, prisoner number, institution, and street address.

11th Cir. R. 25-5 Maintaining Privacy of Personal Data. In order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court.

a. Social Security numbers and Taxpayer Identification numbers. If an individual's social security number or taxpayer identification number must be included in a pleading, only the last four digits of that number should be used.

b. Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used. For purposes of this rule, a minor child is any person under the age of eighteen years, unless otherwise provided by statute or court order.

c. Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.

d. Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

e. Home addresses. If a home address must be included, only the city and state should be used.

Subject to the exemptions from the redaction requirement contained in the Federal Rules of Civil, Criminal, and Bankruptcy Procedure, as made applicable to the courts of appeals through FRAP 25(a)(5), a party filing a document containing the personal data identifiers listed above shall file a redacted document for the public file and either:

(1) a reference list under seal. The reference list shall contain the complete personal data identifier and the redacted identifier used in its place in the redacted filing. All references in the filing to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifiers. The reference list must be filed under seal, may be amended as of right, and shall be retained by the court as part of the record. A motion to file the reference list under seal is not required. Or

(2) an unredacted document under seal, along with a motion to file the unredacted document under seal specifying the type of personal data identifier included in the document and why the party believes that including it in the document is necessary or relevant. If permitted to be filed, both the redacted and unredacted documents shall be retained by the court as part of the record.

The responsibility for redacting these personal data identifiers rests solely with counsel and the parties. The clerk will not review each pleading for compliance with this rule. A person waives the protection of this rule as to the person's own information by filing it without redaction and not under seal.

Consistent with FRAP 25(a)(5), electronic public access is not provided to pleadings filed with the court in social security appeals and immigration appeals. Therefore, parties in social security appeals and immigration appeals are exempt from the requirements of this rule.

In addition to the foregoing, a party should exercise caution when filing a document that contains any of the following information. A party filing a redacted document that contains any of the following information must comply with the rules for filing an unredacted document as described in numbered paragraph (2) above.

- Personal identifying number, such as driver's license number;
- medical records, treatment and diagnosis;
- employment history;
- individual financial information;
- proprietary or trade secret information;
- information regarding an individual's cooperation with the government;
- national security information;
- sensitive security information as described in 49 U.S.C. § 114(s).

11th Cir. R. 25-6 Court Action with Respect to Impermissible Language or Information in Filings.

(a) When any paper filed with the court, including motions and briefs, contains:

(1) *ad hominem* or defamatory language; or

(2) information the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(3) information the public disclosure of which would violate legally protected interests,

the court on motion of a party or on its own motion, may without prior notice take appropriate action.

(b) The appropriate action the court may take in the circumstances described above includes ordering that: the document be sealed; specified language or information be stricken from the document; the document be struck from the record; the clerk be directed to remove the document from electronic public access; that the party who filed the document explain why including the specified language or disclosing specified information in the document is relevant, necessary, and appropriate or file a redacted or replacement document.

(c) When the court takes such action under this rule without prior notice, the party may within 14 days from the date the court order is issued file a motion to restore language, information, or a document without alteration, setting forth with particularity any reasons why the action taken by the court is unwarranted. The timely filing of a motion to restore language, information, or a document will postpone the due date for filing any redacted or replacement document until the court rules on the motion.

* * * *

I.O.P. -

1. Timely Filing of Papers. Except as otherwise provided by FRAP 25(a) for inmate filings and for briefs and appendices, all other papers, including petitions for rehearing, shall not be timely unless they are actually received in the clerk's office within the time fixed for filing.

2. Acknowledgment of Filings. The clerk will acknowledge paper filings if a stamped self-addressed envelope is provided.

3. Filing with the Clerk. The clerk's office in Atlanta is the proper place for the filing of all court documents that are exempt from electronic filing. It is open for business from 8:30 a.m. until 5:00 p.m., Eastern time, Monday through Friday (except legal holidays). Staff is available during these hours to receive filings and to respond to over-the-counter and telephone inquiries. Outside of normal business hours, an emergency telephone message system is available through which a deputy clerk may be reached by dialing the main clerk's office telephone number and following recorded instructions.

4. Papers Sent Directly to Judges' Chambers. When an attorney or party sends papers related to a pending appeal directly to a judge's chambers without having received prior approval from the court to do so, the judge forwards the papers to the clerk for appropriate processing. The clerk will advise the attorney or party that the papers have been received by the clerk, and that the clerk's office in Atlanta is the proper place for the filing of appellate papers.

5. Miami Satellite Office. The clerk maintains a satellite office in Miami, Florida, to assist parties and counsel to access the record on appeal in appeals being briefed, and to provide other related assistance. It is open for business from 8:30 a.m. until 5:00 p.m., Eastern time, Monday through Friday (except legal holidays).

All filings and case-related inquiries should be directed to the clerk's principal office in Atlanta, except that counsel who receive a calendar assigning an appeal to a specific day of oral argument in Miami should direct filings and case-related inquiries up to the date of oral argument to the Miami satellite office. Inquiries concerning bar membership, renewal of bar membership, and application for admission to the bar should be directed to the clerk's principal office in Atlanta.

Cross-Reference: FRAP 26, 45, "E-Government Act of 2002," Pub. L. No. 107-347
Cross-Reference for 11th Cir. R. 25-6(a)(2): See 5 U.S.C. § 552b(c)(6) [personal privacy exception to the Freedom of Information Act]

FRAP 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C) – and filing by mail under Rule 13(b) – at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal Holiday" Defined. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Service. When a party may or must act within a specified time after service, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

11th Cir. R. 26-1 Motion for Extension of Time. A motion for extension of time made pursuant to FRAP 26(b) shall contain a statement that movant's counsel has consulted opposing counsel and that either opposing counsel has no objection to the relief sought, or will or will not promptly file an objection. In criminal appeals, counsel must state whether the party they represent is incarcerated.

* * * *

I.O.P. -

1. Extensions of Time. The court expects the timely filing of all papers within the period of time allowed by the rules, without granting extensions of time. Requests for extensions of time to file the brief or appendix are governed by 11th Cir. R. 31-2. Failure to timely file required documents may cause the appeal to be dismissed for want of prosecution, under the provisions of 11th Cir. R. 42-1, 42-2, or 42-3, or may result in possible disciplinary action against counsel as described in Addendum Eight, or both.

2. Inaccessibility of Clerk's Office. The court, by order of the chief judge, may determine that inclement weather or other extraordinary conditions have made the clerk's office inaccessible. If such a determination is made, any filings due to be made on such a day will automatically be processed as timely if received on the day that the clerk's office reopens for business. Counsel need not make any special application or request for such treatment. Further, parties and their counsel should note that ordinarily local conditions at the place from which filings are sent do not trigger the additional time for filing provisions of FRAP 26(a) except upon application to the clerk and order of court.

Cross-Reference: FRAP 25, 27, 31, 42, 45

FRAP 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) Number of Copies. If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

(As added Apr. 25, 1989, eff. Dec. 1, 1989; amended April 30, 1991, eff. Dec. 1, 1991; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

* * * *

11th Cir. R. 26.1-1 Certificate of Interested Persons and Corporate Disclosure Statement: Contents. A certificate shall be furnished by appellants, appellees, intervenors and amicus curiae, including governmental parties, which contains a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. In criminal and criminal-related appeals, the certificate shall also disclose the identity of the victim(s). In bankruptcy appeals, the certificate shall also identify the debtor, the members of the creditor's committee, any entity which is an active participant in the proceedings, and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings.

The certificate contained in the first brief filed must include a complete list of all persons and entities known to that party to have an interest in the outcome of the particular case or appeal. The certificate contained in the second and all subsequent briefs filed must include only persons and entities omitted from the certificate contained in the first brief filed and in any other brief that has been filed. Counsel who believe that the certificate contained in the first brief filed and in any other brief that has been filed is complete may simply certify to that effect.

The certificate contained in each motion or petition filed must include a complete list of all persons and entities known to that party to have an interest in the outcome of the particular case or appeal. The certificate contained in a response or answer to a motion or petition, or a reply to a response, must include only persons and entities that were omitted from the certificate contained in

the motion or petition. Counsel who believe that the certificate contained in the motion or petition is complete may simply certify to that effect.

In a petition for en banc consideration, the petitioner's certificate shall also compile and include a complete list of all persons and entities listed on all certificates filed in the appeal prior to the date of filing of the petition for en banc consideration. If the court grants en banc rehearing, the requirements set forth in the second paragraph of this rule also apply to en banc briefs.

11th Cir. R. 26.1-2 Certificate of Interested Persons and Corporate Disclosure Statement: Time for Filing.

(a) The certificate described in 11th Cir. R. 26.1-1 must be filed by the appellant (and cross-appellant) with this court within 14 days after the date the appeal is docketed in this court, or along with the filing in this court by any party of any motion, petition, or pleading, whichever occurs first.

(b) On the same day a certificate is served, the party filing it must also complete the court's web-based certificate at www.ca11.uscourts.gov, providing the information required by that form. Pro se parties are not required or authorized to complete the web-based certificate.

(c) Within 14 days after the filing of the initial certificate, the opposing party must file a notice either indicating that the certificate initially filed is correct and complete, or adding any interested persons or entities omitted from the initial certificate.

(d) In the alternative, the parties may file a joint certificate within 14 days after the date the appeal is docketed in this court, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first.

(e) The certificate described in 11th Cir. R. 26.1-1 must be included within the principal brief filed by any party and also must be included in any petition, answer, motion or response filed by any party. The clerk is not authorized to submit to the court any brief (except for the reply brief of an appellant or cross-appellant), petition, answer, motion or response that does not contain the certificate, but may receive and retain the papers pending supplementation of the papers with the required certificate.

(f) After a party has filed its initial certificate, that party is required to notify the court immediately of any additions, deletions, corrections or other changes that should be made to its certificate. A party must do so by filing an amended certificate with the court or by including an amended certificate with a party's brief, petition, answer, motion or response. A party must:

(1) prominently indicate on the amended certificate the fact that it has been amended, and

(2) must clearly identify the person or entity that has been added, deleted, corrected or otherwise changed.

(g) On the same day an amended certificate is served, that party must also update the web-based certificate to reflect the amendments.

(h) If a party files an amendment that deletes a person or entity from a certificate, the opposing party must, within 10 days after the filing of the amended certificate, file a notice indicating whether or not it agrees that the deletion is proper.

11th Cir. R. 26.1-3 Certificate of Interested Persons and Corporate Disclosure Statement: Format.

(a) The certificate described in 11th Cir. R. 26.1-1 must immediately follow the cover page within a brief, and must precede the text in a petition, answer, motion or response.

(b) The certificate must list persons (last name first) and entities in alphabetical order, have only one column, and be double-spaced.

(c) A corporate entity must be identified by its full corporate name as registered with a secretary of state's office and, if its stock is publicly listed, its stock ("ticker") symbol must be provided after the corporate name.

(d) At the top of each page the court of appeals docket number and short style must be noted (name of first-listed plaintiff or petitioner v. name of first-listed defendant or respondent). Each page of the certificate must be separately sequentially numbered to indicate the total number of pages comprising the certificate (e.g., C-1 of 3, C-2 of 3, C-3 of 3). These pages do not count against any page limitations imposed on the papers filed.

* * * *

I.O.P. - No Action Without Certificate. The court will not act upon any papers requiring a Certificate of Interested Persons and Corporate Disclosure Statement, including emergency filings, until the certificate is filed, except to prevent injustice.

Cross-Reference: FRAP 5, 5.1, 21, 27, 28, 29, 35

FRAP 27. Motions

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(A) Grounds and relief sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying documents.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) Documents barred or not required.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) Response.

(A) Time to file. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) Request for affirmative relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Cover. A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper size, line spacing, and margins. The document must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and type styles. The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) Page Limits. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule

27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) Number of Copies. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

11th Cir. R. 27-1 Motions.

(a) Number of Copies and Form of Motion.

(1) When a motion is filed in paper, an original and three copies of the motion and supporting papers must be filed if the motion requires panel action. An original and one copy of the motion and supporting papers must be filed if the motion may be acted upon by a single judge or by the clerk [see 11th Cir. R. 27-1(c) and (d)].

(2) A motion filed in paper must contain proof of service on all parties, and should ordinarily be served on other parties by means which are as equally expeditious as those used to file the motion with the court.

(3) A motion shall be accompanied by, and the opposing party shall be served with, supporting documentation required by FRAP 27, including relevant materials from previous judicial or administrative proceedings in the case or appeal. A party moving for a stay must include a copy of the judgment or order from which relief is sought and any opinion and findings of the district court.

(4) In addition to matters required by FRAP 27, a motion shall contain a brief recitation of prior actions of this or any other court or judge to which the motion, or a substantially similar or related application for relief, has been made.

(5) A motion for extension of time made pursuant to FRAP 26(b) shall, and other motions where appropriate may, contain a statement that movant's counsel has consulted opposing counsel and that either opposing counsel has no objection to the relief sought, or will or will not promptly file an objection.

(6) In criminal appeals, counsel must state whether the party they represent is incarcerated.

(7) Both retained and appointed counsel who seek leave to withdraw from or to dismiss a criminal appeal must recite in the motion that the party they represent has been informed of the

motion and either approves or disapproves of the relief sought and show service of the motion on the party they represent.

(8) Appointed counsel who seek leave to withdraw from representation in a criminal appeal must follow procedures set forth by the Supreme Court in Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). It is counsel's responsibility to ensure that the record contains transcripts of *relevant* proceedings in the case, including pre-trial proceedings, trial proceedings (including opening and closing arguments and jury instructions), and sentencing proceedings. Counsel's brief in support of a motion to withdraw under Anders must contain a certificate of service indicating service on the party represented as well as on the other parties to the appeal.

(9) All motions filed with the court shall include a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

(10) A motion must comply with the typeface and type style requirements of FRAP 32(a)(5) and 32(a)(6).

(b) Emergency Motions.

(1) Except in capital cases in which execution has been scheduled, a motion will be treated as an emergency motion only when **both** of the following conditions are present:

1. The motion will be moot unless a ruling is obtained within seven days; and

2. If the order sought to be reviewed is a district court order or action, the motion is being filed within seven days of the filing of the district court order or action sought to be reviewed.

Motions that do not meet these two conditions but in which a ruling is required by a date certain may be treated as "time sensitive" motions.

(2) A party requesting emergency action shall label the motion as "Emergency Motion" and state the nature of the emergency and the date by which action is necessary. The motion or accompanying memorandum shall state the reasons for granting the requested relief and must specifically discuss:

(i) the likelihood the moving party will prevail on the merits;

(ii) the prospect of irreparable injury to the moving party if relief is withheld;

(iii) the possibility of harm to other parties if relief is granted; and

(iv) the public interest.

Counsel filing the motion shall make every possible effort to serve the motion personally; if this is not possible, counsel shall notify opposing counsel promptly by telephone.

(3) If the emergency motion raises any issue theretofore raised in a district court, counsel for the moving party shall furnish copies of all pleadings, briefs, memoranda or other papers filed in the district court supporting or opposing the position taken by the moving party in the motion and copies of any order or memorandum decision of the district court relating thereto. If compliance is impossible or impractical due to time restraints or otherwise, the reason for non-compliance shall be stated.

(4) An emergency motion, whether addressed to the court or an individual judge, ordinarily should be filed with the clerk and not with an individual judge. To expedite consideration by the court in a genuine emergency, counsel may telephone the clerk and describe a motion that has not yet been filed in writing. This is not a substitute for the filing required by FRAP 27(a).

(5) Except in capital cases in which execution has been scheduled, counsel will be permitted to file an emergency motion outside of normal business hours only when **both** of the following conditions are present:

1. The motion will be moot unless a ruling is obtained prior to noon [Eastern Time] of the next business day; and

2. If the order or action sought to be reviewed is a district court order or action, the motion is being filed within two business days of the filing of the district court order or action sought to be reviewed.

(c) Motions for Procedural Orders Acted Upon by the Clerk.

The clerk is authorized, subject to review by the court, to act for the court on the following unopposed procedural motions:

(1) to extend the time for filing briefs or other papers in appeals not yet assigned or under submission;

(2) to withdraw appearances except for court-appointed counsel;

(3) to make corrections at the request of counsel in briefs or pleadings filed in this court;

(4) to extend the time for filing petitions for rehearing for not longer than 28 days, but only when the court's opinion is unpublished;

(5) to abate or stay further proceedings in appeals, provided that the requesting party files a written status report with the clerk at 30-day intervals, indicating whether the abatement or stay should continue;

(6) to supplement or correct records;

(7) to consolidate appeals from the same district court;

(8) to incorporate records or briefs from former appeals;

(9) to grant leave to file further reply or supplemental briefs before argument in addition to the single reply brief permitted by FRAP 28(c);

(10) to reinstate appeals dismissed by the clerk;

(11) to enter orders continuing on appeal district court appointments of counsel for purposes of compensation;

(12) to file briefs in excess of the page and type-volume limitations set forth in FRAP 32(a)(7), but only upon a showing of extraordinary circumstances;

(13) to extend the time for filing Bills of Costs.

(14) to permit the release of the record from the clerk's custody but only upon a showing of extraordinary circumstances;

(15) to grant leave to adopt by reference any part of the brief of another;

(16) to intervene in a proceeding seeking review or enforcement of an agency order;

(17) to intervene pursuant to 28 U.S.C. § 2403;

(18) for substitution of parties.

The clerk is authorized, subject to review by the court, to act for the court on the following opposed procedural motions:

(19) to grant moderate extensions of time for filing briefs or other papers in appeals not yet assigned or under submission unless substantial reasons for opposition are advanced;

(20) to expedite briefing in a direct appeal of a criminal conviction and/or sentence when it appears that an incarcerated defendant's projected release is expected to occur prior to the conclusion of appellate proceedings.

The clerk is also authorized to carry a motion with the case where there is no need for court action prior to the time the matter is considered on the merits by a panel.

(d) Motions Acted Upon by a Single Judge. Under FRAP 27(c), a single judge may, subject to review by the court, act upon any request for relief that may be sought by motion, except to dismiss or otherwise determine an appeal or other proceeding. Without limiting this authority, a single judge is authorized to act, subject to review by the court, on the following motions:

(1) where opposed, motions that are subject to action by the clerk under part (c) of this rule;

(2) for certificates of appealability under FRAP 22(b) and 28 U.S.C. § 2254;

(3) to appeal in forma pauperis pursuant to FRAP 24 and 28 U.S.C. § 1915(a);

(4) to appoint counsel for indigent persons appealing from judgments of conviction or from denial of writs of habeas corpus or petitions filed under 28 U.S.C. § 2255, or to permit court appointed counsel to withdraw;

(5) to extend the length of briefs except in capital cases, and to extend the length of petitions for rehearing or rehearing en banc;

(6) to extend the times prescribed by the rules of this court for good cause shown (note that FRAP 26(b) forbids the court to enlarge the time for taking various actions, including the time for filing a notice of appeal); in criminal appeals, counsel requesting an extension of time to file a brief must state whether the party they represent is incarcerated;

(7) to exercise the power granted in FRAP 8 and 9 with respect to stays or injunctions or releases in criminal cases pending appeal but subject to the restrictions set out therein, and under FRAP 18 with respect to stays pending review of decisions or orders of agencies but subject to the restrictions on the power of a single judge contained therein;

(8) to stay the issuance of mandates or recall mandates pending certiorari;

(9) to expedite appeals;

(10) to file briefs as amicus curiae prior to issuance of a panel opinion.

(e) Two-Judge Motions Panels. Specified motions as determined by the court may be acted upon by a panel of two judges.

(f) Motions Shall Not Be Argued. Unless ordered by the court no motion shall be orally argued.

(g) Effect of a Ruling on a Motion. A ruling on a motion or other interlocutory matter, whether entered by a single judge or a panel, is not binding upon the panel to which the appeal is assigned on the merits, and the merits panel may alter, amend, or vacate it.

11th Cir. R. 27-2 Motion for Reconsideration. A motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing.

11th Cir. R. 27-3 Successive Motions for Reconsideration Not Permitted. A party may file only one motion for reconsideration with respect to the same order. Likewise, a party may not request reconsideration of an order disposing of a motion for reconsideration previously filed by that party.

11th Cir. R. 27-4 Sanctions for Filing a Frivolous Motion. When a party or an attorney practicing before this court files a frivolous motion, the court may, on motion of a party, or on its own motion

after notice and a reasonable opportunity to respond, impose an appropriate sanction on the party, the attorney, or both. For purposes of this rule, a motion is frivolous if:

(a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or

(b) it contains assertions of material facts that are false or unsupported by the record; or

(c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Sanctions may be monetary or nonmonetary in nature. Monetary sanctions may include an order to pay a penalty into the court, or an order directing payment to another party of some or all of the attorney's fees and expenses incurred by that party as a result of the frivolous motion, or both.

When a motion to impose sanctions is filed under this rule, the court may, if warranted, award to the party prevailing on the motion reasonable attorney's fees and expenses incurred in presenting or opposing the motion.

* * * *

I.O.P. -

1. Routing Procedures to Judges. Pre-submission motions requiring consideration by judges are assigned to motions panels. Composition of these panels is changed at the beginning of each court year in October, and upon a change in the court's membership. The clerk submits the motion papers to the judges assigned in rotation from a routing log, the effect of which is to route motions randomly to judges based on filing date. In matters requiring panel action, the papers are sent to the first judge (initiating judge), who will transmit them to the second judge with a recommendation. The second judge in turn sends them on to the third judge who returns the file and an appropriate order to the clerk.

2. Emergency Motion Procedure. Emergency motions are assigned in rotation from a separate emergency routing log. The papers are forwarded to all panel members simultaneously. If the matter requires that counsel contact panel members individually, the clerk after first securing panel approval will advise counsel (or parties) of the identity of the panel members to whom the appeal is assigned.

3. Motions to Expedite Appeals. An appeal may be expedited only by the court upon motion and for good cause shown. Unless the court otherwise specifies, the clerk will fix an appropriate briefing schedule which will permit the appeal to be heard at an early date.

4. Motions after Assignment of Appeal to Calendar. After an appeal is assigned to a non-argument or oral argument calendar, motions in that appeal are circulated to that panel rather than to an administrative motions panel.

5. Signature Required. 11th Cir. R. 25-4 requires motions to be signed by an attorney or by a party proceeding pro se.

6. Acknowledgment of Motions. The clerk will acknowledge filing of a motion if a stamped self-addressed envelope is provided.

Cross-Reference: FRAP 8, 9, 18, 26, 26.1, 32, 43; U.S. Sup. Ct. Rule 43

FRAP 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- **Answer p. 7;**
- **Motion for Judgment p. 2;**
- **Transcript p. 231.**

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; May 1, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 16, 2013, eff. Dec. 1, 2013.)

* * * *

11th Cir. R. 28-1 Briefs - Contents. Each principal brief shall consist, in the order listed, of the following:

(a) Cover Page. Elements to be shown on the cover page include the court of appeals docket number centered at the top; the name of this court; the title of the case [see FRAP 12(a)]; the nature of the proceeding [e.g., Appeal, Petition for Review]; the name of the court, agency, or board below; the title of the brief, identifying the party or parties for whom the brief is filed; and the name, office address, and telephone number of the attorney. See FRAP 32(a)(2).

(b) Certificate of Interested Persons and Corporate Disclosure Statement. A Certificate of Interested Persons and Corporate Disclosure Statement is required of all parties, including governmental parties. The Certificate shall comply with FRAP 26.1 and the accompanying circuit rules, and shall be included within each brief (except for the reply brief of an appellant or cross-appellant) immediately following the cover page.

(c) Statement Regarding Oral Argument. Appellant's brief shall include a short statement of whether or not oral argument is desired, and if so, the reasons why oral argument should be heard. Appellee's brief shall include a similar statement. The court will accord these statements due, though not controlling, weight in determining whether oral argument will be heard. See FRAP 34(a) and (f) and 11th Cir. R. 34-3(c).

(d) Table of Contents. The table of contents shall include page references to each section required by this rule to be included within the brief. The table shall also include specific page references to each heading or subheading of each issue argued.

(e) Table of Citations. The Table of Citations shall show the locations in the brief of citations, and shall contain asterisks in the margin identifying the citations upon which the party primarily relies.

(f) Statement Regarding Adoption of Briefs of Other Parties. A party who adopts by reference any part of the brief of another party pursuant to FRAP 28(i) shall include a statement describing in detail which briefs and which portions of those briefs are adopted.

(g) Statement of Subject-Matter and Appellate Jurisdiction. The jurisdictional statement must contain all information required by FRAP 28(a)(4)(A) through (D).

(h) Statement of the Issues.

(i) Statement of the Case. In the statement of the case, as in all other sections of the brief, every assertion regarding matter in the record shall be supported by a reference to the volume number (if available), document number, and page number of the original record where the matter relied upon is to be found. The statement of the case shall briefly recite the nature of the case and shall then include:

(i) the course of proceedings and dispositions in the court below. IN CRIMINAL APPEALS, COUNSEL MUST STATE WHETHER THE PARTY THEY REPRESENT IS INCARCERATED;

(ii) a statement of the facts. A proper statement of facts reflects a high standard of professionalism. It must state the facts accurately, those favorable and those unfavorable to the party. Inferences drawn from facts must be identified as such;

(iii) a statement of the standard or scope of review for each contention. For example, where the appeal is from an exercise of district court discretion, there shall be a statement that the standard of review is whether the district court abused its discretion. The appropriate standard or scope of review for other contentions should be similarly indicated, e.g., that the district court erred in formulating or applying a rule of law; or that there is insufficient evidence to support a verdict; or that fact findings of the trial judge are clearly erroneous under Fed.R.Civ.P. 52(a); or that there is a lack of substantial evidence in the record as a whole to support the factual findings of an administrative agency; or that the agency's action, findings and conclusions should be held unlawful and set aside for the reasons set forth in 5 U.S.C. § 706(2).

(j) Summary of the Argument. The opening briefs of the parties shall also contain a summary of argument, suitably paragraphed, which should be a clear, accurate and succinct condensation of the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed two and never five pages.

(k) Argument and Citations of Authority. Citations of authority in the brief shall comply with the rules of citation in the latest edition of either the "Bluebook" (A Uniform System of Citation) or the "ALWD Manual" (Association of Legal Writing Directors' Citation Manual: A Professional System of Citation). Citations shall reference the specific page number(s) which relate to the proposition for which the case is cited. Citations to decisions of the Supreme Court of the United States shall include both the United States Reports and the Supreme Court Reporter, where such citations exist. For state reported cases the national reporter series should be cross referenced (e.g., Southern Reporter, Southeast Reporter).

(l) Conclusion.

(m) Certificate of Compliance. The certificate described in FRAP 32(a)(7), if required by that rule.

(n) Certificate of Service.

11th Cir. R. 28-2 Appellee's Brief. An appellee's brief need not contain items (g), (h), and (i) of 11th Cir. R. 28-1 if the appellee is satisfied with the appellant's statement.

11th Cir. R. 28-3 Reply Brief. A reply brief need contain only items (a), (d), (e), (k), (m) and (n) of 11th Cir. R. 28-1.

11th Cir. R. 28-4 Briefs from Party Represented by Counsel. When a party is represented by counsel, the clerk may not accept a brief from the party.

11th Cir. R. 28-5 References to the Record. References to the record in a brief shall be to volume number (if available), document number, and page number. A reference may (but need not) contain the full or abbreviated name of a document.

* * * *

I.O.P. -

1. Signature Required. 11th Cir. R. 25-4 requires briefs to be signed by an attorney or by a party proceeding pro se.

2. "One Attorney, One Brief". Unless otherwise directed by the court, an attorney representing more than one party in an appeal may only file one principal brief (and one reply brief, if authorized), which will include argument as to all of the parties represented by that attorney in that appeal, and one (combined) appendix. A single party responding to more than one brief, or represented by more than one attorney, is similarly bound.

3. Adoption of Briefs of Other Parties. The adoption by reference of any part of the brief of another party pursuant to FRAP 28(i) does not fulfill the obligation of a party to file a separate brief which conforms to 11th Cir. R. 28-1, except upon written motion granted by the court.

4. Waiver of Reply Brief. A party may waive the right to file a reply brief. Immediate notice of such waiver to the clerk will expedite submission of the appeal to the court.

5. Supplemental Briefs. Supplemental briefs may not be filed without leave of court. The court may, particularly after an appeal is orally argued or submitted on the non-argument calendar, call for supplemental briefs on specific issues.

6. Citation of Supplemental Authorities. After a party's brief has been filed, counsel may direct a letter to the clerk with citations to supplemental authorities. See FRAP 28(j). The body of the letter must not exceed 350 words, including footnotes. If a new case is not reported, copies should be appended. When such a letter is filed in paper, four copies must be filed, with service on opposing counsel.

7. Briefs in Consolidated Cases and Appeals. Unless the parties otherwise agree or the court otherwise orders, the party who filed the first notice of appeal shall be deemed the appellant for purposes of FRAP 28, 30, and 31 and the accompanying circuit rules.

8. Corporate Reorganization - Chapter 11. The first appeal is handled in the usual manner. Counsel shall state in their briefs whether the proceeding is likely to be complex and protracted so that the panel can determine whether it should enter an order directing that it will be the permanent panel for subsequent appeals in the same matter. If there are likely to be successive appeals, a single panel may thus become fully familiar with the case making the handling of future appeals more expeditious and economical for litigants, counsel and court.

9. Requesting Copies of the Record. Pursuant to FRAP 45(d), where there is an original paper record on appeal, that record may not be circulated to counsel or parties. Counsel or parties may obtain copies of specified portions of the record upon payment of the per page copy fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. The copy fee is not automatically waived simply because a party has been allowed to proceed on appeal in forma pauperis, but may be waived by court order upon an appropriate motion supported by an affidavit of indigency which substantially complies with Form 4 in the Appendix to the FRAP Rules.

Requests for copies must be in writing and should identify the items to be copied by reference to the district court docket sheet or the agency's list of documents comprising the record. Upon receipt of such a written request, this office will advise the requesting party of the total number of pages to be copied and the cost. Upon payment of the required copying fee, the requested copies will be sent.

Cross-Reference: FRAP 26.1, 32.1, 36

FRAP 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus

curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) Page Limitation. Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) Type-Volume Limitation.

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) Certificate of Compliance. A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.

(As amended Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013.)

* * * *

11th Cir. R. 28.1-1 Briefs in Cross-Appeals. In addition to the requirements of FRAP 28.1, briefs in cross-appeals are also governed by 11th Cir. R. 28-1 through 28-5 and the Internal Operating Procedures corresponding to those rules.

11th Cir. R. 28.1-2 Briefing Schedule in Cross-Appeals. Except as otherwise provided by 11th Cir. R. 31-1, the initial brief of appellant/cross-appellee shall be served and filed within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1. The brief of appellee/cross-appellant shall be served and filed within 30 days after service of the last appellant's brief. The second brief of appellant/cross-appellee shall be served and filed within 30 days after service of the last appellee/cross-appellant's brief. Appellee/cross-appellant's reply brief shall be served and filed within 14 days after service of the last appellant/cross-appellee's second brief.

* * * *

I.O.P. -

1. Designation of Appellant in Cross-Appeals. If parties agree to modify the designation of appellant pursuant to FRAP 28.1(b), counsel are expected to advise the clerk in writing, upon commencement of the briefing schedule, which party will file the first brief.

2. Color of Covers of Briefs in Cross-Appeals. In cross-appeals the color of the covers of briefs shall be as follows:

brief of appellant – blue
brief of appellee-cross-appellant – red
brief of cross-appellee and reply brief for appellant – yellow
reply brief of cross-appellant – gray
amicus – green
appellate intervenor – green

If supplemental briefs are allowed to be filed by order of the court, the color of their covers shall be tan.

FRAP 29. Brief of an Amicus Curiae

(a) When Permitted. The United States or its officer or agency or a state may file an amicus curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(1) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities — cases (alphabetically arranged), statutes and other authorities — with references to the pages of the brief where they are cited;

(4) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(5) unless the amicus curiae is one listed in the first sentence of Rule 29(a), a statement that indicates whether:

(A) a party's counsel authored the brief in whole or in part;

(B) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(C) a person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(6) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(7) a certificate of compliance, if required by Rule 32(a)(7).

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, effective Dec. 1, 2010.)

* * * *

11th Cir. R. 29-1 Motions for Leave. Motions for leave to file a brief of amicus curiae must comply with FRAP 27 and 11th Cir. R. 27-1, including the requirement of a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

11th Cir. R. 29-2 Amicus Brief. In addition to the requirements of FRAP 29(c), an amicus brief must contain items (a), (b), (d), (e), (h), (j), (k), (l), (m) and (n) of 11th Cir. R. 28-1.

* * * *

I.O.P. -

1. Citation of Supplemental Authorities. After an amicus brief has been filed, counsel for amicus may direct a letter to the clerk with citations to supplemental authorities. See FRAP 28(j). The body of the letter must not exceed 350 words, including footnotes. If a new case is not reported, copies should be appended. When such a letter is filed in paper, four copies must be filed, with service on counsel for the parties and other amicus curiae in the appeal.

2. Length of Amicus Brief in a Cross-Appeal. The maximum length of an amicus brief in a cross-appeal, regardless of the party supported, is one-half the maximum length authorized by FRAP 28.1(e) for an appellant/cross-appellee's principal brief.

Cross-Reference: FRAP 26.1

FRAP 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) Contents of the Appendix. The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) Excluded Material. Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) Time to File; Number of Copies. Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) Costs of Appendix. Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local

rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) Deferred Appendix.

(1) Deferral Until After Briefs Are Filed. The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) References to the Record.

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) Appeal on the Original Record Without an Appendix. The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and

permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Mar. 10, 1986, eff. July 1, 1986; May 1, 1991, eff. Dec. 1, 1991; Apr. 29, 1994; eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

11th Cir. R. 30-1 Appendix - Appeals from District Court and Tax Court.

(a) Contents. In appeals from district courts and the tax court, the appellant must file an appendix containing those items required by FRAP 30(a)(1), which are:

- the relevant docket entries in the proceeding below;
- the relevant portions of the pleadings, charge, findings, or opinion;
- the judgment, order, or decision in question; and
- other parts of the record to which the parties wish to direct the court's attention.

Other than FRAP 30(a)(1), the requirements in FRAP 30 do not apply in this circuit.

Consistent with the requirements of FRAP 30(a)(1) that the appendix contain relevant docket entries and relevant portions of the record, this court has determined that the following items are either relevant docket entries or relevant portions of the record in the types of appeals specified below and thus must be included in the appendix:

(1) the district court or tax court docket sheet, including, in bankruptcy appeals, the bankruptcy court docket sheet;

(2) in an appeal in a criminal case, the indictment, information, or petition as amended;

(3) in an appeal in a civil case, the complaint, answer, response, counterclaim, cross-claim, and any amendments to such items;

(4) those parts of any pretrial order relevant to the issues on appeal;

(5) the judgment or interlocutory order appealed from;

(6) any other order or orders sought to be reviewed, including, in bankruptcy appeals, the order(s) of the bankruptcy court appealed to the district court;

(7) in an appeal from the grant or denial of a petition for a writ of habeas corpus under 28 U.S.C. § 2254, all opinions by any state court previously rendered in the criminal prosecution and related collateral proceedings and appeals, and any state court orders addressing any claims and

defenses brought by the petitioner in the federal action. This requirement applies whether or not the state court opinions and orders are contained in the district court record;

(8) any supporting opinion, findings of fact and conclusions of law filed or delivered orally by the court;

(9) if the correctness of a jury instruction is in issue, the instruction in question and any other relevant part of the jury charge;

(10) a magistrate's report and recommendation, when appealing a court order adopting same in whole or in part;

(11) findings and conclusions of an administrative law judge, when appealing a court order reviewing an administrative agency determination involving same;

(12) the relevant parts of any document, such as an insurance policy, contract, agreement, or ERISA plan, whose interpretation is relevant to the issues on appeal;

(13) in an appeal in a criminal case in which any issue is raised concerning the guilty plea, the transcript of the guilty plea colloquy and any written plea agreement;

(14) in an appeal in a criminal case in which any issue is raised concerning the sentence, the transcript of the sentencing proceeding, and the presentence investigation report and addenda (under seal in a separate envelope); and

(15) any other pleadings, affidavits, transcripts, filings, documents, or exhibits that any one of the parties believes will be helpful to this court in deciding the appeal.

Except as otherwise permitted by subsection (a)(7) of this rule, under no circumstances should a document be included in the appendix that was not submitted to the trial court.

(b) Appellee's Responsibility. If the appellant's appendix is deficient or if the appellee's brief, to support its position on an issue, relies on parts of the record not included in appellant's appendix, the appellee must file its own supplemental appendix within seven days of filing its brief. The appellee's supplemental appendix must not duplicate any documents in the appellant's appendix.

In an appeal by an incarcerated pro se party, counsel for appellee must submit an appendix that includes the specific pages of any record materials referred to in the argument section of appellee's brief and those referred to in the argument section of the appellant's brief that are relevant to the resolution of an issue on appeal.

(c) Time for Filing. A party must file an appendix or supplemental appendix within seven days of filing the party's brief.

(d) Number of Copies. A pro se party proceeding in forma pauperis may file only one paper copy of the appendix or supplemental appendix, except that an incarcerated pro se party is not required to file an appendix.

Every other party must file two paper copies of the appendix or supplemental appendix within seven days of filing the party's brief, and if the appeal is classed for oral argument, an additional three identical paper copies of the appendix previously filed by the party within seven days after the date on the notice from the Clerk that the appeal has been classed for oral argument. One copy shall be served on counsel for each party separately represented, and on each pro se party. Where multiple parties are on one side of an appeal, they are strongly urged to file a joint appendix.

For counsel using the ECF system, the electronically filed appendix is the official record copy of the appendix. Use of the ECF system does not modify the requirement that counsel must provide to the court the required number of paper copies of the appendix. Counsel will be considered to have complied with this requirement if, on the day the electronic appendix is filed, counsel sends two paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B). If the appeal is classed for oral argument, counsel must file an additional three identical paper copies of the appendix in accordance with the preceding paragraph.

(e) Form. The paper appendix shall be reproduced on white paper by any duplicating or copying process capable of producing a clear black image, with a cover containing the information specified in 11th Cir. R. 28-1(a) and captioned "Appendix." The appendix shall be assembled with a front and back durable (at least 90#) white covering and shall be bound across the top with a secure fastener. Indexing tabs shall be affixed to the first page of each document in the appendix to identify and assist in locating the document. An index identifying each document contained in the appendix and its tab number shall be included immediately following the cover page. The appendix shall include a certificate of service consistent with FRAP 25(d).

11th Cir. R. 30-2 Appendix - Agency Review Proceedings. Except in review proceedings covered by 11th Cir. R. 15-1, in proceedings for review of orders of an agency, board, commission or officer, the petitioner must file an appendix containing those items required by FRAP 30(a)(1), which are:

- the relevant docket entries in the proceeding below;
- the relevant portions of the pleadings, charge, findings, or opinion;
- the judgment, order, or decision in question; and
- other parts of the record to which the parties wish to direct the court's attention.

Other than FRAP 30(a)(1), the requirements in FRAP 30 do not apply in this circuit.

The requirements concerning the time for filing, number of copies, and form, set out in 11th Cir. R. 30-1(c), (d), and (e), also apply in agency proceedings. In a National Labor Relations Board enforcement proceeding, the party adverse to the Board shall be considered a petitioner for purposes of this rule.

11th Cir. R. 30-3 Electronic Appendix Submission. This rule only applies to attorneys who have been granted an exemption from the use of the ECF system under 11th Cir. R. 25-3(b). On the day the attorney's paper appendix is served, the attorney must provide the court with an electronic appendix in accordance with directions provided by the clerk. The time for serving and filing an appendix is determined by service and filing of the paper appendix. If corrections are required to be made to the paper appendix, a corrected copy of the electronic appendix must be provided. The certificate of service shall indicate the date of service of the appendix in paper format.

* * * *

I.O.P. -

1. Indexing Tabs on an Appendix. For paper appendices, standard commercially-available indexing tabs or their equivalent which extend beyond the edge of the page should be staggered in sequence from top to bottom along the right-hand side. Tab numbers should correspond to the original document numbers assigned by the district court and noted on the district court docket sheet. The district court docket sheet should also be tabbed and identified. For electronic appendices, separator pages showing the appropriate tab numbers should be used in place of indexing tabs.

2. Appendices in Cross-Appeals. In cross-appeals the appellee-cross-appellant may (but is not required to) file an appendix within seven days of filing their first brief.

FRAP 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 29, 1994; eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

* * * *

11th Cir. R. 31-1 Briefs - Time for Serving and Filing.

(a) Briefing Schedule. Except as otherwise provided herein, the appellant shall serve and file a brief within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1. The appellee shall serve and file a brief within 30 days after service of the brief of the last appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the last appellee.

(b) Pending Motions. If any of the following motions or matters are pending in either the district court or the court of appeals at the time the appeal is docketed in the court of appeals or thereafter, the appellant (or appellant/cross-appellee) shall serve and file a brief within 40 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later:

- Motion to proceed In Forma Pauperis
- Motion for a Certificate of Appealability or to expand a Certificate of Appealability
- Motion of a type specified in FRAP 4(a)(4)(A) or FRAP 4(b)(3)(A)
- Determination of excusable neglect or good cause as specified in FRAP 4(a)(5)(A) or FRAP 4(b)(4)
- Assessment of fees pursuant to the Prisoner Litigation Reform Act
- Appointment and/or withdrawal of counsel
- Request for transcript at government expense
- Designation by appellee of additional parts of the proceedings to be ordered from the court reporter, order by appellee of such parts, or motion by appellee for an order requiring appellant to order such parts, as provided by FRAP 10(b)(3)(B) and (C)
- Motion to consolidate appeals, provided that such motion is filed on or before the date the appellant's brief is due in any of the appeals which are the subject of such motion

Except as otherwise provided below, if any of the foregoing motions or matters are pending in either the district court or the court of appeals after the appellant (or appellant/cross-appellee) has served and filed a brief, the appellee (or appellee/cross-appellant) shall serve and file a brief within 30 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 30 days after the date on which the supplemental record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later.

When a motion to consolidate appeals is filed or is pending after an appellant has served and filed a brief in any of the appeals which are the subject of such motion, the due date for filing appellee's brief shall be postponed until the court rules on such motion. If the motion is granted, the appellee (or appellee/cross-appellant) shall serve and file a brief in the consolidated appeals within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief, whichever is later. If the motion is denied, the appellee (or appellee/cross-appellant) shall serve and file a brief in each separate appeal within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief in that separate appeal, whichever is later.

(c) Effect of Other Pending Motions on Time for Serving and Filing Brief. Except as otherwise provided in this rule, a pending motion does not postpone the time for serving and filing any brief. For example, the appellee's brief remains due within 30 days after service of the appellant's brief even though a motion to file appellant's brief out-of-time or to file a brief which does not comply with the court's rules is pending. However, the filing of a motion to dismiss a criminal appeal based on an appeal waiver in a plea agreement shall postpone the due date for filing appellee's brief until the court rules on such motion. In addition, a motion to file a replacement brief under 11th Cir. R.

31-6(b) shall postpone the due date for filing an opposing party's response brief or reply brief until the court rules on such motion. When the court rules on the motion, a new due date will be set for filing the next brief.

(d) Jurisdictional Question. If, upon review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over the appeal, the court may request counsel and pro se parties to advise the court in writing of their position with respect to the jurisdictional question(s) raised. The issuance of a jurisdictional question does not stay the time for filing appellant's brief otherwise provided by this rule. The due date for filing appellee's brief shall be postponed until the court determines that the appeal shall proceed or directs counsel and pro se parties to address the jurisdictional question(s) in their briefs on the merits. When the court rules on a jurisdictional question, a new due date will be set for filing appellee's brief if the appeal is allowed to proceed.

11th Cir. R. 31-2 Briefs and Appendices - Motion to Extend Time.

(a) First Request for an Extension of Time. A party's first request for an extension of time to file the brief or appendix, or to correct a deficiency in the brief or appendix, must set forth good cause. A first request for an extension of seven days or less may be made by telephone or in writing, and may be granted by the clerk. A first request for an extension of more than seven days must be made by written motion setting forth with particularity the facts demonstrating good cause, and will only be acted upon by the court. When a briefing schedule has been established by court order, a first request for an extension must be made by written motion and will only be acted upon by the court.

(b) First Request Filed 14 or More Days in Advance. When a party's first request for an extension of time to file the brief or appendix is filed 14 or more days in advance of the due date for filing the brief or appendix, and the requested extension of time is denied in full on a date that is seven or fewer days before the due date, or is after the due date has passed, the time for filing the party's brief or appendix will be extended an additional seven days beyond the initial due date or the date the court order is issued, whichever is later, unless the court orders otherwise.

(c) Seven Days in Advance Requirement. If a party's first request for an extension of time to file the brief or appendix requests an extension of more than seven days, the motion must be filed at least seven days in advance of the due date for filing the brief or appendix. Such a motion received by the clerk less than seven days in advance of the due date for filing the brief or appendix will generally be denied by the court, unless the motion demonstrates that the good cause on which the motion is based did not exist earlier or was not and with due diligence could not have been known earlier or communicated to the court earlier.

(d) Second Request for an Extension of Time. Second requests for an extension of time to file the brief or appendix, or to correct a deficiency in the brief or appendix, are extremely disfavored and are granted rarely. A party's second request for an extension will be granted only upon a showing of extraordinary circumstances that were not foreseeable at the time the first request was made. A second request must be made by written motion and will only be acted upon by the court.

(e) Extension of Time Must Be Requested Prior to Due Date. A request for an extension of time to file the brief or appendix pursuant to this rule must be made or filed prior to the expiration of the due date for filing the brief or appendix. The clerk is without authority to file an appellant's motion for an extension of time to file the brief or appendix received by the clerk after the expiration of the due date for filing the brief or appendix. A request for an extension of time to correct a deficiency in the brief or appendix pursuant this rule must be made or filed within 14 days of the clerk's notice as provided in 11th Cir. R. 42-3. The clerk is without authority to file an appellant's motion for an extension of time to correct a deficiency in the brief or appendix received by the clerk after the expiration of the 14-day period provided by that rule. [See 11th Cir. R. 42-2 and 42-3 concerning dismissal for failure to prosecute in a civil appeal.]

11th Cir. R. 31-3 Briefs - Number of Copies. One originally signed brief and six copies (total of seven) shall be filed in all appeals, except that pro se parties proceeding in forma pauperis may file one originally signed brief and three copies (total of four). One copy must be served on counsel for each party separately represented.

For counsel using the ECF system, the electronically filed brief is the official record copy of the brief. Use of the ECF system does not modify the requirement that counsel must provide to the court seven paper copies of a brief. Counsel will be considered to have complied with this requirement if, on the day the electronic brief is filed, counsel sends seven paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B).

11th Cir. R. 31-4 Expedited Briefing in Criminal Appeals. The clerk is authorized to expedite briefing when it appears that an incarcerated defendant's projected release is expected to occur prior to the conclusion of appellate proceedings.

11th Cir. R. 31-5 Electronic Brief Submission. This rule only applies to attorneys who have been granted an exemption from the use of the ECF system under 11th Cir. R. 25-3(b). On the day the attorney's paper brief is served, the attorney must provide the court with an electronic brief in accordance with directions provided by the clerk. The time for serving and filing a brief is determined by service and filing of the paper brief, which is the official record copy of the brief, and is not affected in any way by providing an electronic brief. If corrections are required to be made to the paper brief, a corrected copy of the electronic brief must be provided. The certificate of service shall indicate the date of service of the brief in paper format.

11th Cir. R. 31-6 Replacement Briefs.

(a) Replacement Briefs from Counsel Appointed to Represent a Pro Se Party. When an attorney is appointed to represent a pro se party in an appeal in which the party has filed a pro se brief, the attorney must file a new brief that will replace the brief filed by the pro se party, unless otherwise directed by the court.

(b) Replacement Briefs in Other Circumstances. Except as otherwise provided in subsection (a) of this rule, when a pro se party or the party's prior counsel has already filed a brief, a newly retained or appointed attorney may file a replacement brief only upon motion and with leave of court. If permission to file a replacement brief is granted, the brief filed by the pro se party or prior counsel

will not be considered by the court; therefore, no portion of the prior brief may be adopted by reference. However, the new attorney may replicate any portion of the prior brief into the replacement brief as an integral part thereof. A motion to file a replacement brief generally will be denied if an opposing party has already filed an appellee's principal brief or an appellant's reply brief, or if the appeal has already been submitted to a non-argument panel or assigned to an oral argument panel.

* * * *

I.O.P. - Briefing Schedule. The clerk's office will send counsel and pro se parties a letter confirming the due date for filing appellant's brief consistent with the provisions of 11th Cir. R. 12-1 and 11th Cir. R. 31-1, but delay in or failure to receive such a letter does not affect the obligation of counsel and pro se parties to file the brief within the time permitted by 11th Cir. R. 31-1. The clerk's office will also advise counsel and pro se parties of the rules and procedures governing the form of briefs.

Cross-Reference: FRAP 25, 26, 27; "E-Government Act of 2002," Pub. L. No. 107-347

FRAP 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ½ characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) Type-volume limitation.

(i) A principal brief is acceptable if:

- **it contains no more than 14,000 words; or**
- **it uses a monospaced face and contains no more than 1,300 lines of text.**

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) Certificate of compliance.

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- **the number of words in the brief; or**
- **the number of lines of monospaced type in the brief.**

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 ½ by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(d).

(2) Other Papers. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

* * * *

11th Cir. R. 32-1 Binding of Papers. Except as otherwise provided by 11th Cir. R. 30-1(e) for appendices, all papers shall be stapled or bound on the left. All copies presented to the court must be legible.

11th Cir. R. 32-2 Briefs - Cover. The cover of the brief must clearly indicate the name of the party on whose behalf the brief is filed. Each copy must comply with FRAP, have a cover of durable quality (at least 90#) on both front and back sides, and be securely bound along the left-hand margin so as to insure that the bound copy will not loosen or fall apart or the cover be detached by shipping and use. Exposed metal prong paper fasteners are prohibited on briefs.

11th Cir. R. 32-3 Briefs - Form.

Only the cover page, the certificate of service, direct quotes, headings and footnotes may be single-spaced. All other typed matter must be double-spaced, including the Table of Contents and the Table of Citations. The court may reject or require recomposition of a brief for failure to comply.

The clerk may exercise very limited discretion to permit the filing of briefs in which the violation of FRAP and circuit rules governing the format of briefs is exceedingly minor if in the judgment of the clerk recomposition of the brief would be unwarranted.

Except as otherwise provided in the preceding paragraph, unless each copy of the brief, in the judgment of the clerk, conforms to this rule and to provisions of FRAP 32(a), the clerk may conditionally file the brief, subject to the requirement that the party file in the office of the clerk a complete set of replacement briefs which comply with FRAP and circuit rules within 14 days of issuance of notice by the clerk that the briefs have been conditionally filed. The clerk's notice shall specify the matters requiring correction. No substantive changes may be made to the brief. The time for filing of the opposing party's brief runs from the date of service of the conditionally filed brief and is unaffected by the later substitution of corrected copies pursuant to this rule.

11th Cir. R. 32-4 Briefs - Page Numbering and Length. The pages of each brief shall be consecutively numbered except that materials referred to in 11th Cir. R. 28-1(a), (b), (c), (d), (e), (f), (g), (m) and (n) and any addendum containing statutes, rules, or regulations need not be numbered and do not count towards page limitations or type-volume limitations. Motions for leave to file briefs which do not comply with the limitations set forth in FRAP 28.1(e) or FRAP 32(a)(7), as applicable, must be filed at least seven days in advance of the due date of the brief. The court looks with disfavor upon such motions and will only grant such a motion for extraordinary and compelling reasons.

* * * *

I.O.P. -

1. Color of Covers of Briefs. The covers of briefs operate for a busy court like traffic signals. It is important to efficient paper flow for those signals to be correct. The color of the covers of briefs shall be as follows:

brief of appellant -- blue
brief of appellee -- red
reply brief of appellant -- gray
amicus -- green
appellate intervenor -- green

If supplemental briefs are allowed to be filed by order of the court, the color of their covers shall be tan.

For cross-appeals, see I.O.P. 2, Color of Covers of Briefs in Cross-Appeals, following FRAP 28.1.

2. Form of Printing- Legibility. While the court encourages inexpensive forms of reproduction to minimize costs, counsel should personally check each copy of the brief for legibility, completeness, and a proper binding since copies distributed to the court are selected at random. It is also essential that the size type conform to the requirements of FRAP 32(a).

3. Briefs - Miscellaneous Information.

a. Certificate of Service - The certificate of service required by FRAP 25(d) must be shown at the conclusion of the brief.

b. Acknowledgment of Briefs - The clerk will acknowledge filing of a brief if a stamped self-addressed envelope is provided.

c. Sample Briefs and Appendices - Upon request, the clerk's office will loan to counsel sample briefs and appendices that comply with the prescribed form.

FRAP 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(As added Apr. 12, 2006, eff. Dec. 1, 2006.)

Cross-Reference: FRAP 28, 36

FRAP 33. Appeal Conferences

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

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

* * * *

11th Cir. R. 33-1 Kinnard Mediation Center.

(a) Filing Civil Appeal Statement.

A Civil Appeal Statement is required in all civil appeals, except as provided in section (a)(3) below.

(1) Civil appeals from United States district courts. When notice of the filing of a notice of appeal is served pursuant to FRAP 3(d), the clerk of the district court shall notify the appellant(s) (and cross-appellant(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s) (and cross-appellant(s)) shall file with the clerk of the court of appeals, with service on all other parties, an original and one copy of a completed Civil Appeal Statement within 14 days after the date the appeal is docketed in this court. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal and shall be accompanied by the portion of the district court record described in 11th Cir. R. 33-1(b)(1). Any appellee may file an original and one copy of a response with the court of appeals within 10 days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(2) Review of administrative agency orders and appeals from the United States Tax Court. When the clerk of the court of appeals notifies the parties that an appeal or petition has been docketed, the clerk shall also notify the appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) shall file with the clerk of the court of appeals, with service on all other parties, an original and one copy of a completed Civil Appeal Statement within 14 days from the date the notice was transmitted by the clerk of the court of appeals. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal or petition and shall be accompanied by the portion of the record described in 11th Cir. R. 33-1(b). Any appellee/respondent may file an original and one copy of a response with the court of appeals within 10 days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(3) A Civil Appeal Statement is not required to be filed in (1) appeals or petitions in which any party is proceeding without the assistance of counsel or in which any party is incarcerated; (2) appeals from habeas corpus actions filed under 28 U.S.C. §§ 2241, 2254, and 2255; and (3) immigration appeals.

(4) Availability of Civil Appeal Statement forms. The Civil Appeal Statement form is available on the Internet at www.ca11.uscourts.gov. Copies may also be obtained from the clerk of the court of appeals and from the clerk of each district court within the Eleventh Circuit.

(b) Portions of Record to Accompany Completed Civil Appeal Statement.

(1) Civil appeals from United States district courts and the United States Tax Court. The appellant shall file with each completed Civil Appeal Statement the following portions of the district court or tax court record:

(i) the judgment or order appealed from;

(ii) any other order or orders sought to be reviewed, including, in bankruptcy appeals, the order(s) of the bankruptcy court appealed to the district court;

(iii) any supporting opinion, findings of fact, and conclusions of law filed by the court;

(iv) the magistrate judge's report and recommendation, when appealing a court order adopting same in whole or in part; and

(v) findings and conclusions of an administrative law judge, when appealing a court order reviewing an administrative agency determination involving same.

(2) Review of administrative agency orders. The petitioner shall file with each completed Civil Appeal Statement the following portions of the agency record:

(i) the agency docket sheet, or index of documents comprising the record, if one exists;

(ii) any order or orders sought to be reviewed; and

(iii) any supporting opinion, findings of fact, and conclusions of law filed by the agency, board, commission, or officer.

(c) Mediation.

(1) An active or senior judge of the court of appeals, a panel of judges (either before or after oral argument), or the Kinnard Mediation Center, by appointment of the court, may direct counsel and parties in an appeal to participate in mediation conducted by the court's circuit mediators. Mediations are official court proceedings and the Kinnard Mediation Center circuit mediators act on behalf of the court. Counsel for any party may request mediation in an appeal in which a Civil

Appeal Statement is required to be filed if he or she thinks it would be helpful. Such requests will not be disclosed by the Kinnard Mediation Center to opposing counsel without permission of the requesting party. The purposes of the mediation are to explore the possibility of settlement of the dispute, to prevent unnecessary motions or delay by attempting to resolve any procedural problems in the appeal, and to identify and clarify issues presented in the appeal. Mediation sessions are held in person or by telephone. Counsel must, except as waived by the mediator in advance of the mediation date, have the party available during the mediation. Should waiver of party availability be granted by the mediator, counsel must have the authority to respond to settlement proposals consistent with the party's interests. The mediator may require the physical presence of the party at an in-person mediation or the telephone participation of the party in a telephone mediation. For a governmental or other entity for which settlement decisions must be made collectively, the availability, presence, or participation requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and to make recommendations to it concerning settlement.

(2) A judge who participates in the mediation or becomes involved in the settlement discussions pursuant to this rule will not sit on a judicial panel that deals with that appeal.

(3) Communications made during the mediation and any subsequent communications related thereto shall be confidential. Such communications shall not be disclosed by any party or participant in the mediation in motions, briefs, or argument to the Eleventh Circuit Court of Appeals or to any court or adjudicative body that might address the appeal's merits, except as necessary for enforcement of Rule 33-1 under paragraph (f)(2), nor shall such communications be disclosed to anyone not involved in the mediation or otherwise not entitled to be kept informed about the mediation by reason of a position or relationship with a party unless the written consent of each mediation participant is obtained. Counsel's motions, briefs, or argument to the court shall not contain any reference to the Kinnard Mediation Center.

(d) Confidential Mediation Statement. The court requires, except as waived by the circuit mediator, that counsel in appeals selected for mediation send a confidential mediation statement assessing the appeal to the Kinnard Mediation Center before the mediation. The Kinnard Mediation Center will not share the confidential mediation statement with the other side, and it will not become part of the court file.

(e) Filing Deadlines. The filing of a Civil Appeal Statement or the scheduling of mediation does not extend the time for ordering any necessary transcript (pursuant to 11th Cir. R. 10-1) or for filing briefs (pursuant to 11th Cir. R. 31-1). Such time may be extended by a circuit mediator to comply with these rules if there is a substantial probability the appeal will settle and the extension will prevent the unnecessary expenditure of time and resources by counsel, the parties, and the court.

(f) Noncompliance Sanctions.

(1) If the appellant or petitioner has not taken the action specified in paragraph (a) of this rule within the time specified, the appeal or petition may be dismissed by the clerk of the court of appeals after appropriate notice pursuant to 11th Cir. R. 42-1.

(2) Upon failure of a party or attorney to comply with the provisions of this rule or the provisions of the court's notice of mediation, the court may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; dismiss the appeal; or take such other appropriate action as the circumstances may warrant.

(g) Use of Private Mediators.

(1) Upon agreement of all parties, a private mediator may be employed by the parties, at their expense, to mediate an appeal that has been selected for mediation by the Kinnard Mediation Center.

(2) Such private mediator (i) shall have been certified or registered as a mediator by either the State of Alabama, Florida, or Georgia for the preceding five years; (ii) shall have been admitted to practice law in either the State of Alabama, Florida, or Georgia for the preceding fifteen years and be currently in good standing; and (iii) shall be currently admitted to the bar of this court.

(3) All persons while employed as private mediators shall follow the private mediator procedures as set forth by the Kinnard Mediation Center.

(4) The provisions of this subsection (g) shall be in effect until discontinued by the Chief Circuit Mediator or by the court.

FRAP 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

(As amended Mar. 10, 1986, eff. July 1, 1986; May 1, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

* * * *

11th Cir. R. 34-1 Sessions.

(a) At least one session of the court shall ordinarily be held each court year in each state of the circuit. Sessions may be scheduled at any location having adequate facilities. The court may assign the hearing of any appeal to another time or place of sitting.

(b) Regular and special sessions of the court may be held at the following places: Atlanta, Jacksonville, Miami, Montgomery, Tallahassee and Tampa.

11th Cir. R. 34-2 Quorum. Unless otherwise directed, a panel of the court shall consist of three judges. When an appeal is assigned to an oral argument panel, at least two judges shall be judges of this court unless such judges cannot sit because recused or disqualified or unless the chief judge certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Any two judges of a panel constitute a quorum. If a judge of a panel that has taken an appeal or matter under submission is not able to participate in a decision, the two remaining judges, whether or not they are both judges of this court, may decide the appeal or may request the chief judge or a delegate of the chief judge to designate another judge to sit in place of the judge unable to participate. No further argument will be had or briefs received unless ordered.

Prior to oral argument, if a judge of an oral argument panel to which an appeal has been assigned determines that he or she cannot sit for reasons other than recusal or disqualification, the two remaining judges, whether or not they are both judges of this court, may hear oral argument. If the third judge is thereafter able to participate as a panel member, the third judge may listen to the oral argument recording and participate in the decision. If the third judge is thereafter not able to participate as a panel member, the two remaining judges may proceed as provided in the paragraph above.

Prior to oral argument, if a judge of an oral argument panel to which an appeal has been assigned determines that he or she cannot sit because recused or disqualified, the two remaining judges, whether or not they are both judges of this court, may: (1) proceed by quorum to hear oral argument and decide the appeal; (2) return the appeal to the clerk for placement on another calendar; or (3) request the chief judge or a delegate of the chief judge to designate another judge to sit in place of the recused or disqualified judge. For purposes of this rule, an appeal is considered assigned to an oral argument panel when the clerk notifies counsel of the specific day of the week on which oral argument in the appeal is scheduled to be heard. Prior to that time, a recusal or disqualification will ordinarily result in the appeal being transferred to another calendar.

Following the issuance of an opinion by a panel of three judges, if a judge of the panel recuses or is disqualified, the two remaining judges, whether or not they are both judges of this court, may proceed by quorum to take such further actions as are deemed appropriate.

11th Cir. R. 34-3 Non-Argument Calendar.

(a) The court maintains a two-calendar system for consideration and decision of appeals in the interest of efficient and appropriate use of judicial resources, control of the docket by the court, minimizing unnecessary expenditure of government funds, and lessening delay in decisions.

(b) When a panel of judges of the court unanimously determines, after an examination of the briefs and records, that an appeal of a party falls within one of the three categories of FRAP 34(a)(2):

(l) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been authoritatively determined; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process will not be significantly aided by oral argument; that appeal will be placed on the non-argument calendar for submission and decision without oral argument. If at any time before decision a judge on the non-argument panel concludes that oral argument is desired, that appeal will be transferred to the oral argument calendar. Except as provided in subparagraphs (d) and (f) of this rule, decision without oral argument must be unanimous, and no dissenting or special concurring opinion may be filed.

(c) Any party may request in his or her brief that oral argument be heard, as provided in 11th Cir. R. 28-1(c).

(d) Pursuant to FRAP 34(f), if parties state that they do not desire oral argument or otherwise agree that an appeal shall be submitted on briefs, that appeal may be placed on the non-argument calendar even though it does not fall within one of the requirements of FRAP 34(a). The decision in that appeal need not be unanimous and a dissent or special concurrence may be filed.

(e) Panels of three judges are drawn to serve as non-argument panels to determine whether appeals should be placed on the non-argument calendar and to receive submission of and decide non-argument appeals. In appeals involving multiple parties, a non-argument panel judge may determine that the appeals of fewer than all parties shall be scheduled for oral argument, and that the appeals of the remaining parties shall be submitted to the assigned oral argument panel for decision on the briefs. Or, a non-argument panel may decide the appeals of fewer than all parties without oral argument and may schedule the appeals of the remaining parties for oral argument.

(f) When an appeal is assigned to an oral argument panel, the oral argument panel, whether or not composed of only active judges, may by unanimous vote determine that the appeal will be decided by the panel without oral argument, or transfer the appeal to the non-argument calendar. In appeals involving multiple parties, an oral argument panel may by unanimous vote determine that the appeals of fewer than all parties will be decided by the panel without oral argument, and that the appeals of the remaining parties will be scheduled for oral argument.

11th Cir. R. 34-4 Oral Argument Calendar.

(a) General. All appeals not assigned to the non-argument calendar shall be assigned to the oral argument calendar. Appeals to be orally argued will be calendared by the clerk based upon the court's calendaring priorities. Counsel for each party scheduled to present oral argument to the court must appear for oral argument unless excused by the court for good cause shown. The oral argument calendar will show the time the court has allotted for each argument.

(b) Waiver or Submission Without Argument. After an appeal has been scheduled for oral argument, argument may only be waived by the court upon motion filed in advance of the date set for hearing. If counsel for parties agree to submit the appeal on briefs, that appeal will be governed by FRAP 34(f).

(c) Failure to Appear for Oral Argument. If counsel for appellant fails to appear in an appeal from criminal conviction, the court will not hear argument from the United States; in all other appeals, the court may hear argument from counsel present.

(d) Number of Counsel to Be Heard. Only two counsel will be heard for each party whose appeal is scheduled to be argued, and the time allowed may be apportioned between counsel at their discretion.

(e) Expediting Appeals. The court may, on its own motion or for good cause shown on motion of a party, advance an appeal for hearing and prescribe an abbreviated briefing schedule.

(f) Continuance of Hearing. After an appeal has been set for hearing it may not be continued by stipulation of the parties or their counsel but only by an order of the court on good cause shown. Usually the engagement of counsel in other courts will not be considered good cause.

(g) Recording Oral Arguments. With advance approval of the court, counsel may arrange and pay for a qualified court reporter to be present to record and transcribe the oral argument for counsel's personal use. When counsel has received such approval, counsel must provide the court with a copy of the transcript without delay and at no expense to the court. Except as otherwise provided in this rule, recording of court proceedings by anyone other than the court is prohibited. Also see I.O.P. 16, CD Recordings of Oral Arguments, following this rule.

(h) Citation of Supplemental Authorities During Oral Argument. If counsel intend to cite supplemental authorities during oral argument that were not provided to the court and opposing counsel prior to the day of oral argument, counsel must bring to oral argument a sufficient number of paper copies of the opinion(s) or other authorities being cited to permit distribution to panel members and opposing counsel.

* * * *

I.O.P. -

1. Non-Argument Calendar. When the last brief is filed an appeal is sent to the office of staff attorney for classification. If the staff attorney is of the opinion that the appeal of a party does not warrant oral argument, a brief memorandum is prepared and the appeal is returned to the clerk for routing to one of the court's active judges, selected in rotation. In appeals involving multiple parties, the staff attorney may recommend that appeals of fewer than all parties be decided without oral argument but that the appeals of the remaining parties be scheduled for oral argument. If the judge to whom an appeal is directed for such consideration agrees that the appeal of a party does not warrant oral argument, that judge forwards the briefs, together with a proposed opinion, to the two other judges on the non-argument panel. If a party requests oral argument, all panel judges must concur not only that the appeal of that party does not warrant oral argument, but also in the panel opinion as a proper disposition without any special concurrence or dissent. If a party does not request oral argument, all panel judges must concur that the appeal of that party does not warrant oral argument.

In other appeals, when oral argument is requested by a party and the staff attorney is of the opinion that oral argument should be heard, the staff attorney may recommend that an appeal be assigned to the oral argument calendar, subject to later review by the assigned oral argument panel.

If a determination is made that oral argument should be heard, the appeal is placed on the next appropriate calendar, consistent with the court's calendaring priorities. At that time a determination is made of the oral argument time to be allotted to each side.

The assignment of an appeal to the non-argument calendar does not mean that it is considered to be an appeal of less importance than an orally argued appeal.

2. Oral Argument.

a. Court Year Schedule - A proposed court schedule for an entire year is prepared by the circuit executive in collaboration with the clerk's office, and then approved by the scheduling committee of the court which consists of active judges. The court schedule does not consider what specific appeals are to be heard, but only sets the weeks of court in relation to the probable volume of appeals and judgeship availability for the year.

b. Separation of Assignment of Judges and Calendaring of Appeals - To insure complete objectivity in the assignment of judges and the calendaring of appeals, the two functions of judge assignment to panels and calendaring of appeals are intentionally separated. The circuit executive and the scheduling committee take into account a fixed number of weeks for each active judge and the available sittings from the court's senior judges, visiting circuit judges, and district judges. After this determination, names of the active judges for the sessions of the court are drawn by lot from a matrix for the entire court year.

This schedule is available only to judges and the circuit executive for their advance planning, not to the clerk. The clerk is not furnished with names of the panel members for any session until after the court calendars of appeals have been prepared and approved as described below.

3. Preparation and Issuing of Calendars.

a. General - The clerk's office prepares oral argument calendars approximately one month in advance of oral argument.

b. Calendaring by Case Type - The clerk attempts to balance the calendars by dividing the appeals scheduled for oral argument among the panels by case type so that each panel for a particular week has an equitable number of different types of litigation for consideration.

c. Non-Preference Appeals - Appeals are calendared for hearing in accordance with the court's "first-in first-out" rule. Absent special priority, those appeals which are oldest in point of time of availability of briefs are calendared first for hearing, insofar as practicable with other requirements of the docket.

d. Number of Appeals Assigned - Ordinarily the court hears argument Tuesday through Friday. A regular oral argument session consists of up to 22 appeals with up to 6 appeals scheduled per day.

e. Advance Notice - Counsel are provided the maximum advance notice of scheduling for oral argument practicable. Ordinarily counsel will receive notice of oral argument at least three weeks in advance. Counsel are expected to make all reasonable efforts to adjust conflicts in their schedule which will permit them to attend oral argument as scheduled. Motions for continuance are disfavored in recognition of the difficulty in scheduling panels and the commitment of the court to dispose of appeals as promptly as possible and of the fact that there is no backlog of appeals awaiting oral argument.

4. Location of Court Sessions - Convenience of Counsel. Appeals to be assigned to oral argument sessions are, if possible, selected from the area where the session is to be held.

5. Forwarding Briefs to Judges. Immediately after issuance of the calendar and receipt by the clerk of names of the panel members, the clerk forwards to panel members copies of the briefs for the appeals set on the calendar.

6. Pre-Argument Preparation. The judges read the briefs prior to oral argument.

7. Identity of Panel. The clerk's office may disclose the names of the panel members for a particular session one week in advance of the session, or earlier as determined by the court. At the time the clerk issues a calendar assigning an appeal to a specific day of oral argument, the clerk will advise counsel of when the clerk's office may be contacted to learn the identity of the panel members.

8. Checking In with Clerk's Office. On the day of hearing counsel should check in with the clerk's office at least 30 minutes in advance of the convening of court to advise the courtroom deputy of the name of the attorney or attorneys who will present argument for each party and how the argument time will be divided between opening and rebuttal. Timely check-in is necessary so that the clerk can inform the panel of the names of attorneys presenting argument and their time division.

9. Submission Without Argument. When an appeal is placed on the oral argument calendar, a judge of the court has determined that oral argument would be helpful in that particular appeal. Therefore, requests by the parties to waive oral argument are not looked upon with favor, and counsel may be excused only by the court for good cause shown. Attorneys appointed by the court under the Criminal Justice Act must personally appear for oral argument unless excused by the court for good cause shown.

10. Time for Oral Argument. The time for oral argument will be indicated on the calendar. The time specified is per side. In the event that more than one attorney will present oral argument per side, arrangements among counsel regarding the division of time and the order of presentation should be made before counsel check in with the clerk's office.

11. Additional Time for Oral Argument. Additional time for oral argument is sparingly permitted. Requests for additional time for oral argument should be set forth in a motion to the clerk filed well in advance of the oral argument.

12. Calling the Calendar. Usually the court hears the appeals in the order in which they appear on the calendar, and will not call the calendar unless there are some special problems requiring attention. All counsel, however, must be present at the beginning of the court session for the day.

13. Presenting Argument. Counsel should prepare oral arguments with the knowledge that the judges have already studied the briefs. Reading from briefs, decisions or the record is not permitted except in unusual circumstances. Counsel should be prepared to answer questions by the court. The essay Twenty Pages and Twenty Minutes Revisited by Judge John C. Godbold is available from the clerk on request.

14. Timer and Lighting Signal Procedure. The courtroom deputy will monitor time and use lighting signals. In Atlanta, Miami, and Montgomery, and sometimes in other locations where court is held, an easily readable timer visible both to counsel and the court is also used.

a. Appellant's Argument - A green light signals the beginning of the opening argument of appellant. Two minutes prior to expiration of the time allowed for opening argument, the green light goes off and a yellow light comes on. When the time reserved for opening has expired, the yellow light goes off and a red light comes on.

b. Appellee's Argument - The same procedure as outlined above for appellant is used.

c. Appellant's Rebuttal - A green light signals commencement of time; a red light comes on when the time expires. No yellow caution light is displayed for this argument.

15. Appeals Conference and Designation of Writing Judge. At the conclusion of each day's arguments the panel usually has a conference on the appeals heard that day. A tentative decision is usually reached, a tentative determination is made as to the kind of opinion necessary and the presiding judge, when in the majority, makes opinion writing assignments. Judges do not specialize. Writing assignments are made so as to equalize the workload of the entire session.

16. CD Recordings of Oral Arguments. Oral argument is recorded for the use of the court. Although the court is not in the court reporting or audio recording business, copies of the court's audio recordings of oral arguments are available for purchase on CD upon payment of the fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit. CD recordings of oral arguments are available for oral arguments held after August 1, 2012. The court makes no representations about the quality of the CD recordings or about how quickly they will become available. Oral argument recordings are retained for a limited time by the court for its use and then the recordings are destroyed.

Cross-Reference: FRAP 45; 28 U.S.C. §§ 46, 48

FRAP 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of every other United States Court of Appeals that has addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

* * * *

11th Cir. R. 35-1 Number of Copies and Length. Fifteen copies of a petition for en banc consideration pursuant to FRAP 35 shall be filed whether for initial hearing or rehearing. A petition for en banc consideration shall not exceed 15 pages, and if made with a petition for rehearing (whether or not they are combined in a single document) the combined documents shall not exceed 15 pages.

Use of the ECF system does not modify the requirement that counsel must provide to the court 15 paper copies of a petition for en banc consideration, whether for initial hearing or rehearing. Counsel will be considered to have complied with this requirement if, on the day the electronic petition is filed, counsel sends 15 paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B).

11th Cir. R. 35-2 Time - Extensions. A petition for en banc rehearing must be filed within 21 days of entry of judgment, except that a petition for en banc rehearing in a civil appeal in which the United States or an agency or officer thereof is a party must be filed within 45 days of entry of judgment. Judgment is entered on the opinion filing date. No additional time is allowed for mailing. Counsel should not request extensions of time except for the most compelling reasons. For purposes of this rule, a "civil appeal" is one that falls within the scope of 11th Cir. R. 42-2(a).

11th Cir. R. 35-3 Extraordinary Nature of Petitions for En Banc Consideration. A petition for en banc consideration, whether upon initial hearing or rehearing, is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional importance in an appeal or other proceeding, and, with specific reference to a petition for en banc consideration upon rehearing, is intended to bring to the attention of the entire court a panel opinion that is allegedly in direct conflict with precedent of the Supreme Court or of this circuit. Alleged errors in a panel's determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the panel's misapplication of correct precedent to the facts of the case, are matters for rehearing before the panel but not for en banc consideration.

Counsel are reminded that the duty of counsel is fully discharged without filing a petition for rehearing en banc if the rigid standards of FRAP 35(a) are not met, and that the filing of a petition for rehearing or rehearing en banc is not a prerequisite to filing a petition for writ of certiorari.

11th Cir. R. 35-4 Matters Not Considered En Banc. A petition for rehearing en banc tendered with respect to any of the following orders will not be considered by the court en banc, but will be referred as a motion for reconsideration to the judge or panel that entered the order sought to be reheard:

(a) Administrative or interim orders, including but not limited to orders ruling on requests for the following relief: stay or injunction pending appeal; appointment of counsel; leave to appeal in forma pauperis; and, permission to appeal when an appeal is within the court's discretion.

(b) Any order dismissing an appeal that is not published including, but not limited to, dismissal for failure to prosecute or because an appeal is frivolous.

11th Cir. R. 35-5 Form of Petition. A petition for en banc consideration shall be bound in a white cover which is clearly labeled with the title "Petition for Rehearing (or Hearing) En Banc." A petition for rehearing en banc will also be treated as a petition for rehearing before the original panel. A petition for rehearing will not be treated as a petition for rehearing en banc. A petition for en banc consideration shall contain the following items in this sequence:

(a) a cover page as described in 11th Cir. R. 28-1(a);

(b) a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules;

(c) where the party petitioning for en banc consideration is represented by counsel, one or both of the following statements of counsel as applicable:

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: [cite specifically the case or cases]

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: [set forth each question in one sentence]

/s/ _____

ATTORNEY OF RECORD FOR

_____

(d) table of contents and citations;

(e) statement of the issue(s) asserted to merit en banc consideration;

(f) statement of the course of proceedings and disposition of the case;

(g) statement of any facts necessary to argument of the issues;

(h) argument and authorities. These shall concern only the issues and shall address specifically not only their merit but why they are contended to be worthy of en banc consideration;

(i) conclusion;

(j) certificate of service;

(k) a copy of the opinion sought to be reheard.

11th Cir. R. 35-6 Motion for Leave to File Amicus Brief in Support of Petition for Rehearing En Banc. The United States or its officer or agency or a state may file an amicus brief in support of a petition for rehearing en banc without the consent of the parties or leave of court. Any other amicus curiae must request leave of court to file an amicus brief in support of a petition for rehearing en banc. The request must be made by motion accompanied by the proposed brief in conformance with 11th Cir. R. 35-5, except that subsections (f) and (k) may be omitted. The proposed amicus brief must not exceed 15 pages, exclusive of items required by 11th Cir. R. 35-5(a), (b), (c), (d), and (j). The cover must be green. An amicus curiae must file its proposed brief, accompanied by a motion for filing when necessary, no later than 10 days after the petition for rehearing en banc being supported is filed.

11th Cir. R. 35-7 Response to Petition. A response to a petition for en banc consideration may not be filed unless requested by the court.

11th Cir. R. 35-8 En Banc Briefs. An en banc briefing schedule shall be set by the clerk for all appeals in which rehearing en banc is granted by the court. Twenty copies of en banc briefs are required, and must be filed in the clerk's office, and served on counsel, according to the schedule established. En banc briefs should be prepared in the same manner and form as opening briefs and conform to the requirements of FRAP 28 and 32. The covers of all en banc briefs shall be of the color required by FRAP 32 and shall contain the title "En Banc Brief." Unless otherwise directed by the court, the page and type-volume limitations described in FRAP 32(a)(7) apply to en banc briefs. Counsel are also required to furnish 20 additional copies of each brief previously filed by them.

11th Cir. R. 35-9 En Banc Amicus Briefs. The United States or its officer or agency or a state may file an en banc amicus brief without the consent of the parties or leave of court. Any other amicus curiae must request leave of court by filing a motion accompanied by the proposed brief in conformance with FRAP 29(b) through (d) and the corresponding circuit rules. An amicus curiae must file its en banc briefs, accompanied by a motion for filing when necessary, no later than the due date of the principal en banc brief of the party being supported. An amicus curiae that does not support either party must file its en banc briefs, accompanied by a motion for filing when necessary, no later than the due date of the appellant's or petitioner's principal en banc brief. An amicus curiae must also comply with 11th Cir. R. 35-8.

11th Cir. R. 35-10 Senior Circuit Judges' Participation. Senior circuit judges of the Eleventh Circuit assigned to duty pursuant to statute and court rules may sit en banc reviewing decisions of panels of which they were members and may continue to participate in the decision of a case that was heard or reheard by the court en banc at a time when such judge was in regular active service.

11th Cir. R. 35-11 Effect of Granting Rehearing En Banc. Unless otherwise expressly provided, the effect of granting a rehearing en banc is to vacate the panel opinion and to stay the mandate.

* * * *

I.O.P. -

1. Time. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing en banc whether or not combined with a petition for rehearing is timely only if received by the clerk within the time specified in 11th Cir. R. 35-2.

2. Length. A petition for rehearing en banc, whether or not filed with a petition for rehearing, is limited to 15 pages, exclusive of items required by 11th Cir. R. 35-5(a), (b), (c), (d), (j), and (k).

3. Panel Has Control. Although a copy of the petition for rehearing en banc is distributed to each panel judge and every active judge of the court, the filing of a petition for rehearing en banc does not take the appeal out of plenary control of the panel deciding the appeal. The panel may, on its own, grant rehearing by the panel and may do so without action by the full court.

4. Requesting a Poll. Within 10 days of the date of mailing to the judge by the clerk, any active Eleventh Circuit judge may notify the writing judge (the senior active Eleventh Circuit judge on the panel if the writing judge is a non-active member) that in the event the panel declines to grant rehearing the judge requests that a poll be taken regarding en banc consideration. At the same time the judge may notify the clerk to withhold the mandate.

If the panel, after such notice, concludes not to grant rehearing it notifies the chief judge of that fact and that a request was made that a poll be taken regarding en banc consideration. The chief judge then polls the court by written ballot on whether rehearing en banc should be granted.

5. No Poll Request. If after expiration of the specified time for requesting a poll the writing judge of the panel has not received a request from any active member of the court, the panel, without further notice, may take such action as it deems appropriate on the petition. In its order disposing of the appeal and the petition, however, the panel must enter an order denying the petition for rehearing en banc showing no poll was requested by any judge of the court in regular active service.

6. Requesting a Poll on Court's Own Motion. Any active Eleventh Circuit judge may request that the court be polled on whether rehearing en banc should be granted whether or not a petition for rehearing en banc has been filed by a party. This is ordinarily done by a letter from the requesting judge to the chief judge with copies to the other active and senior judges of the court and any other panel member. At the same time the judge may notify the clerk to withhold the mandate. If a petition for rehearing or a petition for rehearing en banc has not been filed by the date that mandate would otherwise issue, the Clerk will make an entry on the docket to advise the parties that a judge has notified the clerk to withhold the mandate. The identity of the judge will not be disclosed.

7. Polling the Court. Upon request to poll, the chief judge conducts a poll. Each active judge receives a form ballot that is used to cast a vote. A copy of each judge's ballot is sent to all other

active judges. The ballot form indicates whether the judge voting desires oral argument if en banc is granted.

8. Effect of Recusal or Disqualification on Number of Votes Required. A recused or disqualified judge is not counted in the base when calculating whether a majority of circuit judges in regular active service have voted to rehear an appeal en banc. If, for example, there are 12 circuit judges in regular active service on this court, and five of them are recused or disqualified in an appeal, rehearing en banc may be granted by affirmative vote of four judges (a majority of the seven non-recused and non-disqualified judges).

9. Negative Poll. If the vote on the poll is unfavorable to en banc consideration, the chief judge enters the appropriate order.

10. En Banc Rehearing Procedures Following Affirmative Poll.

a. Appeal Managers. When an appeal is voted to be reheard en banc, the chief judge shall designate as appeal managers a group of active judges of this court. The chief judge will ordinarily designate the judge who authored the panel opinion, the judge who requested that the court be polled regarding whether the appeal should be reheard en banc, and a judge who dissented from or specially concurred in the panel opinion, if they are active circuit judges of this court. The chief judge may, however, designate other active circuit judges as appeal managers.

b. Initial Notice to Counsel. The clerk meanwhile notifies counsel that rehearing en banc has been granted but that they should not prepare en banc briefs until they are advised of the issue(s) to be briefed and page limitations on briefs.

c. Notice of Issue(s) to be Briefed. The appeal managers prepare and circulate to the other members of the en banc court a proposed notice to the parties advising which issue(s) should be briefed to the en banc court, page limitations on briefs, and whether the appeal will be orally argued or submitted on briefs. The notice may also set the time limits for oral argument. In appeals with multiple appellants or appellees, the notice may direct parties to file a single joint appellants' or appellees' en banc brief. In such cases the side directed to file a single joint brief may be allotted some extension of the page and type-volume limitations that would otherwise apply to the brief. Members of the en banc court thereafter advise the appeal managers of any suggested changes in the proposed notice. Provided that no member of the en banc court objects, counsel may be advised that the en banc court will decide only specified issues, and after deciding them, remand other issues to the panel. Once the form of the notice has been approved by the court, the clerk issues the notice to counsel.

d. Oral Argument. Appeals to be reheard en banc will ordinarily be orally argued unless fewer than three of the judges of the en banc court determine that argument should be heard.

Cross-Reference: FRAP 40, 41

FRAP 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion — but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

* * * *

11th Cir. R. 36-1 [Rescinded]

11th Cir. R. 36-2 Unpublished Opinions. An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority. If the text of an unpublished opinion is not available on the internet, a copy of the unpublished opinion must be attached to or incorporated within the brief, petition, motion or response in which such citation is made. But see I.O.P. 7, Citation to Unpublished Opinions by the Court, following this rule.

11th Cir. R. 36-3 Publishing Unpublished Opinions. At any time before the mandate has issued, the panel, on its own motion or upon the motion of a party, may by unanimous vote order a previously unpublished opinion to be published. The timely filing of a motion to publish shall stay issuance of the mandate until disposition thereof unless otherwise ordered by the court. The time for issuance of the mandate and for filing a petition for rehearing or petition for rehearing en banc shall begin running anew from the date of any order directing publication.

* * * *

I.O.P. -

1. Motion to Amend, Correct, or Settle the Judgment. These motions are referred to the panel members.

2. Effect of Mandate on Precedential Value of Opinion. Under the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect this result. See Martin v. Singletary, 965 F.2d 944, 945 n.1 (11th Cir. 1992). For information concerning the precedential value of opinions of the former Fifth Circuit, see Bonner v. City of

Prichard, Alabama, 661 F.2d 1206 (11th Cir. 1981) (en banc) and Stein v. Reynolds Securities, Inc., 667 F.2d 33 (11th Cir. 1982).

3. Processing of Opinions. After the draft opinion has been prepared, the opinion writing judge circulates the proposed opinion to each of the other two judges on the panel. Review of another judge's proposed opinion is given high priority by the other members of the panel. When the writing judge has received concurrences from the other judges or in the case of dissent, or special concurrences, sufficient concurrence(s) to constitute a majority, the writing judge then sends the opinion to the clerk , along with the concurrences, dissent, or special concurrence, as the case may be.

4. Circulation of Opinions to Non-Panel Members. Copies of proposed opinions are not normally circulated to non-panel members. In special cases, however, a panel or member thereof may circulate a proposed opinion to other members of the court.

5. Publication of Opinions. The policy of the court is: The unlimited proliferation of published opinions is undesirable because it tends to impair the development of the cohesive body of law. To meet this serious problem it is declared to be the basic policy of this court to exercise imaginative and innovative resourcefulness in fashioning new methods to increase judicial efficiency and reduce the volume of published opinions. Judges of this court will exercise appropriate discipline to reduce the length of opinions by the use of those techniques which result in brevity without sacrifice of quality.

6. Unpublished Opinions. A majority of the panel determine whether an opinion should be published. Opinions that the panel believes to have no precedential value are not published. Although unpublished opinions may be cited as persuasive authority, they are not considered binding precedent. The court will not give the unpublished opinion of another circuit more weight than the decision is to be given in that circuit under its own rules. Parties may request publication of an unpublished opinion by filing a motion to that effect in compliance with FRAP 27 and the corresponding circuit rules.

7. Citation to Unpublished Opinions by the Court. The court generally does not cite to its "unpublished" opinions because they are not binding precedent. The court may cite to them where they are specifically relevant to determine whether the predicates for res judicata, collateral estoppel, or double jeopardy exist in the case, to ascertain the law of the case, or to establish the procedural history or facts of the case.

8. Release of Opinions. Prior to issuance of an opinion, information concerning the date a decision by the court may be expected is not available to counsel.

Opinions are generally released from the clerk's office in Atlanta. Upon release of an opinion, a copy is mailed to counsel and made available to the press and public at the clerk's office and at the circuit libraries. On request, the clerk will also notify counsel by telephone. Opinions are available on the Internet at www.ca11.uscourts.gov.

Opinions are subject to typographical and printing errors. Cooperation of the bar in calling apparent errors to the attention of the clerk's office is solicited.

9. Appearance of Counsel Form. Upon release of a published opinion, the name of every attorney in the appeal who has filed an Appearance of Counsel Form or is court-appointed is provided to publishers who choose to include such information in their publications. When an Appearance of Counsel Form is not filed until after a published opinion has issued, the name of that attorney is not provided to publishers.

10. Citation to Internet Materials in an Opinion. When an opinion of the court includes a citation to materials available on a website, the writing judge will send a copy of the cited internet materials to the clerk for placement in the case file and in a separate file to be permanently maintained by the clerk for this purpose. A footnote in the opinion will reference the availability of the internet materials in the case file.

Cross-Reference: FRAP 28, 32.1, 41

FRAP 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

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

FRAP 38. Frivolous Appeal — Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

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

* * * *

11th Cir. R. 38-1 Time for Filing Motions. Motions for damages and costs pursuant to FRAP 38 must be filed no later than the filing of appellee's brief.

* * * *

I.O.P. - Motions for Damages and Costs. Such motions shall not be contained in appellee's brief but shall be filed separately consistent with the requirements of FRAP 27 and the corresponding circuit rules. When the motion is filed in paper, an original and three copies must be filed.

Cross-Reference: FRAP 42; 28 U.S.C. § 1927

FRAP 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must — within 14 days after entry of judgment — file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must — upon the circuit clerk's request — add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

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

* * * *

11th Cir. R. 39-1 Costs. In taxing costs for printing or reproduction and binding pursuant to FRAP 39(c) the clerk shall tax such costs at rates not higher than those determined by the clerk from time to time by reference to the rates generally charged for the most economical methods of printing or reproduction and binding in the principal cities of the circuit, or at actual cost, whichever is less.

Unless advance approval for additional copies is secured from the clerk, costs will be taxed only for the number of copies of the brief and appendix required by the rules to be filed and served, plus two copies for each party signing the brief.

All costs shall be paid and mailed directly to the party to whom costs have been awarded. Costs should not be mailed to the clerk of the court.

11th Cir. R. 39-2 Attorney's Fees.

(a) Time for Filing. Except as otherwise provided herein or by statute or court order, an application for attorney's fees must be filed with the clerk within 14 days after the time to file a petition for rehearing or rehearing en banc expires, or within 14 days after entry of an order disposing of a timely petition for rehearing or denying a timely petition for rehearing en banc, whichever is later. For purposes of this rule, the term "attorney's fees" includes fees and expenses authorized by statute, but excludes damages and costs sought pursuant to FRAP 38, costs taxed pursuant to FRAP 39, and sanctions sought pursuant to 11th Cir. R. 27-4.

(b) Required Documentation. An application for attorney's fees must be supported by a memorandum showing that the party seeking attorney's fees is legally entitled to them. The application must also include a summary of work performed, on a form available from the clerk, supported by contemporaneous time records recording all work for which a fee is claimed. An affidavit attesting to the truthfulness of the information contained in the application and demonstrating the basis for the hourly rate requested must also accompany the application. Exceptions may be made only to avoid an unconscionable result. If contemporaneous time records are not available, the court may approve only the minimum amount of fees necessary, in the court's judgment, to adequately compensate the attorney.

(c) Objection to Application. Any party from whom attorney's fees are sought may file an objection to the application. An objection must be filed with the clerk within 14 days after service of the application. The party seeking attorney's fees may file a reply to the objection within 10 days after service of the objection.

(d) Motion to Transfer. Any party who is or may be eligible for attorney's fees on appeal may, within the time for filing an application provided by this rule, file a motion to transfer consideration of attorney's fees on appeal to the district court or administrative agency from which the appeal was taken.

(e) Remand for Further Proceedings. When a reversal on appeal, in whole or in part, results in a remand to the district court for trial or other further proceedings (e.g., reversal of order granting summary judgment, or denying a new trial), a party who may be eligible for attorney's fees on appeal after prevailing on the merits upon remand may, in lieu of filing an application for attorney's fees in this court, request attorney's fees for the appeal in a timely application filed with the district court upon disposition of the matter on remand.

11th Cir. R. 39-3 Fee Awards to Prevailing Parties Under the Equal Access to Justice Act.

(a) An application to this court for an award of fees and expenses pursuant to 28 U.S.C. § 2412(d)(1)(B) must be filed within the time specified in the statute. The application must identify the applicant, show the nature and extent of services rendered, that the applicant has prevailed, and shall identify the position of the United States Government or an agency thereof which the applicant alleges was not substantially justified.

(b) An application to the court pursuant to 5 U.S.C. § 504(c)(2) shall be upon the factual record made before the agency, which shall be filed with this court under the procedures established in FRAP 11 and associated circuit rules. Unless the court establishes a schedule for filing formal briefs upon motion of a party, such proceedings shall be upon the application papers, together with such supporting papers, including memorandum briefs, as the appellant shall submit within 14 days of filing of the record of agency proceedings and upon any response filed by the United States in opposition thereto within the succeeding 14 days.

* * * *

I.O.P. -

1. Time - Extensions. A bill of costs is timely if filed within 14 days of entry of judgment. Judgment is entered on the opinion filing date. The filing of a petition for rehearing or petition for rehearing en banc does not extend the time for filing a bill of costs. A motion to extend the time to file a bill of costs may be considered by the clerk.

2. Costs for or Against the United States. When costs are sought for or against the United States, the statutory or other authority relied upon for such an award must be set forth as an attachment to the Bill of Costs.

3. Reproduction of Statutes, Rules, and Regulations. Costs will be taxed for the reproduction of statutes, rules, and regulations in conformity with FRAP 28(f). Costs will not be taxed for the reproduction of papers not required or allowed to be filed pursuant to FRAP 28 and 30 and the corresponding circuit rules, even though the brief or appendix within which said papers are included was accepted for filing by the clerk.

FRAP 40. Petition for Panel Rehearing

(a) Time to File; Contents; Answer; Action by the Court if Granted.

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

(A) the United States;

(B) a United States agency;

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

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

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

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

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

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

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

(C) issue any other appropriate order.

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

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011.)

* * * *

11th Cir. R. 40-1 Contents. A copy of the opinion sought to be reheard shall be included as an addendum to each petition for rehearing, following the certificate of service. This addendum does not count towards page limitations.

11th Cir. R. 40-2 Number of Copies. Four copies of a petition for rehearing pursuant to FRAP 40 shall be filed. Use of the ECF system does not modify the requirement that counsel must provide to the court four paper copies of a petition for rehearing. Counsel will be considered to have complied with this requirement if, on the day the electronic petition is filed, counsel sends four paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B).

11th Cir. R. 40-3 Time - Extensions. A petition for rehearing must be filed within 21 days of entry of judgment, except that a petition for rehearing in a civil appeal in which the United States or an officer or agency thereof is a party must be filed within 45 days of entry of judgment. Judgment is entered on the opinion filing date. No additional time shall be allowed for mailing. Counsel should not request extensions of time except for the most compelling reasons. For purposes of this rule, a "civil appeal" is one that falls within the scope of 11th Cir. R. 42-2(a).

11th Cir. R. 40-4 [Rescinded]

11th Cir. R. 40-5 Supplemental Authorities. If pertinent and significant authorities come to a party's attention while a party's petition for rehearing or petition for rehearing en banc is pending, a party may promptly advise the clerk by letter, with a copy to all other parties. The body of the letter must not exceed 350 words, including footnotes. If a new case is not reported, copies should be appended. When such a letter is filed in paper, four copies must be filed.

11th Cir. R. 40-6 Motion for Leave to File Amicus Brief in Support of Petition for Panel Rehearing. The United States or its officer or agency or a state may file an amicus brief in support of a petition for panel rehearing without the consent of the parties or leave of court. Any other amicus curiae must request leave of court to file an amicus brief in support of a petition for panel rehearing. The request must be made by motion accompanied by the proposed brief in conformance with FRAP 29(b) and (c) and the corresponding circuit rules. The proposed amicus brief must not exceed 15 pages, exclusive of items that do not count towards page limitations as described in 11th Cir. R. 32-4. The cover must be green. An amicus curiae must file its proposed brief, accompanied by a motion for filing when necessary, no later than 10 days after the petition for panel rehearing being supported is filed.

* * * *

I.O.P. -

1. Necessity for Filing. As indicated in 11th Cir. R. 35-3, it is not necessary to file a petition for rehearing or petition for rehearing en banc in the court of appeals as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States. Counsel are also reminded that the duty of counsel is fully discharged without filing a petition for rehearing en banc if the rigid standards of FRAP 35(a) are not met.

2. Petition for Panel Rehearing. A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is not to be used for reargument of the issues

previously presented or to attack the court's non-argument calendar procedures. Petitions for rehearing are reviewed by panel members only.

3. Time. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received by the clerk within the time specified in 11th Cir. R. 40-3.

4. Form of Petition for Panel Rehearing. The form of a petition for panel rehearing is governed by FRAP 32(c)(2).

Cross-Reference: FRAP 35

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

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

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

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate.

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

(2) Pending Petition for Certiorari.

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

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

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

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

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

* * * *

11th Cir. R. 41-1 Stay or Recall of Mandate.

(a) A motion filed under FRAP 41 for a stay of the issuance of a mandate in a direct criminal appeal shall not be granted simply upon request. Ordinarily the motion will be denied unless it shows that it is not frivolous, not filed merely for delay, and shows that a substantial question is to be presented to the Supreme Court or otherwise sets forth good cause for a stay.

(b) A mandate once issued shall not be recalled except to prevent injustice.

(c) When a motion to recall a mandate is tendered for filing more than one year after issuance of the mandate, the clerk shall not accept the motion for filing unless the motion states with specificity why it was not filed sooner. The court will not grant the motion unless the movant has established good cause for the delay in filing the motion.

(d) Unless otherwise expressly provided, granting a petition for rehearing en banc vacates the panel opinion and stays the mandate.

11th Cir. R. 41-2 Expediting Issuance of Mandate. In any appeal in which a published opinion has issued, the time for issuance of mandate may be shortened only after all circuit judges in regular active service who are not recused or disqualified have been provided with reasonable notice and an opportunity to notify the clerk to withhold issuance of the mandate.

11th Cir. R. 41-3 Published Order Dismissing Appeal or Disposing of a Petition for a Writ of Mandamus or Prohibition or Other Extraordinary Writ. When any of the following orders is published, the time for issuance of the mandate is governed by FRAP 41(b):

(a) An order dismissing an appeal.

(b) An order disposing of a petition for a writ of mandamus or prohibition or other extraordinary writ.

11th Cir. R. 41-4 Non-Published Order Dismissing Appeal or Disposing of a Petition for a Writ of Mandamus or Prohibition or Other Extraordinary Writ. When any of the following orders is not published, the clerk shall issue a copy to the district court clerk or agency as the mandate:

(a) An order dismissing an appeal, including an order dismissing an appeal for want of prosecution.

(b) An order disposing of a petition for a writ of mandamus or prohibition or other extraordinary writ.

* * * *

I.O.P. -

1. Stay or Recall of Mandate. A motion for stay or recall of mandate is disposed of by a single judge. See 11th Cir. R. 27-1(d).

2. Return of Record. The original record and any exhibits are returned to the clerk of the district court or agency with the mandate.

3. Certified Records for Supreme Court of the United States. Pursuant to Rule 12.7 of the Rules of the Supreme Court of the United States, the clerks of the courts of appeals are deemed to be the custodial agents of the record pending consideration of a petition for a writ of certiorari. Therefore, the clerk's office does not prepare a certified record unless specifically requested to do so by the Clerk of the Supreme Court. If certiorari is granted, the Clerk of the Supreme Court will request the clerk of the court of appeals to certify and transmit the record. See Rule 16.2 of the Rules of the Supreme Court of the United States.

Cross-Reference: FRAP 35, 36, 40

FRAP 42. Voluntary Dismissal

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

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

* * * *

11th Cir. R. 42-1 Dismissal of Appeals.

(a) Dismissal by Appellant or Petitioner. Such motions to dismiss shall indicate whether the dismissal is sought with or without prejudice. If an appellant or petitioner files an unopposed motion to dismiss an appeal or agency review proceeding without prejudice, the clerk may dismiss the appeal or petition and in such circumstances will issue a copy of the order as and for the mandate. For motions to dismiss criminal appeals, see also 11th Cir. R. 27-1(a)(7) and 27-1(a)(8).

(b) Dismissal for Failure to Prosecute. Except as otherwise provided for briefs and appendices in civil appeals in 11th Cir. R. 42-2 and 42-3, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to timely file such motion will result in dismissal for want of prosecution.

The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal forthwith. The clerk shall not dismiss an appeal during the pendency of a timely filed motion to file documents out of time or otherwise remedy the default which is accompanied by the brief or other required papers, but if the court denies such leave the clerk shall dismiss the appeal forthwith.

If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

11th Cir. R. 42-2 Dismissal in a Civil Appeal for Appellant's Failure to File Brief or Appendix by Due Date.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice of Due Date for Filing Brief and Appendix. Eleventh Circuit Rules 30-1(c) and 31-1 establish the due dates for filing the brief and appendix. To facilitate compliance, the clerk will send counsel and pro se parties a notice confirming the due date for filing appellant's brief and appendix consistent with 11th Cir. R. 30-1(c) and 31-1. However, delay in or failure to receive such notice does not affect the obligation of counsel and pro se parties to file the brief and appendix within the time permitted by the rules.

(c) Dismissal Without Further Notice. When an appellant has failed to file the brief or appendix by the due date as established by 11th Cir. R. 30-1(c) and 31-1 and set forth in the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the timely filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required brief and appendix. Such a motion showing extraordinary circumstances, accompanied by the required brief and appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required brief and appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal.

(f) Failure of Appellee to File Brief by Due Date. When an appellee fails to file a brief by the due date as established by 11th Cir. R. 31-1, or, if the due date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-3 Dismissal in a Civil Appeal for Appellant's Failure to Correct a Deficiency in Briefs or Appendices Within 14 Days of Notice.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice to Correct a Deficiency in Briefs or Appendices. If briefs or appendices do not comply with the rules governing the form of briefs and appendices, the clerk will send counsel and pro se parties a notice specifying the matters requiring correction. A complete corrected set of replacement briefs or appendices must be filed in the office of the clerk within 14 days of the date of the clerk's notice.

(c) Dismissal Without Further Notice. When an appellant has failed to correct the brief or appendix within 14 days of the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to correct a deficiency in appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for correcting a deficiency in the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required corrected brief or appendix. Such a motion showing extraordinary circumstances, accompanied by the required corrected brief or appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required corrected brief or appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal.

(f) Failure of Appellee to File Corrected Brief Within 14 Days of Notice. When an appellee fails to file a corrected brief within 14 days of the clerk's notice, or, if that date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-4 Frivolous Appeals. If it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed.

* * * *

I.O.P.

*1. Voluntary Dismissal With Prejudice. Such motions to dismiss **with** prejudice are submitted to the court. Any such motion shall contain a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules. A joint motion to dismiss must be signed by counsel for each party encompassed by the motion, and a Certificate of Interested Persons and Corporate Disclosure Statement contained in a joint motion to dismiss must compile and include a complete list of all persons and entities known by all applicable parties to have an interest in the outcome of the particular case or appeal.*

2. Dismissal Rules Apply to Principal Briefs. The rules that provide for dismissal of an appeal for appellant's failure to file a brief by the due date, or to correct deficiencies in a brief within 14 days of notice, apply to appellant's or cross-appellant's principal (first) brief only, unless the court orders otherwise.

Cross-Reference: FRAP 3, 38; 28 U.S.C. § 1927

FRAP 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed — Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative — or, if there is no personal representative, the decedent's attorney of record — may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed — Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

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

FRAP 44. Case Involving a Constitutional Question When the United States or the Relevant State Is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute. If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

FRAP 45. Clerk's Duties

(a) General Provisions.

(1) Qualifications. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) When Court Is Open. The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

(1) The Docket. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) Calendar. Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) Other Records. The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

* * * *

11th Cir. R. 45-1 Clerk.

(a) Location. The clerk's principal office shall be in the city of Atlanta, Georgia.

(b) Office to Be Open. The office of the clerk, with the clerk or a deputy in attendance, shall be open for business from 8:30 a.m. to 5:00 p.m., Eastern time, on all days except Saturdays, Sundays, New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * *

I.O.P. -

1. Telephone Inquiries. The clerk's office welcomes telephone inquiries from counsel concerning rules and procedures. Counsel may contact the appropriate deputy clerk by calling the clerk's office. The clerk is also available to confer with counsel on special problems.

2. Emergency Telephone Inquiries After Hours. In emergency situations arising outside normal office hours, or on weekends, the deputy clerk on duty may be reached by dialing the clerk's office and following recorded instructions.

3. Miami Satellite Office. The clerk maintains a satellite office in Miami, Florida. See I.O.P. 5, Miami Satellite Office, following FRAP 25.

Cross-Reference: FRAP 25, 26, 34; 28 U.S.C. §§ 452, 711, 956

FRAP 46. Attorneys

(a) Admission to the Bar.

(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

> **"I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."**

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

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

* * * *

11th Cir. R. 46-1 Bar Admission and Fees. Only attorneys admitted to the bar of this court may practice before the court, except as otherwise provided in these rules. Admission is governed by FRAP 46 and this Eleventh Circuit Rule. To request admission to the bar, an attorney must complete an application form, available on the Internet at www.ca11.uscourts.gov, and submit the form to the clerk's principal office in Atlanta. The application form must be accompanied by:

- a certificate of good standing issued within the previous six months from a court described in FRAP 46(a)(1); and
- the non-refundable fee set by the court and posted on the court's website, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

Each member of the bar has a continuing obligation to keep this court informed of any changes to addresses, phone numbers, fax numbers, and e-mail addresses.

11th Cir. R. 46-2 Renewal of Bar Membership; Inactive Status. Each attorney admitted to the bar of this court shall pay a bar membership renewal fee of $10.00 every five years. A new certificate of admission will *not* issue upon payment of this fee. An attorney admitted *after* April 1, 1989, must pay this renewal fee to the clerk every five years from the date of admission. An attorney admitted *before* April 1, 1989, must pay this renewal fee to the clerk during the month indicated in the following schedule, and then during that same month each five years thereafter:

Last Name (Initial)	Payment Due
A - D	April, 1994
E - K	May, 1994
L - R	June, 1994
S - Z	July, 1994

During the first week of the month in which an attorney's renewal fee is due, the clerk shall send a notice to the attorney at the address on the roll of attorneys admitted to practice before this court (attorney roll), and advise the attorney that payment of the renewal fee is due by the last day of that month. If the notice is returned undelivered due to an incorrect address, no further notice will be sent. If the renewal fee is not paid by the last day of the month in which the notice is sent, the attorney's membership in the bar of this court will be placed in inactive status for a period of 12 months, beginning on the first day of the next month. An attorney whose bar membership is in inactive status may not practice before the court. To renew a bar membership, including one in inactive status, an attorney must complete a bar membership renewal form, available on the Internet at www.ca11.uscourts.gov, and submit the form to the clerk's principal office in Atlanta. The renewal form must be accompanied by a non-refundable bar membership renewal fee of $10.00 payable to U.S. Court of Appeals, Non-Appropriated Fund, 11th Circuit.

After 12 months in inactive status, if an attorney has not paid the bar membership renewal fee, the clerk shall strike the attorney's name from the attorney roll. An attorney whose name is stricken from the attorney roll due to nonpayment of the renewal fee who thereafter wishes to practice before the court must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

11th Cir. R. 46-3 Admission for Particular Proceeding. The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application or payment of the admission fee: an attorney appearing on behalf of the United States, a federal public defender, an attorney appointed by a federal court under the Criminal Justice Act or appointed to represent a party in forma pauperis. Attorneys in these categories who desire to receive an admission certificate from the Eleventh Circuit must pay the admission fee.

11th Cir. R. 46-4 Pro Hac Vice Admission. An attorney who does not reside in the circuit but is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules may apply to appear pro hac vice in a particular proceeding. The following items must be provided:

- a completed Application to Appear Pro Hac Vice form, available on the Internet at www.ca11.uscourts.gov, with proof of service;
- a certificate of good standing issued within the previous six months from a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee of $50.00, payable to U.S. Court of Appeals, Non-Appropriated Fund, 11th Circuit.

An attorney may apply to appear before this court pro hac vice only two times.

To practice before the court, an attorney who resides in the circuit or who has two times previously applied to appear before this court pro hac vice, must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

The clerk is authorized to grant an application to appear pro hac vice in an appeal not yet assigned or under submission, in such circumstances as determined by the court, when an attorney meets the requirements of the rules.

11th Cir. R. 46-5 Entry of Appearance. Every attorney, except one appointed by the court for a specific case, must file an Appearance of Counsel Form in order to participate in a case before the court. The form must be filed within 14 days after the date on the notice from the clerk that the Appearance of Counsel Form must be filed. With a court-appointed attorney, the order of appointment will be treated as the appearance form.

Except for those who are court-appointed, an attorney who has not previously filed an Appearance of Counsel Form in a case will not be permitted to participate in oral argument of the case until the appearance form is filed.

11th Cir. R. 46-6 Clerk's Authority to Accept Filings.

(a) Filings from an Attorney Who Is Not a Member of the Eleventh Circuit Bar.

(1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not a member of the circuit bar and who is not admitted for the particular proceeding pursuant to 11th Cir. R. 46-3:

- a petition or application that initiates a proceeding in this court;
- an emergency motion as described in 11th Cir. R. 27-1(b);
- a motion or petition that is treated by the clerk as "time sensitive" as that term is used in 11th Cir. R. 27-1(b).

(2) Upon filing the petition, application, or motion, the clerk will mail a notice to the attorney, stating that in order to participate in the appeal the attorney must be properly admitted either to the bar of this court or for the particular proceeding pursuant to 11th Cir. R. 46-4, and that the attorney must submit an appropriate application for admission within fourteen (14) days from the date of such notice.

(3) Within the 14-day notice period, the clerk may conditionally file motions and other papers received from the attorney, subject to receipt of an appropriate application for admission within that period. At the expiration of the 14-day notice period, if an appropriate application for admission has not been received, the clerk will return any such motions and other papers to the attorney and enter that action on the docket, and the motions and other papers will be treated as though they were never filed.

(4) When an appropriate application for admission is received within the 14-day notice period, the clerk may continue to conditionally file motions and other papers received from the attorney, subject to the court's approval of the attorney's application for admission. If the attorney's application is denied, the clerk will return any such motions and other papers to the attorney and enter that action on the docket, and the motions and other papers will be treated as though they were never filed. Before taking that action, the clerk may stay further proceedings in the appeal for 30 days, if necessary, to allow the attorney's client to seek new counsel.

(b) Filings from an Attorney Who Has Not Filed an Appearance of Counsel Form Within 14 Days After Notice is Mailed by the Clerk. When an attorney fails to file a required Appearance of Counsel Form within 14 days after notice of that requirement is mailed by the clerk, the clerk may not accept any further filings (except for a brief) from the attorney until the attorney files an Appearance of Counsel Form. When an attorney who has not filed an Appearance of Counsel Form tenders a brief for filing, the clerk will treat the failure to file an Appearance of Counsel Form as a deficiency in the form of the brief. An Appearance of Counsel Form need not be accompanied by a motion to file out of time.

11th Cir. R. 46-7 Active Membership in Good Standing with State Bar Required to Practice; Changes in Status of Bar Membership Must Be Reported. In addition to the requirements of FRAP 46 and the corresponding circuit rules, and Addendum Eight, an attorney may not practice before this court if the attorney is not an active member in good standing with a state bar or the bar of the highest court of a state, or the District of Columbia (hereinafter, "state bar"). When an attorney's active membership in good standing with a state bar lapses for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees, or failure to complete continuing education requirements, the attorney must notify the clerk of this court within 14 days. That notification must also list every other state bar and federal bar of which the attorney is a member, including state bar numbers and the attorney's status with that bar (e.g., active, inactive, retired, etc.). Upon receipt of that notification, the court may take any action it deems appropriate, including placing the attorney's bar membership in inactive status until the attorney provides documentation of active membership in good standing with a state bar.

11th Cir. R. 46-8 Certificate of Admission. Upon admission to the bar of this court, the clerk will send the attorney a certificate of admission. A duplicate certificate of admission is available for purchase upon payment of the fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

11th Cir. R. 46-9 Attorney Discipline. This court has adopted rules governing attorney conduct and discipline. See Addendum Eight.

11th Cir. R. 46-10 Appointment or Withdrawal of Counsel.

(a) Appellate Obligations of Retained Counsel. Retained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Criminal Justice Act, and may not abandon or cease representation of a defendant except upon order of the court.

(b) Habeas Corpus or 28 U.S.C. § 2255 Pauper Appeals. When any pro se appeal for either habeas corpus or 2255 relief is classified for oral argument, counsel will normally be appointed under the Criminal Justice Act before the appeal is calendared. The non-argument panel that classifies the appeal for oral argument will advise the clerk who will then obtain counsel under the regular procedure.

(c) Relieving Court Appointed Counsel on Appeal. Counsel appointed by the trial court shall not be relieved on appeal except in the event of incompatibility between attorney and client or other serious circumstances.

(d) Criminal Justice Act Appointments. The Judicial Council of this circuit has adopted the Eleventh Circuit Plan under the Criminal Justice Act and Guidelines for Counsel Supplementing the Eleventh Circuit Plan under the Criminal Justice Act. See Addendum Four.

(e) Non-Criminal Justice Act Appointments. This court has adopted rules governing Non-Criminal Justice Act Appointments. See Addendum Five.

11th Cir. R. 46-11 Appearance and Argument by Eligible Law Students.

(a) Scope of Legal Assistance.

(1) Notice of Appearance. An eligible law student, as described below, acting under a supervising attorney of record, may enter an appearance in this court on behalf of any indigent person, the United States, or a governmental agency in any civil or criminal case, provided that the party on whose behalf the student appears and the supervising attorney of record has consented thereto in writing. The written consent of the party (or the party's representative) and the supervising attorney of record must be filed with this court.

(2) Briefs. An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be reviewed, approved entirely, and signed by the supervising attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs.

(3) Oral Argument. Except, on behalf of the accused, in a direct appeal from a criminal prosecution, an eligible law student may also participate in oral argument, but only in the presence of the supervising attorney of record.

(b) Law Student Eligibility Requirements.

In order to appear before this court, the law student must:

(1) Be enrolled in a law school approved by the American Bar Association;

(2) Have completed legal studies for which the student has received at least 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

(3) Be certified by the dean of the law student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

(4) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent these entities from making proper charges for its services;

(5) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court; and

(6) File all of the certifications and consents necessary under this rule with the clerk of this court prior to the submission of any briefs or documents containing the law student's name and the law student's appearance at oral argument.

(c) Supervising Attorney of Record Requirements.

(1) The supervising attorney of record must be a member in good standing of the bar of this court.

(2) With respect to the law student's appearance, the supervising attorney of record shall certify in writing to this court that he or she:

(A) consents to the participation of the law student and agrees to supervise the law student;

(B) assumes full, personal professional responsibility for the case and for the quality of the law student's work;

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

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

* * * *

I.O.P. -

1. Admissions. There is no formal swearing-in ceremony.

2. Payment Returned or Denied for Insufficient Funds. When a payment of a fee is returned unpaid or denied by a financial institution due to insufficient funds, counsel must thereafter pay the fee by money order or cashier's check made payable to the same entity or account as the returned check or denied payment. In addition, counsel must also remit by separate money order or cashier's check the returned-or-denied-payment fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

3. Components of Attorney Admission Fee. The attorney admission fee is composed of two separate fees. A national admission fee has been prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. This fee is remitted to the federal judiciary. A local admission fee has been prescribed by this court pursuant to FRAP 46(a)(3), and is posted on the court's website. This fee is deposited in the court's non-appropriated fund account to be used for the benefit of the bench and bar in the administration of justice.

FRAP 47. Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

* * * *

11th Cir. R. 47-1 Name, Seal, and Process.

(a) Name. The name of this court is "United States Court of Appeals for the Eleventh Circuit."

(b) Seal. Centered upon a blue disc a representation of the American eagle in its proper colors with wings displayed and inverted standing upon a closed book with gold page ends and maroon cover; also standing upon the book and in front of the eagle's right wing a gold balance embellished with three white stars, one above each of the pans and one atop the centerpost and below the book on a gold semi-circular scroll in blue letters the inscription EQUAL JUSTICE UNDER LAW; all enclosed by a gold-edged white border inscribed in blue with the words UNITED STATES COURT OF APPEALS above two gold rosettes of blue and gold and the words ELEVENTH CIRCUIT also in blue.

(c) Writs and Process. Writs and process of this court shall be under the seal of the court and signed by the clerk.

11th Cir. R. 47-2 Circuit Executive. The judicial council has appointed a circuit executive pursuant to 28 U.S.C. § 332 as secretary of the judicial council and of the judicial conference.

The circuit executive is designated as the court's manager for all matters pertaining to administrative planning, organizing and budgeting. The clerk, the director of the staff attorney's office, and the circuit librarian shall coordinate fully with the circuit executive on those administrative matters pertaining to their areas of responsibility that appropriately warrant judicial attention or administrative action.

The circuit executive shall maintain an office in Atlanta, Georgia.

11th Cir. R. 47-3 Circuit Librarian. Under the direction of a circuit librarian the court will maintain a library in Atlanta, Georgia, and approve regulations for its use. All persons admitted to practice before the court shall be authorized to use the library. Libraries may be maintained at other places in the circuit designated by the judicial council.

11th Cir. R. 47-4 Staff Attorneys. Under the supervision of a senior staff attorney, a central staff of attorneys shall be maintained at Atlanta, Georgia, to assist the court in legal research, analysis of appellate records and study of particular legal problems, and such other duties as the court directs.

11th Cir. R. 47-5 Judicial Conference. The rules of this court for having and conducting the conference and for representation and active participation at the conference by judges and members of the bar appear as Addendum One.

11th Cir. R. 47-6 Restrictions on Practice by Current and Former Employees. Consistent with the Consolidated Code of Conduct for Judicial Employees adopted by the Judicial Conference of the United States, no employee of the court shall engage in the practice of law. A former employee of the court may not participate by way of representation, consultation, or assistance, in any matter which was pending in the court during the employee's term of employment.

* * * *

I.O.P. -

1. Physical Facilities. The headquarters of the United States Court of Appeals for the Eleventh Circuit is located at 56 Forsyth Street, N.W., Atlanta, Georgia 30303, in the Elbert P. Tuttle U.S. Court of Appeals Building. The courthouse contains three courtrooms, chambers for judges, the Kinnard Mediation Center, and the library. The John C. Godbold Federal Building, which contains the circuit executive's office, the clerk's office, and the office of the staff attorneys, is located at 96 Poplar Street, N.W., Atlanta, Georgia 30303, and is directly behind the Elbert P. Tuttle U.S. Court of Appeals Building.

2. Judges. The Eleventh Circuit has 12 authorized active judges. Each active judge's office, maintained in the place of residence, is authorized three law clerks and two secretaries or four law clerks and one secretary. The chief judge is authorized one additional law clerk or secretary. Several senior judges maintain offices and staffs commensurate with the judicial work they choose

to do, and sit on oral argument panels several times during the year. Senior judges do not normally participate in the administrative work of the court, although they are authorized by law to do so.

3. Circuit Executive. The circuit executive is the chief administrative officer of the court. The circuit executive's office contains staff assistants and secretaries. See 28 U.S.C. § 332.

4. Office of Staff Attorneys. The office is comprised of a senior staff attorney, staff attorneys, and supporting clerical personnel. This office assists the court in legal research, analysis of appellate records, and studies of particular legal problems. It also assists in handling pro se prisoner matters. In many cases the office prepares memoranda to assist the judges.

5. Library. The library is staffed by the circuit librarian and assistant librarians. Library hours are from 8:30 a.m. to 4:30 p.m., Monday through Friday.

All persons admitted to practice before the court are authorized to use the library. Under regulations approved by the court, others may use the library by special permission only. Books and materials may not be removed from the library without permission of the librarian.

6. Judicial Conference. Pursuant to 28 U.S.C. § 333 there is held biennially, and may be held annually, at such time and place as designated by the chief judge of the court, a conference of all circuit, district and bankruptcy judges of the circuit for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit. See Addendum One to the circuit rules.

7. Judicial Council. The judicial council established by 28 U.S.C. § 332 is composed of nineteen members: one active judge from each of the nine district courts, nine active circuit judges, and the circuit chief judge. The judicial council meets on call of the chief judge approximately three times a year to consider and to make orders for the effective and expeditious administration of the courts within the circuit. The council is responsible for considering complaints against judges.

8. Fifth Circuit Court of Appeals Reorganization Act of 1980 (P.L. 96-452, October 4, 1980). Section 9 of the Fifth Circuit Court of Appeals Reorganization Act of 1980 determines appellate case processing after October 1, 1981, in terms of the "submitted for decision" date of each appeal.

The date an appeal assigned to the oral argument calendar is submitted for decision, is the date on which the initial argument of the appeal is heard. The date an appeal decided on the summary or non-argument calendar is submitted for decision, is the date on which the last panel judge concurs in summary or nonargument calendar disposition.

9. Recusal or Disqualification of Judges.

a. Grounds - A judge may recuse himself or herself under any circumstances considered sufficient to require such action. A judge is disqualified under circumstances set forth in 28 U.S.C. § 455 or in accordance with Canon 3C, Code of Judicial Conduct for United States Judges as approved by the Judicial Conference of the United States, April 1973.

b. Administrative Motions Procedure -

(1) single judge matter - If a judge who is the initiating judge recuses himself or herself from considering or is disqualified to consider an administrative motion, the file is returned to the clerk who then sends it to the next initiating judge listed on the administrative routing log.

(2) panel matter - If a judge who is the initiating judge recuses himself or herself from considering or is disqualified to consider an administrative motion, the file is forwarded by the recused judge directly to the next judge (who then becomes the initiating judge) for decision by quorum of the panel. If these remaining judges cannot agree as to disposition of the matter or if the appeal is deemed more appropriate for a full panel, the quorum may submit the matter to the backup judge. If at any point there are insufficient, unrecused judges on a panel to constitute a quorum, the file is returned to the clerk for appointment of a new panel from the administrative routing log.

c. Non-Argument Calendar Appeals - The same procedure is followed as in paragraph (b)(2) above, except that a backup judge is ordinarily called in since the court's practice is that appeals are not ordinarily disposed of on the merits by only two judges.

d. Oral Argument Calendar Appeals - Prior to issuance of the court calendar, each judge on the panel is furnished with a copy for each appeal of the Certificate of Interested Persons and Corporate Disclosure Statement described in FRAP 26.1 and the accompanying circuit rules, for each judge's advance study to determine if the judge should recuse himself or herself or is disqualified in any of the appeals.

10. Complaints Against Judges. This court's rule for the conduct of complaint proceedings under 28 U.S.C. §§ 351-364 is outlined in Addendum Three.

11. Pro Se Applications. The clerk's office processes and answers prisoner and other pro se correspondence with the assistance of the staff attorneys' office. When a pro se petition is in the proper form for docketing and processing, it is routed to the staff attorneys' office. This office prepares legal memoranda for the court on such interlocutory matters as applications for leave to appeal in forma pauperis, certificates of appealability, and appointment of counsel, and on other pro se matters.

12. Statistics. The clerk periodically prepares statistical reports for the court and for the Administrative Office of the United States Courts. These reports are used to manage the internal affairs of the court and to provide information for purposes of determining personnel and equipment needs, the number of oral argument sessions to be scheduled, the workload of the judges and staff, and other management concerns. The reports are distributed to the judges and the circuit executive, and are discussed at judicial council meetings.

Cross-Reference: 28 U.S.C. §§ 41-48, 57, 291-296, 332, 333, 372, 455, 713, 1691

FRAP 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

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

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the _____

District of _____

File Number _____

A. B., Plaintiff

v. Notice of Appeal

C. D., Defendant

Notice is hereby given that (here name all parties taking the appeal), (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, _____.

(s) _____

Attorney for _____

Address: _____

* See Rule 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court

UNITED STATES TAX COURT
Washington, D.C.

A. B., Petitioner

v. Docket No. _____

Commissioner of Internal Revenue,
Respondent

Notice of Appeal

Notice is hereby given that (here name all parties taking the appeal)*, hereby appeal to the United States Court of Appeals for the _____ Circuit from (that part of) the decision of this court entered in the above captioned proceeding on the _____day of _____, _____ (relating to _____).

(s) _____

Counsel for _____

Address: _____

* See Rule 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the _____ Circuit

A. B., Petitioner

v. Petition for Review

XYZ Commission, Respondent

(here name all parties bringing the petition)* hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on _____, _____.

(s) _____

Attorney for Petitioners _____

Address: _____

*See Rule 15

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 4. **Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis**

UNITED STATES DISTRICT COURT

for the

<_____> DISTRICT OF <_____>

<Name(s) of plaintiff(s)>,	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	Case No. <Number>
<Name(s) of defendant(s)>,	)	
	)	
Defendant(s)	)	
	)	

Affidavit in Support of Motion	**Instructions**
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are:

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	**$**	**$**	**$**	**$**

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			$
			$
			$

4. *How much cash do you and your spouse have? $_____*

   Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) $	(Value) $	(Value) $
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) $	(Value) $	(Value) $
Make and year:		
Model:		

Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
	$	$
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	**Relationship**	**Age**

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	**Your Spouse**
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [ ] Yes [ ] No Is property insurance included? [ ] Yes [ ] No	$	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$	$
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$

Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	$	$
Life:	$	$
Health:	$	$
Motor vehicle:	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments) (specify):	$	$
Installment payments		
Motor Vehicle:	$	$
Credit card (name):	$	$
Department store (name):	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	**$**	**$**

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

   [ ] Yes [ ] No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* [ ] Yes [ ] No

    If yes, how much? $ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *State the city and state of your legal residence.*

Your daytime phone number: (____) _____

Your age: _____ *Your years of schooling*: _____

Last four digits of your social-security number: _____

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 16, 2013, eff. Dec. 1, 2013.)

Form 5. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel

United States District Court for the _____

District of _____

In re:

_____,
Debtor

File No. _____

_____,
Plaintiff

v.

_____.
Defendant

Notice of Appeal to United States Court of Appeals
for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, _____ [here describe the judgment, order, or decree].

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____

Signed _____
Attorney for Appellant

Address: _____

_____

(As added Apr. 25, 1989, eff. Dec. 1, 1989; amended Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 6. Certificate of Compliance With Rule 32(a)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because:

☐ this brief contains *[state the number of]* words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii), *or*

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2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because:

☐ this brief has been prepared in a proportionally spaced typeface using *[state name and version of word processing program]* in *[state font size and name of type style]*, *or*

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(s) _____

Attorney for _____

Dated: _____

(As added Apr. 29, 2002, eff. Dec. 1, 2002.)

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