United States Court of Appeals
for the Third Circuit

Local Appellate Rules

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L.A.R. 1.0 SCOPE AND TITLE OF RULES

1.1 Scope and Organization of Rules

The following Local Appellate Rules (L.A.R.) are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (FRAP) and apply to procedure in this court. The numbering of the Local Appellate Rules has been organized to follow the numbering system of the Federal Rules of Appellate Procedure in order to increase public accessibility to the Rules. Where a local rule has no counterpart in the Federal Rules of Appellate Procedure it is classified as a Miscellaneous Rule. The Miscellaneous Local Appellate Rules begin with Rule 101.0.

Source: 1988 Court Rule 1.1

Cross-references: 28 U.S.C. § 2072; FRAP 1, 47

Committee Comments: The Local Appellate Rules bind all litigants in this court. Each Local Appellate Rule is numbered to correspond to its counterpart in the Federal Rules, *e.g.*, Local Appellate Rule 1.0 corresponds to Federal Rule of Appellate Procedure 1. Cross-references are provided for convenience and are not intended to be exhaustive. Committee Comments are provided by the court's Rules Committee and are intended to guide, but not bind, litigants in this court. The 1988 Local Rules were substantially revised in 1995. Unless otherwise noted, a rule was enacted in 1995. Substantive amendments made after 1995 and new rules adopted after 1995 are noted in the Committee Comments.

1.2 Title; Citation Form

These rules are to be known as the Third Circuit Local Appellate Rules, and cited as 3d Cir. L.A.R. __._ (2011).

Source: None

Cross-references: FRAP 1

Committee Comments: The Local Rules Project of the Judicial Conference Committee on Rules and Practice recommends that all courts of appeals follow a uniform numbering and citation system, for ease of reference and indexing of local rules. This court follows the recommendation of the Local Rules Project.

L.A.R. 3.0 APPEAL AS OF RIGHT - HOW TAKEN

3.1 Notice to Trial Judge; Opinion in Support of Order

No later than 30 days after the docketing of a notice of appeal, the trial judge may file and transmit to the parties a written opinion or a written amplification of a prior written or oral recorded ruling or opinion. Failure to give notice of the appeal to the trial judge will not affect the jurisdiction of this court.

Source: 1988 Court Rules 8.4

Cross-References: FRAP 3, 24, Form 1, Form 3

Committee Comments: A district court may properly prepare an opinion or memorandum explaining a decision after an appeal is taken. The rule is not intended to inhibit or discourage district courts from preparing opinions as they presently do. To the contrary, the rule was designed to provide more flexibility. Prior Court Rule 8.4 was amended in 1995 to apply to all appellants, not simply pro se habeas corpus petitioners. Otherwise, no substantive change from prior Court Rule 8.4 was intended. This rule does not authorize a trial judge to change a prior ruling except as provided by F.R.C.P. 59(e). For procedures under F.R.C.P. 60(b) when a case is on appeal, see Venen v. Sweet, 758 F.2d 117, 120 (3d Cir. 1985). The rule was amended in 2008 to change the time from 15 to 30 days. A requirement to notify the district court judge of the filing of a notice of appeal was deleted in 2008 because the district court's automated docketing system (cm/ecf) will do so.

3.2 Joint Notice of Appeal

When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. Parties filing a joint notice of appeal must file a single consolidated brief and appendix.

Source: None

Cross-references: FRAP 3(b), 28(I), 31

Committee Comments: New provision in 1995.

3.3 Payment of Fees

(a) If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant must pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(b) If an action has been dismissed by the district court pursuant to 28 U.S.C. § 1915 as frivolous or malicious, or if the district court certifies pursuant to § 1915(a) and FRAP 24(a) that an appeal is not taken in good faith, the appellant may either pay the applicable docketing fee or file a motion to proceed in forma pauperis within 14 days after docketing the appeal. If appellant fails to either pay the applicable docketing fee or file the motion to proceed in forma pauperis and any required supporting documents, the clerk is authorized to dismiss the appeal 30 days after docketing of the appeal.

Source:	1988 Court Rule 28.1
Cross-References:	28 U.S.C. §1915; FRAP 3(a), 24(a); 3d Cir. L.A.R. 24.1, 39.2, Misc. 107.2(a)
Committee Comments:	Subsection (b) was added in 1995 to codify existing practice. Subsection (b) is not intended to preclude a litigant who did not seek leave to proceed in forma pauperis in the district court from requesting leave to proceed in forma pauperis in the court of appeals.

3.4 Notice of Appeal in Pro Se Cases

The court will deem a document filed by a pro se litigant after the decision of the district court in a civil, criminal, or habeas corpus case to be a notice of appeal despite informality in its form or title, if it evidences an intention to appeal. The court will deem an application for leave to appeal in forma pauperis or an application for a certificate of appealability to be a notice of appeal if no formal notice has been filed. The grant or denial of a certificate of appealability by the district court will not be treated as a notice of appeal.

Source:	1988 Court Rules 8.1, 8.3
Cross-References:	28 U.S.C. §2253; FRAP 3, 4(d), & 22(b), 24, Form 1, Form 3
Committee Comments:	This rule is designed to emphasize that the jurisdictional requirement of a notice of appeal is met in a pro se case by the filing of an informal document, a request for certificate of

appealability, or a motion for in forma pauperis status in this court, but not by the mere granting or denial by the district court of a certificate of appealability. The portions of prior Court Rule 8 that were repetitive of FRAP 3 and 4 have been deleted; otherwise no substantive change from prior Court Rule 8 is intended. Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act. The phrase "in this court" was deleted in 2008 to clarify that a request for a certificate of appealability made to a district court when the district court has already ruled on the issue should be construed as a notice of appeal.

L.A.R. 4.0 APPEAL AS OF RIGHT - WHEN TAKEN

4.1 Motions to Expedite

A party who seeks to expedite a case must file a motion within14 days after the opening of the case setting forth the exceptional reason that warrants expedition. If a reason for expedition arises thereafter, the moving party must file a motion within 14 days of the occurrence that is the basis of the motion. Motions seeking to expedite a case must include a proposed briefing schedule that has been agreed upon by the parties, if possible, but if they cannot agree, they should submit their own proposal with reasons in the motion or response. The non-moving party may agree to a proposed briefing schedule without conceding that expedition is necessary. A response to the motion, if any, must be filed within 7 days after service of the motion and any reply within 3 days after service of the response unless otherwise directed by the court or clerk. The court or clerk may direct that service be made in the manner provided by L.A.R. 27.7.

Source: None

Cross-references: FRAP 4

Committee Comments: This rule was added in 1995 to emphasize that a request for an expedited appeal must be made promptly. See L.A.R. 27.7 requiring notification to the clerk of expedited or urgent matters. The rule was amended in 2008 to clarify that the rule applies to all types of cases.

L.A.R. 5.0 APPEALS BY PERMISSION UNDER 28 U.S.C. § 1292(b) [ABROGATED]

5.1 Petition for Permission to Appeal [Abrogated]

Reason for elimination of L.A.R. 5.1:

FRAP 5(b), which sets forth the contents of a petition for permission to appeal, requires that the petition include "the question itself." This requirement makes L.A.R. 5.1 unnecessary.

L.A.R. 8.0 STAY OR INJUNCTION PENDING APPEAL

8.1 Motion for Stay in Court of Appeals

A motion for a stay of a judgment or order of a district court or a decision of the United States Tax Court pending appeal, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must include a copy of any relevant judgment, decision, or order of the district court or the decision of the United States Tax Court and any accompanying opinion. Failure to do so is a ground for dismissal of the motion.

Source: 1988 Court Rules 11.2, 11.4

Cross-references: FRAP 8, 18, 27; 3d Cir. L.A.R. 18.0, 27.0

Committee Comments: This rule was revised in 1995 to apply to decisions of the United States Tax Court as well as the judgments and orders of the United States district court. Otherwise, no substantive change from prior Court Rules 11.2 or 11.4 is intended. The rule was amended to delete references to a supersedeas bond, because approval of a supersedeas bond must be sought in the district court under FRAP 8 (a)(1)(B).

8.2 Expedited Consideration

If the court or clerk determines that a motion under L.A.R. 8.1 requires expedited treatment, proceedings in regard to the motion will be in accordance with L.A.R. 27.7.

Source: New provision in 2002

Cross-references: None

Committee Comments: Section 8.2 was added to clarify procedures in expedited cases. See L.A.R. 27.7 requiring notification to the clerk of expedited or urgent matters.

8.3 Death Penalty Cases

Except as provided in 28 U.S.C. § 2262, the provisions of 3d Cir. L.A.R. Misc. 111.0 govern all stay proceedings in death penalty cases, including appeals from the grant or denial of a petition under 28 U.S.C. §§ 2254 or 2255, applications to file a second or successive petition under 28 U.S.C. §2244 and/or § 2255, and in original habeas corpus actions challenging a conviction in which a sentence of death has been imposed.

In a direct appeal of conviction or sentence in a criminal case in which the district court has imposed a sentence of death, an order will be entered staying the sentence.

Source: None

Cross-references: FRAP 8, 22; Fed. R. Crim. Pro. 38(a); 3d Cir. L.A.R. Misc. 111.0

Committee Comments: New provision in 1995. To the extent consistent with FRAP and applicable statutes, all local procedure in death penalty proceedings are governed by 3d Cir. L.A.R. Misc. 111.0. Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act.

L.A.R. 9.0 RELEASE IN CRIMINAL CASES

9.1 Appeals of Orders Relating to Release or Detention; Release Before Judgment of Conviction

(a) An appeal from an order granting or denying release from custody with or without bail or for detention of a defendant prior to judgment of conviction must be by motion filed either concurrently with or promptly after filing a notice of appeal. The movant must set forth in the body of the motion the applicable facts and law and attach a copy of the reasons given by the district court for its order. The opposing party may file a response within 5 days after service of the motion, unless the court directs that the time be shortened or extended.

(b) Requests for release from custody or for detention of a defendant after judgment of conviction must be by motion filed expeditiously. The time periods and form requirements set forth in 3d Cir. L.A.R. 9.1(a) are applicable to such motions.

Source:	1988 Court Rules 11.3, 11.4
Cross-references:	FRAP 9, 27; 3d Cir. L.A.R. 27.0
Committee Comments:	Renumbered by the 1995 rules revision; no substantive change is intended from prior Court Rule 11.3.Response time changed to 5 days in 2010.

L.A.R. 11.0 TRANSMISSION OF THE RECORD

11.1 Duty of Appellant

Within 14 days after filing a notice of appeal, the appellant must deposit with the court reporter the estimated cost of the transcript of all or the necessary part of the notes of testimony taken at trial. Where an appellant cannot afford the cost of transcripts, counsel for appellant, or the appellant pro se, must make application to the district court within 14 days of the notice of appeal for the provision of such transcript pursuant to 28 U.S.C. §753(f). If the district court denies the application, appellant must, within 14 days of the order denying the application, either deposit with the court reporter the fees for such transcript or apply to the court of appeals for the transcript at government expense. Failure to comply with this rule constitutes grounds for dismissal of the appeal.

Source:	1988 Court Rule 15.1
Cross-references:	28 U.S.C. § 753(f); FRAP 10(b), 11(a); 3d Cir. L.A.R. 10.1(b), Misc. 107.1(b)
Committee Comments:	No substantive change from prior Court Rule 15.1 is intended. The rule codifies current practice. Time changed to 14 days in 2010 to conform to amendments in FRAP.

11.2 Retention of the Record in the District Court

A certified copy of the docket entries in the district court must be transmitted to the clerk of this court in lieu of the entire record in all counseled appeals. In all pro se cases, all documents, including briefs filed in support of dispositive motions that are not available in electronic form on PACER, must be certified and transmitted to the clerk of this court. The clerk of the district court must transmit in any state habeas case or habeas case emanating from any territorial court or motions to vacate sentence under 28 U.S.C. § 2255, whether counseled or pro se, all documents that are not available in electronic form on PACER. In such cases, the clerk of the district court must transmit to the court of appeals any state or territorial records or any documents from the prior criminal trial lodged with the district court during its determination of the habeas case.

Source: 1988 Court Rule 14.1

Cross-references: FRAP 11(e); 22(b)

Committee Comments: Changes were made in 2008 to reflect practices for electronic records. The grant of a motion to proceed on the original record exempts a litigant from filing an appendix. Transmission of the record by the district court to the court of appeals is not a prerequisite to the granting of such motion. The fact that the district court clerk has transmitted the record to the court of appeals does not dictate the granting of the motion.

L.A.R. 15.0 REVIEW OR ENFORCEMENT OF AGENCY ORDERS - HOW OBTAINED; INTERVENTION

15.1 Brief and Argument in Enforcement and Review Proceedings

In any enforcement or review proceeding with respect to an order or action of a federal agency or board, each party adverse to the agency or board is considered to be the petitioner(s) and the federal agency or board to be the respondent, solely for the procedural purposes of briefing and oral argument, unless the court orders otherwise. Nothing in this rule has the effect of changing or modifying the burden of the agency or board of establishing its right to enforcement.

Source: 1988 Court Rule 26.1

Cross-references: FRAP 15

Committee Comments: The portions of prior Court Rule 26.1 that were repetitive of FRAP 15 have been deleted. This rule has been designed to expand the procedure which FRAP 15.1 limits to a single agency, the National Labor Relations Board, to encompass all federal administrative agencies.

L.A.R. 18.0 STAY PENDING REVIEW

18.1 Stay of an Order or Decision of an Agency

An application to this court for stay of the judgment or order of an agency pending review, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must include a copy of the relevant judgment, decision, or order of the agency and any accompanying opinion. In cases challenging a decision of the Board of Immigration Appeals, the opinion of the IJ (immigration judge) must

be included. Failure to do so is a ground for dismissal of the motion.

Source: 1988 Court Rules 11.2, 11.4

Cross-references: FRAP 8, 18, 27; 3d Cir. L.A.R. 27.0

Committee Comments: No substantive change from prior Court Rules 1.2 or 11.4 is intended. See L.A.R. 27.7 requiring notification to the clerk of expedited or urgent matters.

L.A.R. 21.0 MANDAMUS PETITIONS IN CRIME VICTIMS RIGHTS CASES

21.1 Petitions for Writ of Mandamus Pursuant to 18 U.S.C. § 3771(d)(3)

(a) A petition for writ of mandamus filed pursuant to 18 U.S.C. § 3771(d)(3), the Crime Victims' Rights Act, must bear the caption "PETITION FOR WRIT OF MANDAMUS PURSUANT TO 18 U.S.C. § 3771(d)(3), CRIME VICTIMS' RIGHTS ACT." Before filing such a petition, the petitioner's counsel, or the petitioner if appearing pro se, must notify by telephone the clerk's office of the Court of Appeals that such a petition will be filed, and must make arrangements for filing in this court and immediate service of the petition on the relevant parties.

(b) The clerk will notify the U.S. Attorney when a petition is received. The government must file a response to the petition within twenty-four hours of notification by the clerk unless the clerk directs otherwise. The government is responsible for notifying those additional victims of whom it is aware of the proceedings. Any additional victims wishing to join in the action, must file their petitions within twenty-four hours of case opening.

(c) A failure to provide advance notice of such petition, in accordance with subsection (a) of this rule, will be deemed consent to the five day continuance permitted in 18 U.S.C. § 3771(d)(3) and may be construed as a waiver of the time limits prescribed by the statute.

Source: 18 U.S.C. § 3771(d)(3)

Cross-references: FRAP 8, L.A.R. 8.0

Committee Comments: This Rule was added in 2008 to assist the court in complying with the time limits the Act places on decisions. The government is responsible for notifying crime victims of the proceedings. 18 U.S.C. § 3771(c)(1).

L.A.R. 22.0 HABEAS CORPUS PROCEEDINGS

22.1 Necessity of Certificate of Appealability

(a) When a certificate of appealability is required, a formal application must be filed with the court of appeals, but the court may deem a document filed by a habeas corpus petitioner that discloses the intent to obtain appellate review to be an application for a certificate of appealability, regardless of its title or form. If an application is not filed with the notice of appeal, the appellant may file and serve an application within 21 days of either the docketing of the appeal in the court of appeals or of the entry of the order of the district court denying a certificate, whichever is later. The appellees may, but need not unless directed by the court, file a memorandum in opposition to the granting of a certificate, within 14 days of service of the application. The appellant may, but need not, file a reply within 10 days of service of the response. The length and form of any application, response, or reply must conform to the requirements of FRAP 27 governing motions.

(b) If the district court grants a certificate of appealability as to only some issues, the court of appeals will not consider uncertified issues unless appellant first seeks, and the court of appeals grants, certification of additional issues. Appellant desiring certification of additional issues must file, in the court of appeals, a separate motion for additional certification, along with a statement of the reasons why a certificate should be granted as to any issue(s) within 21 days of the docketing of the appeal in the court of appeals. Appellees may file a memorandum in opposition within 14 days of service of the application. Appellant's reply, if any, must be filed within 10 days of the service of the response. The length and form of any application, response, or reply, must conform to the requirements of Rule 27, FRAP governing motions. If granted, the order must be included in volume one of the appendix, which may be attached to the appellant's brief. If the motions panel denies the motion to certify additional issues, the parties should brief only the issues certified unless the merits panel directs briefing of any additional issues. Notwithstanding the above, the merits panel may expand the certificate of appealability as required in the circumstances of a particular case.

(c) In a multi-issue case if the district court grants a certificate of appealability, but does not specify on which issues the certificate is granted as required by 28 U.S.C. § 2253(c)(3), the clerk will remand the case for specification of the issues.

(d) A certificate of appealability is required if a petitioner files a cross-appeal. The petitioner should apply to the district court for a certificate in the first instance.

Source:	1988 Court Rule 13.1
Cross-references:	28 U.S.C. § 2253; FRAP 3, 22; 3d Cir. L.A.R. 3.4
Committee Comments:	The portions of prior Court Rule 13 that were repetitive of FRAP 22 were deleted in 1995; otherwise no substantive change from prior Court Rule 13.1 is intended. Technical changes were made to conform to FRAP 27 in 1997. The response time was

lengthened to permit litigants sufficient time to file an application or response.

22.2 Statement of Reasons for Certificate of Appealability

At the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued, the district judge will make a determination as to whether a certificate of appealability should issue. If the district judge issues a certificate, the judge must state the specific issue or issues that satisfy the criteria of 28 U.S.C. § 2253. If an order denying a petition under § 2254 or § 2255 is accompanied by an opinion or a magistrate judge's report, it is sufficient if the order denying the certificate references the opinion or report. If the district judge has not made a determination as to whether to issue a certificate of appealability by the time of the docketing of the appeal, the clerk will enter an order remanding the case to the district court for a prompt determination as to whether a certificate should issue.

Source: FRAP 22

Cross-references: 28 U.S.C. §§ 2253, 2254, 2255; FRAP 22

Committee Comments: Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act.

22.3 Review of Application for Certificate of Appealability

An application for a certificate of appealability will be referred to a panel of three judges. If all the judges on the panel conclude that the certificate should not issue, the certificate will be denied, but if any judge of the panel is of the opinion that the applicant has made the showing required by 28 U.S.C. § 2253, the certificate will issue.

Source: FRAP 22

Cross-references: 28 U.S.C. § 2253; FRAP 22

Committee Comments: Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act.

22.4 Death Penalty Cases

The provisions of 3d Cir. L.A.R. Misc. 111.0 govern all appeals from the grant or denial of a petition for writ of habeas corpus or original habeas corpus proceedings challenging a conviction in which a sentence of death has been imposed.

Source: None

Cross-references: FRAP 8, 22; 3d Cir. L.A.R. 8.0, Misc. 111.0

Committee Comments: New provision in 1997. To the extent consistent with FRAP and applicable, local procedure in all death penalty proceedings will be governed by 3d Cir. L.A.R. Misc. 111.0.

22.5 Application for Authorization to File a Second or Successive Petition Under 28 U.S.C. § 2254 or § 2255

(a) Forms for filing an application to file a second or successive petition under 28 U.S.C. § 2254 or § 2255 are available from the clerk. If the form application is not used, the application must contain the information requested in the form. The application must be accompanied by:

(1) the proposed new § 2254 or § 2255 petition;

(2) copies of all prior § 2254 or § 2255 petitions;

(3) copies of the docket entries in all prior § 2254 or § 2255 proceedings;

(4) copies of all magistrate judge's reports, district court opinions and orders disposing of the prior petitions; and

(5) any other relevant documents.

(b) The application may be accompanied by a memorandum, not exceeding 20 pages, clearly stating how the standards of § 2244(b) and/or § 2255 are satisfied.

(c) The movant must serve a copy of the application for authorization to file a second or successive petition and all accompanying attachments on the appropriate respondent.

(d) Any response to the application must be filed within 7 days of the filing of the application with the clerk.

(e) If the court determines that the motion and accompanying materials are not sufficiently complete to assess the motion, the court may deny the motion with or without prejudice to refiling or may in its discretion treat the motion as lodged, the filing being deemed complete when the deficiency is remedied.

(f) The clerk will transmit a copy of any order granting authorization to file a second or successive petition to the appropriate district court together with a copy of the petition.

(g) No filing fee is required for an application to file a second or successive petition. If the application is granted, the filing of the petition in the district court will be subject to the requirements of 28 U.S.C. § 1915(a).

(h) If the district court enters an order transferring to the court of appeals an application to file a second or successive petition or a § 2254 or § 2255 petition that the district court deems to be a second or successive petition requiring authorization, the clerk of the district court must

promptly certify the record to the court of appeals as provided in L.A.R. 11.2. The record must include the documents listed in part (a)(1) through (5) of this rule. The clerk of the district court must transmit copies of its order of transfer and any necessary documents to the appropriate respondent.

(i) If a case transferred by the district court does not contain a statement by the applicant as to how the standards of § 2244(b) or § 2255 are satisfied, the clerk may direct the applicant to file a memorandum clearly stating how the statutory standards are met. Failure to file a memorandum as directed will result in the dismissal of the case by the clerk without further notice. If the applicant files a memorandum as directed, the time prescribed in § 2244(b)(3)(D) for deciding the application will run from the date the memorandum is filed.

(j) If an appeal is taken in a case in which the district court issued an order denying a petition under § 2254 or § 2255 on the grounds that it is a second or successive petition that requires authorization under § 2244, the record on appeal certified to this court must include the documents listed in part (a)(1) through (5) of this rule.

Source: FRAP 22

Cross-references: 28 U.S.C. §§ 2244, 2253, 2254, 2255; FRAP 22

Committee Comments: Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act. Revisions were made in 2008 to accommodate electronic records.

L.A.R. 24.0 PROCEEDINGS IN FORMA PAUPERIS

24.1 Documents Required with Application

(a) In civil cases in which 28 U.S.C. § 1915(b) applies, prisoners seeking to proceed on appeal in forma pauperis must file the following documents in the court of appeals:

(1) an affidavit of poverty that includes the amount in the prisoner's prison account;

(2) a certified copy of the prison account statement(s) (or institutional equivalent) for the 6 month period immediately preceding the filing of the notice of appeal; and

(3) a signed form authorizing prison officials to assess and deduct the filing fees in accordance with 28 U.S.C. § 1915(b).

(b) After the filing of the documents required in subsection (a) in civil cases in which 28 U.S.C. § 1915(b) applies, the clerk will issue an order directing the warden of the prison to assess and deduct the filing fees in accordance with 28 U.S.C. § 1915(b).

(c) In cases filed in which 28 U.S.C. § 1915(b) does not apply, prisoners seeking to proceed on appeal in forma pauperis must file an affidavit of poverty in the form prescribed by the Federal Rules of Appellate Procedure accompanied by a certified statement of the prison account statement(s) (or institutional equivalent) for the 6 month period preceding the filing of the notice of appeal or petition for extraordinary writ. No assessment order will be entered unless the court determines that the case is subject to the requirements of § 1915(b) and directs that assessments be made.

Source: None

Cross-references: 28 U.S.C. § 1915

Committee Comments: Technical changes were made in 1997 to conform to the Prison Litigation Reform Act.

24.2 Failure to File

Failure to file any of the documents specified in Rule 24.1 will result in the dismissal of the appeal by the clerk under L.A.R. 3.3 and L.A.R. Misc. 107.1(a).

Source: None

Cross-references: L.A.R. 3.3 and L.A.R. Misc. 107.1(a)

Committee Comments: None

24.3 Issuance of Order

If the affidavit in support of a motion to proceed in forma pauperis demonstrates that the appellant qualifies for in forma pauperis status and the appellant is not precluded from proceeding in forma pauperis under 28 U.S.C. § 1915(g), the clerk will issue an order granting in forma pauperis status. If 28 U.S.C. § 1915(b) applies, the order will direct prison officials to assess and deduct the filing fees in accordance with the statute and transmit such fees to the appropriate district court. The clerk must send a copy of the order to the prisoner, the warden of the prison where appellant is incarcerated, and the appropriate district court.

Source: None

Cross-references: 28 U.S.C. § 1915

Committee Comments: Technical changes were made in 1997 to conform to the Prison Litigation Reform Act.

L.A.R. 25.0 FILING AND SERVICE

25.1 Electronic Filing and Service

(a) Except for original petitions such as a petition for writ of mandamus or petition for review of an agency order, counsel must file all documents electronically in accordance with the procedures of L.A.R. Misc. 113. In addition to electronically filing on cm/ecf, ten paper copies of briefs and four paper copies of the appendices must be filed with the clerk for the convenience of the court. No paper copies of motions or petitions for rehearing need be filed unless directed by the clerk.

(b) Service of electronically filed documents is governed by L.A.R. Misc. 113.4. If the opposing party has not consented to electronic service, the filer must use an alternate method of service prescribed FRAP 25(c). The method of service, whether electronic through the court's docketing system or by alternate means must be specified in the certificate of service.

(c) Litigants proceeding pro se may, but are not required, to file documents electronically.

25.2 Facsimile Filing

Documents may not be filed by facsimile without prior authorization by the clerk. Authorization may be secured only in situations determined by the clerk to be of an emergency nature or other compelling circumstance. In such cases, the original signed document must be filed promptly thereafter.

25.3 Personal Identifiers

Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference Policy.

Source:	None
Cross-references:	3d Cir. L.A.R. Misc. 113
Committee Comments:	New provision in 1995. Amendments made in 2008 regarding electronic filings. The notice of docket activity generated by cm/ecf notes whether notice has been sent to opposing parties by the court's electronic docketing system. This does not substitute for a certificate of service.

L.A.R. 26.1.0 CORPORATE DISCLOSURE STATEMENT

26.1.1 Disclosure of Corporate Affiliations and Financial Interest

(a) Promptly after the notice of appeal is filed, each corporation that is a party to an appeal, whether in a civil, bankruptcy, or criminal case, must file a corporate affiliate/financial interest disclosure statement on a form provided by the clerk that identifies every publicly owned corporation with which it is affiliated but which is not named in the appeal. The form must be completed whether or not the corporation has anything to report.

(b) Every party to an appeal must identify on the disclosure statement required by FRAP 26.1 every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. The form must be completed only if a party has something to report under this section.

(c) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy estate must promptly file with the clerk a list identifying (1) the debtor, if not named in the caption, (2) the members of the creditors' committees or the top 20 unsecured creditors, and (3) any entity not named in the caption which is an active participant in the proceeding. If the debtor or trustee of the bankruptcy estate is not a party, the appellant must file this list with the clerk.

(d) In criminal appeals, the government must file a disclosure statement if an organization is a victim of the crime. If the organizational victim is a corporation, the statement must also identify any parent corporation and any publicly held corporation that owns 10% or more of its stock to the extent it can be obtained through due diligence. The government may seek to be relieved from the requirements of this rule by filing a motion demonstrating that compliance is impossible.

Source:	1988 Court Rule 25
Cross-references:	28 U.S.C. § 455; FRAP 26.1
Committee Comments:	The rule was revised and subsection (c) was added in 1995. Prior Court Rule 25 imposed an obligation upon all parties to civil or bankruptcy cases and all corporate defendants in criminal cases to file a corporate affiliate/financial interest disclosure statement. 3d Cir. L.A.R. 26.1.1(a) limits that obligation to corporate parties only. The rule also provides that the statement must be filed promptly after the notice of appeal is filed, and must be made on a form provided by the clerk. 3d Cir. L.A.R. 26.1.1(b) retains the requirement that every party to an appeal disclose the identity of every publicly owned corporation, not a party to an appeal, that has a financial interest in the outcome of the litigation. The rule also specifies that, under these circumstances, a negative report need not be filed. "In writing" was deleted in 2008 to provide for electronic filing of the notices. Subsection d was added in 2011 to

adopt similar provisions of Federal Rule of Criminal Procedure 12.4.

26.1.2 Notice of Possible Judicial Disqualification

(a) If any judge of this court participated at any stage of the case, in the trial court or in related state court proceedings, appellant, promptly after filing the notice of appeal, must separately file with the clerk a notice of the name of the judge and the other action, and must send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the clerk if, for any reason, appellant fails to comply with this rule fully and accurately.

(b) A party seeking disqualification of a judge for any other reason must file a motion, which must comply with FRAP 27 and L.A.R. 27.

Source: 1988 Court Rule 19.1

Cross-references: 28 U.S.C. §§ 144, 455; FRAP 26.1

Committee Comments: Prior Court Rule 19.1 required appellant to notify the clerk of a possible judicial disqualification when filing the opening brief. 3d Cir. L.A.R. 26.1.2 now requires appellant to notify the clerk of such disqualification promptly after filing the notice of appeal. 3d Cir. L.A.R. 26.1.2, which was adopted in 1995, adds a requirement that appellee notify the clerk of any possible disqualification if appellant fails to do so. "In writing" was deleted in 2008 to provide for electronic filing of the notices.

L.A.R. 27.0 MOTIONS

27.1 No Oral Argument Except When Ordered

Motions are considered and decided by the court upon the motion papers and briefs without oral argument unless ordered by the court or a judge thereof. Counsel may assume there will not be oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Source: 1988 Court Rule 11.1

Cross-references: FRAP 8, 9, 18, 21, 27, 34, 40; 3d Cir. L.A.R. 8.1, 9.0, 18.0

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 11.1 is intended.

27.2 Service

(a) Counsel must file electronically all motions, responses to motions, and replies to such responses in accordance with the procedures of L.A.R. Misc. 113. No paper copies of motions need be filed unless directed by the clerk.

(b) Service of electronically filed documents is governed by L.A.R. Misc. 113.4. If the opposing party has not consented to electronic service, the filer must use an alternate method of service prescribed FRAP 25(c). The method of service, whether electronic through the court's docketing system or by alternate means, must be specified in the certificate of service. Motions must ordinarily be served on other parties by means equally expeditious to those used to file the motion with the court. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the court acts (as in certain emergency motions), the moving party should notify such other parties by telephone, e-mail, or facsimile of the filing of the motion.

(c) Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference Policy.

Source: None

Cross-references: FRAP 8, 9, 18, 25, 27, 41; 3d Cir. L.A.R. 8.1, 9.0, 18.0 and L.A.R. Misc. 113.4

Committee Comments: New provision in 1995. The period for filing a response provided by FRAP 27(a) runs from the time of service. If service is not effectuated promptly, the disposition of the motion may be delayed or parties opposing the motion may not have an opportunity to respond before the court rules on the motion. Amendments made in 2008 regarding electronic filing. The notice of docket activity generated by cm/ecf notes whether notice has been sent to opposing parties by the court's electronic docketing system. This does not substitute for a certificate of service.

27.3 Uncontested Motions

Each uncontested motion must be certified as uncontested by counsel. In the absence of a timely response, the court may treat a motion without such certification as uncontested.

Source: None

Cross-references: FRAP 8, 9, 18, 27, 41; 3d Cir. L.A.R. 8.1, 9.0, 18.0

Committee Comments: New provision in 1995. The period for filing a response provided by FRAP 27(a) is unnecessary where a motion is uncontested. A certification to that effect will aid in the speedy disposition of the

motion. The rule was amended in 2008 to clarify that an uncontested motion is not automatically granted.

27.4 Motions for Summary Action

a) A party may move for summary action affirming, enforcing, vacating, remanding, modifying, setting aside or reversing a judgment, decree or order, alleging that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. In addition, the court may *sua sponte* list a case for summary action.

b) Except for a change in circumstances or a change in law, motions for summary action or dismissal should be filed before appellant's brief is due. The court or the clerk may at any time refer a motion for summary action to a merits panel and direct that briefs be filed.

Source: Third Circuit Internal Operating Procedures 10.6 (1990)

Cross-references: 28 U.S.C. §2106; FRAP 27; Third Circuit Internal Operating Procedure 10.6 (1994)

Committee Comments: No substantive change from current practice or IOP 10.6 is intended. The filing of a motion for summary action does not stay the regular briefing schedule set forth in FRAP 31(a).

27.5 Powers of Single Judge

A single judge of the court may not grant or deny a motion that the court has ordered to be acted on by the court or a panel thereof, and ordinarily a single judge will not entertain and grant or deny a motion for release or for modification of the conditions of release pending review in a criminal case, a motion for leave to intervene, or a motion to postpone the oral argument in a case which has been included by the clerk in the argument list for a particular weekly session of the court. The action of a single judge may be reviewed by a panel of the court.

Source: 1988 Court Rule 2.4

Cross-references: FRAP 27(c); Third Circuit Internal Operating Procedure 10.5 (1994)

Committee Comments: Prior Court Rule 2.4 provided that a single judge could not entertain a motion for leave to file a brief as amicus curiae or a motion that a party requests be heard orally by the Court. 3d Cir. L.A.R. 27.5 removes these restrictions and permits a single judge to entertain such motions.

27.6 Motions Decided by the Clerk

The clerk may entertain and dispose of any motion that can ordinarily be disposed of by a single judge of this court under the provisions of FRAP 27(c) and 3d Cir. L.A.R. 27.5, provided the subject of the motion is ministerial, relates to the preparation or printing of the appendix and briefs on appeal, or relates to calendar control. If application is promptly made, the action of the clerk may be reviewed in the first instance by a single judge or by a panel of the court.

Source: 1988 Court Rule 11.5

Cross-references: FRAP 27

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 11.5 is intended.

27.7 Motions in Which Expedited Consideration is Requested

If the court or clerk determines that a motion requires expedited consideration, the court or the clerk will direct that a response in opposition, if any, must be filed within 7 days after service of the motion and any reply within 3 days after service of the response unless a shorter time is directed by the court or clerk. Service of documents filed under this rule, including the initial motion must be in accordance with L.A.R. 27.2 and 113.4 unless the court or clerk directs that a more expeditious method of service be used. To the fullest extent possible, the clerk must be given advance notice by telephone that a motion requiring expedited or urgent consideration may be filed.

Source: New Provision added in 2002.

Cross-references: L.A.R. 8.0

Committee Comments: Section 27.7 was added in 2002 to clarify procedures for expedited motions.

27.8 Supplemental Pro Se Motions Prohibited

Except in cases in which counsel has filed a motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967), parties represented by counsel may not file a motion or other document pro se. If a party represented by counsel sends a pro se motion or other document to the court, the clerk will forward the motion to the party's attorney of record, with notice to the pro se party, for whatever action counsel deems appropriate. A party may file pro se a motion for the appointment of new counsel or a motion to proceed pro se. The party may file no other motion or document pro se unless and until the motion for new counselor to proceed prose is decided.

Source: None

Cross-references: L.A.R. 31.3 (pro se briefs)

Committee Comments: Rule 27.8, adopted in 2008, is intended to establish a uniform policy of dealing with pro se motions from parties who are represented by counsel. SeeMartinez v. Court of Appeal of Cal. 528 U.S. 152 (2000) (no right to self-representation on appeal).

L.A.R. 28.0 BRIEFS

28.1 Brief of the Appellant

(a) The brief of appellant/petitioner must include, in addition to the sections enumerated in FRAP 28, the following:

(1) in the statement of the issues presented for review required by FRAP 28(a)(5), a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon;

(2) after the statement of issues for review, a statement of related cases and proceedings, stating whether this case or proceeding has been before this court previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending or about to be presented before this court or any other court or agency, state or federal. If the party is aware of any previous or pending appeals before this court arising out of the same case or proceeding, the statement should identify each such case; and

(b) The following statements should appear under a separate heading placed before the discussion of the issue: the statement of the standard or scope of review for each issue on appeal, *i.e.*, whether the trial court abused its discretion; whether its fact findings are clearly erroneous; whether it erred in formulating or applying a legal precept, in which case review is plenary; whether, on appeal or petition for review of an agency action, there is substantial evidence in the record as a whole to support the order or decision, or whether 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).

(c) It is preferred that the documents listed in L.A.R. 32.2(c) be attached to the paper brief. The documents may be filed electronically in a document separate from the brief.

(d) The court expects counsel to exercise appropriate professional behavior in all briefs and to refrain from making *ad hominem* attacks on opposing counsel or parties.

Source: 1988 Court Rule 21.1

Cross-references: FRAP 28-32, 39; 3d Cir. L.A.R. 29-32, 39

Committee Comments: 3d Cir. L.A.R. 28.1, added in 1995, contains a requirement that the appellant must designate where in the proceedings each issue was preserved for appeal. Appellant should cite to the appendix, but if the germane portion of the record is not included in the appendix, the appellant must cite to the original record. If the matter has not been filed of record in the district court, appellant may cite to the original document. 3d Cir. L.A.R. 28.1 no longer requires parties to file a separate statement with the Clerk's Office identifying any previous or pending appeals because such matters must be identified in the briefs. 3d Cir. L.A.R. 28.1 also makes explicit for the first time the court's expectation that counsel will write briefs in a professional manner and refrain from making *ad hominem* attacks on the opposing side. The portions of prior Court Rule 21.1 that were repetitive of FRAP 28 have been deleted. See L.A.R. 32.2(c) for permissible attachments to the brief.

28.2 Brief of the Appellee

The brief of the appellee or respondent must conform to the requirements of FRAP 28(b) and 3d Cir. L.A.R. 28.1 (a)(2), (b) and (c). If the appellee is also a cross-appellant, the appellee's brief must also comply with rules 28.1(a)(1) and (a)(3). The brief of an appellee who has been permitted to file one brief in consolidated appeals must contain an appropriate cross reference index which clearly identifies and relates appellee's answering contentions to the specific contentions of the various appellants. The index must contain an appropriate reference by appellee to the question raised and the page in the brief of each appellant.

Source: 1988 Court Rule 21.1

Cross-references: FRAP 28-32; 3d Cir. L.A.R. 29-32

Committee Comments: The portions of prior Court Rule 21.1 that were repetitive of FRAP 28 were deleted in 1995. Otherwise no substantive change from prior Court Rule 21.1 is.

28.3 Citation Form; Certification

(a) In the argument section of the brief required by FRAP 28(a)(9), citations to federal opinions that have been reported must be to the United States Reports, the Federal Reporter, the Federal Supplement or the Federal Rules Decisions, and must identify the judicial circuit or district, and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer's Edition or United States Law Week in that order of preference. Citations to United States Law Week must include the month, day and year of the decision. Citations to federal decisions that have not been formally reported must identify the court, docket number and date, and refer to the electronically transmitted decision. Citations to services and topical reports, whether

permanent or looseleaf, and to electronic citation systems, must not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules Decisions. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court. Hyperlinks to decisions may be used, but are not required, as provided in L.A.R. Misc. 113.13. If hyperlinks are used, citation to a reporter, looseleaf service, or other paper document must be included, if available. If a hyperlink to a paper document is not available, the internet address of the document cited must be included.

(b) For each legal proposition supported by citations in the argument, counsel must cite to any opposing authority if such authority is binding on this court, e.g., U.S. Supreme Court decisions, published decisions of this court, or, in diversity cases, decisions of the highest state court.

(c) All assertions of fact in briefs must be supported by a specific reference to the record. All references to portions of the record contained in the appendix must be supported by a citation to the appendix, followed by a parenthetical description of the document referred to, unless otherwise apparent from context. Hyperlinks to the electronic appendix may be added to the brief. If hyperlinks are used, the brief must also contain immediately preceding the hyperlink a reference to the paper appendix page. Hyperlinks to testimony must be to a transcript. A motion must be filed and granted seeking permission to hyperlink to an audio or video file before such links may be included in the brief or appendix. Hyperlinks may not be used to link to sealed or restricted documents.

(d) Except as otherwise authorized by law, each party must include a certification in the initial brief filed by that party with the court that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to 3d Cir. L.A.R. 46.1.

Source:	1988 Court Rule 21.1
Cross-references:	28 U.S.C. §§ 515, 517, 518; Third Circuit Internal Operating Procedure 9.1 (1994); L.A.R. Misc. 113.13
Committee Comments:	Subsection (b) was adopted in 1995. It imposes upon each party the obligation to cite to authority that is binding on this court, whether that authority supports or opposes the party's propositions. Otherwise, no substantive change from prior Court Rule 21.1 is intended, including the court's longstanding practice of not requiring attorneys representing the United States, or any agency thereof, to be a member of the bar of this court. The rule was amended in 2008 to permit the use of hyperlinks.

28.4 Signing the Brief

All briefs must be signed in accordance with the provision of L.A.R. 46.4. Electronic briefs may be signed with either an electronically generated signature or "s/ typed name" in the signature location. Counsel's state Bar number, if any, and address and phone number must be included with the signature.

Source: Fed. R. Civ. P. 11

Cross-references: L.A.R. 46.4; L.A.R. Misc. 113.4

Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires signatures on all papers. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief to ensure that it complies with all federal and local rules. The requirement is interpreted broadly and the attorney of record may designate another person to sign the brief. If a party is represented by multiple counsel, the signature from only one attorney of record is required.

28.5 Page Limitations in Cross Appeals (Abrogated in 2008 as duplicative of F.R.A.P. 28.1)

L.A.R. 29.0 AMICI CURIAE BRIEFS

29.1 Time for Filing Amici Curiae Briefs on Rehearing

(a) In a case ordered for rehearing before the court en banc or before the original panel, if the court permits the parties to file additional briefs, any amicus curiae must file its brief in accordance with Rule 29(e) of the Federal Rules of Appellate Procedure. In a case ordered for rehearing in which no additional briefing is directed, unless the court directs otherwise, any new amicus must file a brief within 28 days after the date of the order granting rehearing, and any party may file a response to such an amicus brief within 21 days after the amicus brief is served. Before completing the preparation of an amicus brief, counsel for an amicus curiae must attempt to ascertain the arguments that will be made in the brief of any party whose position the amicus is supporting, with a view to avoiding any unnecessary repetition or restatement of those arguments in the amicus brief.

(b) The statement required by FRAP 29(c)(4) does not count toward the word limitations of FRAP 32(a)(7)

Source: None

Cross-references: FRAP 29(e)

Committee Comments: New provision in 2000. Subsection (b) was added in 2008.

L.A.R. 30.0 APPENDIX TO THE BRIEFS

30.1 Number to be Filed

(a) Counsel must electronically file the appendix in accordance with L.A.R. Misc. 113.

(b) In addition to the electronic appendix, four paper copies of the appendix must be filed for the convenience of the court, unless otherwise ordered.

(c) In addition to an electronic and paper appendix, hyperlinks to the appendix may be added to the brief. If hyperlinks are used, the brief must also contain immediately preceding the hyperlink a reference to the paper appendix page. Hyperlinks to testimony must be to a transcript. A motion must be filed and granted seeking permission to hyperlink to an audio or video file before such links may be included in the brief or appendix. Hyperlinks may not be used to link to sealed or restricted documents.

(d) In Virgin Island cases only, one additional copy of the appendix must be filed with the clerk of the district court in the location from which the appeal is taken (St. Thomas or St. Croix).

(e) When hearing or rehearing by the court en banc is ordered, the parties will be directed to file additional paper copies for the court's use.

Source: 1988 Court Rule 10.1

Cross-references: FRAP 30(a); 3d Cir. L.A.R. 31.1 and L.A.R. Misc. 113.

Committee Comments: The portions of prior Court Rule 10.1 that were repetitive of FRAP 30(a) were deleted in 1995. The rule now clarifies that upon the grant of a petition for rehearing, additional copies of the appendix as well as the briefs will be ordered. Otherwise no substantive change from prior Court Rule 10.1 is intended. The requirement of electronic filing was added in 2008. **See addendum to these rules for alternative to electronic filing.**

30.2 Hearing on Original Papers

In cases involving applications for a writ of habeas corpus under 28 U.S.C. §§ 2241, 2254 or 2255, or when permission has been granted for the appellant to proceed in forma pauperis, the appeal will be heard on the original record. Appellants in such cases must strictly

comply with the requirements of 3d Cir. L.A.R. 32.2(c) with respect to inclusion of the trial court's opinion or order in the brief, and must also include copies of the docket entries in the proceedings below and the notice of appeal and any order granting a certificate of appealability. These documents must be included in both the electronic and paper brief. In any other case, this court, upon motion, may dispense with the requirement of an appendix and permit an appeal or petition to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

Source: 1988 Court Rule 10.2

Cross-references: FRAP 30(f); 3d Cir. L.A.R. Misc. 113.

Committee Comments: The requirement of prior Court Rule 10.2 that habeas corpus petitioners or appellants proceeding in forma pauperis attach to their briefs copies of the district court opinion or order appealed from were deleted in 1995 as repetitious of 3d Cir. L.A.R. 32.2(c). 3d Cir. L.A.R. 30.2 cautions such appellants of the importance of complying with 3d Cir. L.A.R. 32.2(c), and further requires them to attach copies of the docket entries below and notice of appeal to the opening brief. The requirement of attaching a copy of the order granting a certificate of appealability was added in 2002. The requirement of electronic filing was added in 2008.

30.3 Contents of Appendix

(a) Relevant portions of a trial transcript, exhibit, or other parts of the record referred to in the briefs must be included in the appendix at such length as may be necessary to preserve context. Relevant portions of the district court briefs may be included in the appendix only if necessary to show whether an issue was raised or an argument was made in the district court or in the proceeding being reviewed. Transcript portions are not considered relevant under this rule merely because they are referred to in the Statement of the Case or Statement of Facts, if they are not otherwise necessary for an understanding of the issues presented for decision. Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the appendix must provide all the evidence of record which supports the challenged determination. In all appeals in this court, the appendix must contain, in addition to the requirements of FRAP 30(a), a table of contents with page references, a copy of the notice of appeal, the relevant opinions of the trial court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge, or the decision of the administrative agency, and a copy of any order granting a certificate of appealability.

(b) Records sealed in the district court and not unsealed by order of the court must be not be included in the paper appendix. Paper copies of sealed documents must be filed in a separate sealed envelope. When filed electronically, sealed documents must be filed as a separate docket entry as a sealed volume.

(c) In an appeal challenging a criminal sentence, the appellant must file, at the time of filing the appendix, four copies of the Presentence Investigation Report and the statement of reasons for the sentence, in four sealed envelopes appropriately labeled. Grand jury materials protected by Fed. R. Crim. P. 6(c), presentence reports, statements of reasons for the sentence and any other similar material in a criminal case or a case collaterally attacking a conviction (cases under 28 U.S.C. §§ 2241, 2254, 2255) must be filed electronically and in paper as separate sealed volumes.

(e) The documents listed in L.A.R. 32.2(c) that must be included in volume one of the appendix may be attached to the paper brief.

(f) Litigants proceeding pro se may, but are not required to, file an electronic appendix.

Source: 1988 Court Rule 10.3

Cross-references: FRAP 30(a), (b) and (f); 3d Cir. L.A.R. 32.0, Misc. 106.1(c) and L.A.R. Misc. 113.

Committee Comments: The portions of prior Court Rule 10.3 that were repetitive of FRAP 30 were deleted in 1995. The portion of prior Court Rule 10.3 addressed to those cases in which the court by order has dispensed with the requirement of an appendix has also been deleted from this rule. Such cases are now addressed by 3d Cir. L.A.R. 30.2. Briefs submitted to the trial court or agency should not be included in the appendix unless the brief serves as evidence that an issue has been preserved or specifically waived. Trial exhibits which are important to the court's understanding of the issues should be reproduced either in the appendix or as exhibits to the brief. The rule was amended in 2008 to provide for electronic filing. **See addendum to these rules for alternative to electronic filing.**

30.4 Deferred Appendix

The use of a deferred appendix pursuant to FRAP 30(c) is not favored.

Source: 1988 Court Rule 10.4

Cross-references: FRAP 30, 32; 3d Cir. L.A.R. 32.0

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 10.4 is intended.

30.5 Sanctions Pursuant to FRAP 30(b)(2)

(a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that

any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion must do so not later than 10 days after a bill of costs has been served. The movant must submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which must be filed within 10 days after service of the motion or Rule to Show Cause.

Source:	1988 Court Rule 20.4
Cross-references:	FRAP 30(b), 39; 3d Cir. L.A.R. Misc. 107.4
Committee Comments:	Renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 20.4 is intended.

L.A.R. 31.0 FILING AND SERVICE OF BRIEFS

31.1 Number of Copies to be Filed and Served

(a) Unless otherwise required by this court, each party must file ten (10) paper copies (i.e. an original and nine copies) of each brief with the clerk for the convenience of the court and, unless counsel has consented to electronic service, serve one (1) paper copy on counsel for each party separately represented. If volume one of the appendix is attached to the electronic brief, one paper copy of volume one must be served on opposing counsel. In Virgin Islands cases only, one additional paper copy of the briefs must be filed with the clerk of the district court in the location from which the appeal is taken (St. Thomas or St. Croix). When hearing or rehearing by the court en banc is ordered, the parties will be directed to file additional paper copies for the court's use.

(b) In addition to the paper briefs, counsel for any party or amicus curiae must file with the court the same brief in electronic form.

(1) Filing must be done on the court’s electronic filing system as provided in L.A.R. Misc. 113 or such other method as the court specifies.

(2) The brief must be in PDF format. The Clerk may prescribe additional requirements to aid in transmission.

(3) The date of filing the brief is the date the electronic version of the brief is received by the Clerk, provided that ten paper copies are mailed as provided in Rule 25(a)(2)(B), FRAP on the same day as electronic transmission.

(4) The electronic version of the brief is the official record copy of the brief; if corrections are required to be made to the paper brief, a corrected copy of the electronic brief must be provided.

(5) Litigants proceeding pro se need not file an electronic brief.

(c) In addition to the certification of type-volume limitations required by Rule 32(a)(7)(C), and in the same document, counsel must certify that the text of the electronic brief is identical to the text in the paper copies. Counsel must also certify that a virus detection program has been run on the file and that no virus was detected. The certification must specify the version of the virus detection program used. Sanctions may be imposed if a filing contains a computer virus or worm.

(d) A party who is a Filing User as provided in L.A.R. Misc. 113.4 consents to electronic service of the brief through the court's electronic docketing system (cm/ecf). Service by alternate means must be made on all parties who are not Filing Users. The certificate of service must note what method of service was used for each party served.

Source:	1988 Court Rule 21.2
Cross-references:	FRAP 28-32; 3d Cir. L.A.R. 28-32 and L.A.R. Misc. 113.4
Committee Comments:	The rule was amended in 2002 to require electronic filing of briefs. Instructions on electronic filing can be found on the court's web site at www.ca3.uscourts.gov. A party proceeding pro se need not file electronically, but if the party wishes to file electronically, this rule must be followed. PDF format makes a document more stable when electronically transmitted. This format also insures that pagination remains the same regardless of what printer is used to print the document. The PDF document should be created by converting a word processing document, not by scanning. Scanned documents that are converted to PDF are more difficult to transport and store and often are not searchable. Although the notice of docket activity issued by cm/ecf lists those parties who were served by the court's electronic docketing system, this is not a substitute for a certificate of service.

31.2 Appellee's Brief

A local, state or federal entity or agency, which was served in the district court and which is the appellee, must file a brief in all cases in which a briefing schedule is issued unless the court has granted a motion seeking permission to be excused from filing a brief. This rule does not apply to entities or agencies that are respondents to a petition for review unless the entity or

agency is the sole respondent or to entities or agencies which acted solely as an adjudicatory tribunal.

Source: None

Cross-references: FRAP 28-32; 3d Cir. L.A.R. 28-32

Committee Comments: Rule 31.2 was added in 2000 and is intended to change the practice of some agencies who choose not to file briefs when they are named as appellee. Amended in 2008 to provide for electronic filing

31.3 Supplemental Pro Se Briefs Prohibited

Except in cases in which counsel has filed a motion under L.A.R. 109.2 to withdraw under *Anders v. California*, 386 U.S. 738 (1967), parties represented by counsel may not file a brief pro se. If a party sends a pro se brief to the court, the clerk will forward the brief to the party's attorney of record, with notice to the pro se party. Counsel may choose to include the arguments in his or her brief or may in the unusual case file a motion to file a supplemental brief, if appropriate.

Source: None

Cross-references: Pro se motions and other documents are governed by L.A.R. 27.8

Committee Comments: Rule 31.3 was added in 2002 and is intended to establish a uniform policy of dealing with pro se briefs from parties who are represented by counsel. SeeMartinez v. Court of Appeal of Cal. 528 U.S. 152 (2000)(no right to self-representation on appeal).

31.4 Motions for Extension of Time to File a Brief

A party's first request for an extension of time to file a brief must set forth good cause. Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. A first request for an extension of 14 days or less may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance that such a request is being made. The grant or denial by the clerk of the extension must be entered on the court docket. If a request for extension of time is made and granted orally, Filing Users are notified by the notice of docket activity generated by the court's electronic docketing system; counsel must send a confirming letter to parties who are not Filing Users within 7 days. A first request for an extension of time should be made at least 3 days in advance of the due date for filing the brief. A motion filed less than 3 days in advance of the due date must be in writing and must demonstrate that the good cause on which the motion is based did not exist earlier or could not with due diligence have been known or communicated to the court earlier. Subsequent requests for an extension of time must be made in writing and will be granted only upon a showing of good

cause that was not foreseeable at the time the first request was made. Only one motion for extension of time to file a reply brief may be granted.

Source: None

Cross-references: None

Committee Comments: The rule was adopted in 2002 to permit the oral granting of a short extension of time. The rule was amended in 2011 to modify the requirement of filing a confirming letter.

L.A.R. 32.0 FORM OF BRIEFS, THE APPENDIX AND OTHER DOCUMENTS

32.1 Forms of Briefs, Appendices, Motions, and Other Papers documents

All briefs, appendices, motions and other documents (collectively "documents") must conform to the following requirements, unless otherwise provided by the FRAP:

(a) All documents filed in paper form must be firmly bound at the left margin, and any metal fasteners or staples must be covered. All fasteners must have smooth edges. Use of backbones or spines without stapling is prohibited. Forms of binding such as velo binding and spiral binding are acceptable forms of binding.

(b) All documents must have margins on both sides of each page that are no less than one (1) inch wide, and margins on the top and bottom of each page that are no less than three-quarters (3/4) of an inch wide.

(c) Typeface. Briefs must comply with the provisions of FRAP 32(a)(5) and (6).

(d) Electronic briefs must be in PDF format; the entire brief must be contained in one electronic file.

(e) Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference policy.

Source: 1988 Court Rules 21.2(B), 22 and 22.1

Cross-references: FRAP 27, 32, 40; 3d Cir. L.A.R. 27.0, 35.1 and 35.2 and L.A.R. Misc. 113

Committee Comments: The portions of prior Court Rules 21.2(B) and 22.1 that were repetitive of FRAP 32 were deleted in 1995. The rule was amended to require electronic filing of the brief. The rule was amended in 2008 to require all documents to be filed electronically and to require redaction.

32.2 Form of Briefs and Appendices

(a) Excessive footnotes in briefs are discouraged. Footnotes must be printed in the same size type utilized in the text.

(b) Where a transparent cover is utilized, the underlying cover sheet of the brief or appendix must nevertheless conform to the color requirements of FRAP 32(a)(2) and 32(b)(1).

(c) Volume one of the appendix must consist only of (1) a copy of the notice of appeal, (2) the order or judgment from which the appeal is taken, and any other order or orders of the trial court which pertain to the issues raised on appeal (3) the relevant opinions of the district court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge, or the decision of the administrative agency, if any and (4) any order granting a certificate of appealability. Volume one of the appendix may be bound in the paper brief and will not be counted toward the page or type volume limitations on the brief. All other volumes of the appendix must be separately bound.

(d)Where there is a multi-volume appendix, counsel should specify on the cover of each volume the pages contained therein, e.g., Vol. 2, pp. 358-722. Costs to the party entitled to them will be allowed for documents appended to the brief.

(e) Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference policy.

Source: 1988 Court Rule 21.2

Cross-references: FRAP 28-32; 3d Cir. L.A.R. 28-32 and L.A.R. Misc. 113

Committee Comments: The portions of prior Court Rule 21.2A that were repetitive of FRAP 32(a) were in 1995. Subsection (a) has been added to curtail the use of footnotes as a means to circumvent the page limitations set forth in FRAP. The Rule has been amended to require that additional relevant opinions be bound in the brief. Subsection (e) was added in 2008 to require redaction.

32.3 Form of Motions and Other Documents Only

(a) Briefs and memoranda in support of or in opposition to motions need not comply with the color requirements of FRAP 32(a).

(b) Petitions for rehearing en banc in which petitioner is represented by counsel must contain the "Statement of Counsel" required by 3d Cir. L.A.R. 35.1. As required in L.A.R. 35.2 and 40.1 all petitions seeking either panel rehearing or rehearing en banc must include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

(c) Certain personal identifiers must be excluded or redacted from all documents filed

with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference policy.

Source: 1988 Court Rules 21.2(B), 22 and 22.1

Cross-references: FRAP 27, 32, 40; 3d Cir. L.A.R. 27.0, 35.1 and 35.2 and L.A.R. Misc. 113

Committee Comments: The portions of prior Court Rules 21.2(B) and 22.1 that were repetitive of FRAP 32 were deleted in 1995. Otherwise no substantive change from prior Court Rules 21.2(B) and 22.1 is intended. Subsection (c) was added in 2008 to require redaction.

L.A.R. 33.0 APPELLATE MEDIATION PROGRAM

33.1 Appellate Mediation Program

Appeals in civil cases and petitions for review or for enforcement of administrative action are referred to the Appellate Mediation Program to facilitate settlement or otherwise to assist in the expeditious handling of the appeal or petition. A special master will serve as the Chief Circuit Mediator and, in cooperation with the clerk, will manage the Appellate Mediation Program. Mediations will be conducted by a senior judge of the court of appeals, a senior judge of a district court, the Chief Circuit Mediator, or other person designated pursuant to Rule 48, FRAP Parties may confidentially request mediation by telephone or by letter directed to the Chief Circuit Mediator. In all cases, however, the special master will determine which cases are appropriate for mediation and will assign the matter to a mediator.

33.2 Eligibility for Appellate Mediation Program

All civil appeals and petitions for review or for enforcement of agency action are eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or petitioner must file with the clerk, within 10 days of the docketing of the appeal with service on all parties, a Civil Appeals Information Statement and a Concise Summary of the Case, which is available on the court's website. Appellant must attach to the Concise Summary of the Case copies of the order(s) being appealed and any accompanying opinion or memorandum of the district court or agency. In the event the order(s) being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision must also be attached. In addition, any judge or panel of the court may refer to the Chief Circuit Mediator any appeal, petition, motion or other procedural matter for review and possible amicable resolution.

33.3 Initial Screening and Deferral of Briefing for Cases Selected for Mediation

The Clerk will provide the Chief Circuit Mediator with a copy of the judgment or order on appeal, any opinion or memorandum issued by the district court or agency, appellant's Civil Appeal Information Statement and Concise Summary of the Case and any relevant motions. Following review of these materials, the Chief Circuit Mediator may refer an appeal or petition to a senior judge, himself or herself, or such other person designated pursuant to Rule 48, FRAP for mediation. The Chief Circuit Mediator will advise the parties, the chosen mediator, and the clerk of the referral.

If a case is referred to mediation, a briefing schedule will be deferred during the pendency of mediation unless the court or Chief Circuit Mediator determines otherwise. A referral to mediation will not, however, defer or extend the time for ordering any necessary transcripts.

If a case is not accepted for mediation, or if accepted but is not resolved through mediation, it will proceed in the appellate process as if mediation had not been considered or initiated.

33.4 Referral of Matters to Mediation by a Judge or Panel of the Court

At any time during the pendency of an appeal or petition, any judge or panel of the court may refer the appeal or petition to a senior judge of the court of appeals, a senior judge of a district court, the Chief Circuit Mediator, or other person designated pursuant to Rule 48, F.R.A.P. for mediation or any other purpose consistent with this rule. In addition, any judge or panel of the court may refer any appeal, petition, motion or other procedural matters for review and possible amicable resolution. The procedures set forth in L.A.R. 33.5 are applicable to matters referred for mediation pursuant to L.A.R. 33.4 unless otherwise directed by the Chief Circuit Mediator. Documents, including but not limited to, those specified in L.A.R. 33.5(a) may be required.

33.5 Proceedings After Selection for the Program

(a) Submission of Position Papers and Documents. Within 15 days of the case's selection for mediation by the Chief Circuit Mediator, each counsel must prepare and submit to the mediator a confidential position paper of no more than 10 pages, stating counsel's views on the key facts and legal issues in the case, as well as on key factors relating to settlement. The position paper will include a statement of motions filed in the court of appeals and their status. Copies of position papers submitted by the parties directly to the mediator should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the Clerk's Office and are not to be of record in the case.

(b) Mediation Sessions. The mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person or telephonically. Unless the mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each party responsible for the appeal and by the person or persons with actual authority to negotiate a settlement of the case. If settlement is not reached at the initial mediation session, but the

mediator believes further mediation sessions or discussions would be productive, the mediator may conduct additional mediation sessions in person or telephonically.

(c) Confidentiality of Mediation Proceedings. The mediator will not disclose to anyone statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to any court. The mediation proceedings are considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation will not be considered confidential.

(d) Settlement. No party will be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement must be reduced to writing and will be binding upon all parties to the agreement, and counsel must file a stipulation of dismissal of the appeal pursuant to Rule 42(b), FRAP Such a stipulation must be filed within 30 days after settlement is reached unless an extension thereof is granted by the Chief Circuit Mediator.

33.6 Mediation in Pro Se Cases

In appropriate cases, the Chief Circuit Mediator may request counsel to represent pro se litigants for purposes of mediation only. Counsel must agree to take the case on a pro bono basis, except that if an applicable statute authorizes the award of attorneys' fees, counsel may enter into a written agreement with the client assigning to the attorney any amounts designated as attorneys' fees. The case will be treated as any other case subject to mediation and all provisions of L.A.R. 33 will apply. If mediation is unsuccessful, counsel may discontinue his or her representation; however, counsel may continue to represent the litigant through the rest of the appeal if counsel wishes and the party agrees. The Chief Circuit Mediator may adopt and implement specific procedures in furtherance of this rule.

Source: New rule in 2000.

Cross-references: None

Committee Comments: The rule was amended in 2011 to reflect a change in the title of the circuit mediator and to accommodate electronic filing.

L.A.R. 34.0 ORAL ARGUMENT

34.1 In General

(a) The court will allow oral argument in all cases unless the panel, after examination of the briefs and records or appendices, is unanimously of the opinion that oral argument is not needed.

(b) Any party to the appeal has the right to file a statement with the court setting forth the reasons why, in the party's opinion, oral argument should be heard. Such statement must be filed with the clerk within 7 days after the filing of appellee's or respondent's brief. The request must set forth the amount of argument time sought.

(c) In certain appeals, the clerk will inform the parties by letter of a particular issue(s) that the panel wishes the parties to address.

(d) The court will grant a motion requesting rescheduling of the argument only where the moving party shows extraordinary circumstances.

(e) A party may request oral argument by video-conference. Such a request may be made by calling the clerk's office. Counsel must notify all opposing sides that a request for video-conference has been made. Generally, a request for oral argument by video-conference should be made when the party is notified of the calendaring of the case. In any case, a request for oral argument by video must be made as soon as possible after counsel knows that a video-conference is needed. Granting of the request is at the Court's discretion.

Source:	1988 Court Rule 12.6
Cross-references:	FRAP 21(b), 34; 3d Cir. L.A.R. 27.1; Third Circuit Internal Operating Procedures, Chapter 2 (1994)
Committee Comments:	Because the panels are constituted in advance for a specific sitting, rescheduling of an argument may result in a second panel being assigned an appeal when one panel has already performed the necessary study of the briefs and appendix. Alternatively, it may result in members of the panel having to travel to Philadelphia at additional government expense, disrupting previously established schedules. Such needless waste of judicial resources underlies this court's precedent of declining to reschedule except upon a showing of extraordinary circumstances. Subsection (c), adopted in 1995, contains a provision that counsel in certain cases will be notified prior to the oral argument of a particular issue, if any, that is of concern to the court. The portions of prior Court Rule 12.6 that were repetitive of FRAP were deleted in 1995. Otherwise no substantive change from prior Court Rule 12.6 is intended. The rule was revised and simplified in 2000 and 2008.

34.2 Continuance

For good cause the court may pass a case listed for oral argument or order its continuance. No stipulation to pass or continue a case will be recognized as binding upon the court.

Source: 1988 Court Rule 12.5

Cross-references: FRAP 34; 3d Cir. L.A.R. 34.1

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 12.5 is intended.

34.3 No Oral Argument on Motions Except When Ordered

The court will consider and decide motions upon the motion papers and briefs, and will not hear oral argument unless ordered by the court or a judge thereof. Counsel may assume there will not be oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Source: 1988 Court Rule 11.1

Cross-references: FRAP 8, 9, 18, 27, 34, 40, 41; 3d Cir. L.A.R. 27.1

Committee Comments: This rule is identical to 3d Cir. L.A.R. 27.1. No substantive change from prior Court Rule 11.1 is intended.

L.A.R. 35.0 DETERMINATION OF CAUSES BY THE COURT EN BANC

35.1 Required Statement for Rehearing En Banc

Where the party seeking rehearing en banc is represented by counsel, the petition must contain, so far as is pertinent, the following statement of counsel:

> "I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court, *i.e.*, the panel's decision is contrary to the decision of this court or the Supreme Court in [citing specifically the case or cases], OR, that this appeal involves a question of exceptional importance, *i.e.*, [set forth in one sentence]."

Source: 1988 Court Rule 22

Cross-references: FRAP 32(b), 35, 40; 3d Cir. L.A.R. 32.3; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 22 is intended.

35.2 Form, Filing, and Required Attachments to Petition for Rehearing En Banc

(a) A petition seeking rehearing en banc must be filed electronically as provided in L.A.R. Misc. 113. Paper copies need not be filed unless directed by the clerk. Petitions must include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

(b) Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference policy.

Source: 1988 Court Rule 22.1

Cross-references: FRAP 32(b)(c), 35, 40; 3d Cir. L.A.R. 32.3 and L.A.R. Misc. 113

Committee Comments: The requirements of electronic filing and redaction was added in 2008. Former subsection (b) was deleted in 2008 because of electronic filing.

35.3 Composition of En Banc Quorum

For purposes of determining the majority number necessary to grant a petition for rehearing, all circuit judges currently in regular active service who are not disqualified will be counted.

Source: None

Cross-references: FRAP 35; 3d Cir. L.A.R. Misc. 101.0

Committee Comments: Changes were made in 2002 to conform the rule to Internal Operating Procedure Chapter 9. The last sentence of the 2002 rule was deleted in 2008 to conform to amendments to FRAP 35.

35.4 Caution

As noted in FRAP 35, en banc hearing or rehearing of appeals is not favored. Counsel have a duty to the court commensurate with that owed their clients to read with attention and observe with restraint the required statement for rehearing en banc set forth in 3d Cir. L.A.R. 35.1. Counsel are reminded that in every case the duty of counsel is fully discharged without filing a petition for rehearing en banc unless the case meets the rigorous requirements of FRAP 35 and 3d Cir. L.A.R. 35.1.

Source: None

Cross-references: 28 U.S.C. § 1927; FRAP 35, 38; 3d Cir. L.A.R. 35.1; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: New provision in 1995. This rule is modeled after U.S. Ct. of App. 5th Cir. Rule 35 (1991). The purpose of the rule is to emphasize that the court does not favor requests for hearing or rehearing en banc, and to discourage inappropriate requests from being made.

35.5 Death Penalty Cases

The provisions of 3d Cir. L.A.R. Misc. 111.7 govern all petitions seeking hearing or rehearing by the court en banc in all actions challenging a conviction in which a sentence of death has been imposed.

Source: 3d Cir. L.A.R. 8.2, 22.2

Cross-Reference: FRAP 35, 3d Cir. L.A.R. Misc. 111.7

Committee Comments: New provision in 1995. To the extent consistent with FRAP and applicable, local procedure in all death penalty proceedings will be governed by 3d Cir. L.A.R. Misc. 111.0.

L.A.R. 36.0 ENTRY OF JUDGMENT

36.1 Opinions

All written opinions of the court and of the panels thereof will be filed with and preserved by the clerk. All opinions will be posted on the court's internet web site under the supervision of the clerk. Printed opinions need not be copied into the minutes; when posted on the court's internet web site they will be deemed to have been recorded.

Source: 1988 Court Rule 16

Cross-references: FRAP 36

Committee Comments: Amended in 2008 to conform to current practice of electronic posting of opinions. No substantive change from prior Court Rule 16 is intended.

36.2 Copies of Printed Opinions (Abrogated in 2008)

L.A.R. 39.0 COSTS

39.1 Certification or Certiorari to Supreme Court

In all cases certified to the Supreme Court or removed thereto by certiorari, the fees of the clerk of this court must be paid before a transcript of the record is transmitted to the Supreme Court.

Source: 1988 Court Rule 17.1

Cross-references: 28 U.S.C. §§ 1254, 1913, 1920; FRAP 39

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 17.1 is intended.

39.2 Schedule of Fees and Costs

Pursuant to 28 U.S.C. § 1913, a uniform schedule of fees and costs is prescribed from time to time by the Judicial Conference of the United States. An up-to-date schedule can be found as an annotation to 28 U.S.C. § 1913 in the United States Code, the United States Code Annotated, and West's Federal Civil Judicial Procedure and Rules manual.

Source: 1988 Court Rule 17.2

Cross-references: 28 U.S.C. § 1913; FRAP 39

Committee Comments: The provisions of prior Court Rule 17.2 that were repetitive of 28 U.S.C. § 1913 and FRAP 3(b) and 24(a) have been deleted. The provisions of prior Court Rule 17.2 regarding the costs of printed opinions have been moved to 3d Cir. L.A.R. 36.2.

39.3 Taxation of Reproduction Costs

The cost of printing or otherwise producing necessary copies of briefs and appendices are taxable as follows:

(a) Number of Briefs. Costs will be allowed for ten (10) copies of each brief required to be filed with the court, two copies for the prevailing party, and one (1) copy for each party separately represented, unless the court directs a greater number of briefs to be filed. If costs are claimed for providing paper copies to parties who have consented to electronic service, and the certificate of service does not state that paper copies were provided, the clerk may require proof that paper copies were actually supplied.

(b) Number of Appendices. Costs will be allowed for four (4) copies of the appendix required to be filed with the court plus one (l) copy for each party separately represented, unless the court directs a greater number of appendices to be filed. If costs are claimed for providing paper copies to parties who have consented to electronic service and the certificate of service does not state that paper copies were provided, the clerk may require proof that paper copies were actually supplied.

(c) Costs of Reproduction of Briefs and Appendices. In taxing costs for printed or photocopied briefs and appendices, the clerk will tax costs at the following rates, or at the actual cost, whichever is less, depending upon the manner of reproduction or photocopying:

(1) Reproduction (whether by offset or typography):

Reproduction per page (for 20 copies or less)	$ 4.00
Covers (for 20 copies or less)	$50.00
Binding per copy	$ 4.00
Sales tax	Applicable Rate

(2) Photocopying (whether in house or commercial):

Reproduction per page per copy	$ .10
Binding per copy	$ 4.00
Covers (for 20 copies or less)	$40.00
Sales Tax	Applicable Rate

(3) In the event a party subsequently corrects deficiencies in either a brief or appendix pursuant to 3d Cir. L.A.R. Misc. 107.3 and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed.

(d) Other Costs. No other costs associated with briefs and appendices, including the costs of typing, word processing, preparation of tables and footnotes, and electronic filing will be allowed for purposes of taxation of costs.

Source: 1988 Court Rule 20.1

Cross-references: 28 U.S.C. § 1920; FRAP 39

Committee Comments: Sales tax will be included in the costs only when actually paid to a commercial photocopying service. No substantive change from prior Court Rule 20.1 is intended. Amended in 2011 to conform to L.A.R. 31 regarding copies to be served on opposing counsel and to clarify that costs for reproduction of paper briefs for opposing parties are recoverable only if paper briefs are actually provided.

39.4 Filing Date; Support for Bill of Costs

(a) The court will deny untimely bills of cost unless a motion showing good cause is filed with the bill.

(b) Parties must submit the itemized and verified bill of costs on a standard form to be provided by the clerk.

(c) An answer to objections to a bill of costs may be filed within14 days of service of the objections.

Source: 1988 Court Rules 20.2, 20.3

Cross-references: FRAP 39

Committee Comments: The portions of prior Court Rules 20.2 and 20.3 that were repetitive of FRAP 39 were deleted in 1995. The rule now specifically allows for an answer to objections, a codification of existing practice. Otherwise, no substantive change from prior Court Rules 20.2 and 20.3 is intended. Time changed to 14 days in 2010 to conform to amendments in FRAP.

L.A.R. 40.0 PETITION FOR PANEL REHEARING

40.1 Form, Filing, and Required Attachments to Petition for Panel Rehearing

(a) A petition seeking rehearing must be filed electronically as provided in L.A.R. Misc. 113. Paper copies need not be filed unless directed by the clerk. Petitions must include as an exhibit a copy of the panel's judgment, order, and opinion, if any, as to which rehearing is sought.

(b) Certain personal identifiers must be excluded or redacted from all documents filed with the court as specified in L.A.R. Misc. 113.12 and Judicial Conference policy.

Source: New provision in 2000.

Cross-references: FRAP 35, 40; 3d Cir L.A.R. Misc. 113

Committee Comments: This provision is designed to create parallel provisions for petitions for panel rehearing and rehearing en banc. It is not intended to alter the provisions of IOP 9.5.1 which provide that an unlabeled petition will be construed as requesting both panel rehearing and rehearing en banc. The requirements of electronic filing and redaction was added in 2008.

L.A.R. 45.0 DUTIES OF CLERKS

45.1 Office - Where Kept

The Clerk's Office will be kept in the United States Courthouse in the city of Philadelphia.

Source: 1988 Court Rule 5.1

Cross-references: FRAP 45

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 5.1 is intended.

45.2 Daily Listing of Cases

The clerk must prepare, under the direction of the court, a list for each session of the court, on which so far as practicable each case will be listed for argument or submission on a day certain during the week.

Source: 1988 Court Rule 12.2

Cross-references: FRAP 34, 45; 3d Cir. L.A.R. 34.1

Committee Comments: Language describing the clerk's method of preparing the argument lists was deleted in 1995. Otherwise, no substantive change from prior Court Rule 12.2 is intended.

L.A.R. 46.0 ATTORNEYS

46.1 Admission

(a) Except as the court otherwise directs, practice before the court is limited to the members of the bar of this court. Admission to the bar of this court is governed by the provisions of FRAP 46 and such other requirements as the court may adopt from time to time, provided, however, that (i) the applicant must be familiar with the contents of the Federal Rules of Civil Procedure, Criminal Procedure, and Appellate Procedure, as well as with the Local Appellate Rules and Internal Operating Procedures of this court, and (ii) the applicant has read and understood those provisions of the above documents dealing with briefs, motions and appendices. The fee for admission is determined by order of the court and is payable to the clerk as trustee. All funds received from such applications must be deposited in the appropriate accounts of the court designated for this purpose.

(b) Unless the court otherwise directs, an attorney must apply for admission to the bar of this court when the attorney enters an appearance, or at such time as a motion, brief, or other document is filed in this court. An attorney who will argue the appeal, if not previously admitted to the bar of this court, may apply for admission on or before the date of oral argument. Forms prescribed by the court for purpose of admission may be obtained from the clerk of this court.

(c) Any applicant for admission to the bar of this court may be admitted in open court on oral motion, on motion before a single judge of this court, or as the court may otherwise from

time to time determine. However, qualified applicants to the bar of this court not previously admitted and who will argue the appeal must be admitted in open court on oral motion.

(d) An applicant for admission to the bar of this court may be admitted on written or oral motion of a member of the bar of this court or a circuit or district judge of this circuit.

(e) The initial brief filed by each party with the court must contain a certification that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to this rule.

Source: 1988 Court Rule 9.1

Cross-references: FRAP 46; 3d Cir. L.A.R. 28.3(a) and L.A.R. Misc. 113; Third Circuit Attorney Disciplinary Rules.

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 9.1 is intended. It is not intended that current practice permitted by law be changed. See L.A.R. Misc. 113.2 for requirements for registration for electronic filing. Technical changes were made in 2008 to conform to new Judicial Conference policies regarding the deposit of funds.

46.2 Entry of Appearance

Within 14 days of notification of the docketing of a case, counsel for the appellant or petitioner must file an entry of appearance which must include an address where notices and papers may be mailed to or served upon him or her. Counsel must include an e-mail address. The entry of appearance form must be served on all parties. Not later than 14 days after the docketing of the appeal, counsel for all parties in the trial court or agency below and any other persons entitled to participate in the proceedings as appellees or respondents and desiring to do so, must file similar appearances. Any such party or other person on whose behalf counsel fails to file an entry of appearance within the time fixed by this rule will not be entitled to receive notices or copies of briefs and appendices until an entry of appearance has been entered for such party. Counsel or a party proceeding pro se who is not registered as a Filing User must be served directly with copies of notices, motions, and briefs.

Source: 1988 Court Rule 9.2

Cross-references: FRAP 46

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 9.2 is intended. The requirement of an e-mail address was added in 2008. Time changed to 14 days in 2010 to conform to amendments in FRAP.

46.3 Entry of Appearance by Eligible Law Students

(a) Eligibility

(1) An eligible law student who represented an indigent litigant in the district court in a civil matter or before an administrative agency may enter an appearance in this court provided that the person on whose behalf the student is appearing indicates in writing his or her consent to that appearance and a supervising lawyer also indicates in writing his or her approval of that appearance.

(2) The court may appoint, either in response to a motion for appointment of counsel or *sua sponte*, a law student who is participating in a law school clinic or pro bono program to represent an indigent pro se litigant. If the court appoints a law student *sua sponte*, the person on whose behalf the student is appearing must indicate in writing his or her consent to that appearance. Students appointed by the court must enter an appearance in accordance with this rule.

(3) In each case the written consent and approval of the person the law student represents must be filed in the record of the case and must be brought to the attention of the court.

(4) An eligible law student may engage in other activities under the general supervision of a member of the bar of this court outside the personal presence of that lawyer for the purpose of preparation of briefs, abstracts, and other documents to be filed in this court, but such documents must be signed by the supervising lawyer.

(5) An eligible law student may participate in oral argument in this court but only in the presence of the supervising lawyer, who must be prepared to supplement any written or oral statement made by the student. Students should recognize that argument may be scheduled during school breaks.

(b) Requirements and Limitations. In order to make an appearance pursuant to this rule, the law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a semester basis, or be enrolled in a law school clinic or pro bono program.

(3) If not enrolled in a law school clinic or pro bono program, be certified by the dean of his or her law school as being of good character and competent legal ability, and as being adequately trained to perform as an eligible law student under this rule.

(4) Neither ask for nor receive any compensation or remuneration of any kind

from the person on whose behalf the law student renders service, but this will not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

(5) Submit with the appearance form a certification in writing that the law student has read and is familiar with the rules of professional conduct governing attorneys practicing in the jurisdiction of the supervising attorney.

(6) Submit with the appearance form the following signed and notarized oath or affirmation:

"I, [name], do swear (or affirm) that I will support the Constitution of the United States, and that, in practicing as an eligible law student under 3d Cir. L.A.R. 46.3 I will conduct myself strictly in accordance with the terms of that rule and according to law."

(c) Certification

(1) The certification of a student by the law school dean must be filed with the clerk of court and, unless it is sooner withdrawn, will remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination of the state where the student's law school is located following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification will continue in effect until the date the student is admitted to the bar. The student is responsible for advising the clerk in writing of any change in status or event affecting the student's certification.

(2) The certification may be withdrawn by the dean at any time by sending a notice to that effect to the clerk of the court. It is not necessary that the notice state the cause for withdrawal.

(3) The certification may be terminated by this court at any time without notice or hearing and without any showing of cause.

(d) Supervision. The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule must:

(1) Be a lawyer in good standing of the bar of this court and enter an appearance in the case.

(2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(3) Assist the student to the extent the supervising lawyer considers it necessary.

(4) Assure that briefing schedules are met regardless of semester breaks, exams, and vacations.

(5) Be prepared to appear and argue if the student is unavailable when the case is scheduled for oral argument.

Source: 1988 Court Rule 9.3

Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

Committee Comments: The Model Rules of Professional Responsibility replace the Canons of Professional Ethics. No substantive change from prior Court Rule 9.3 is intended. Revised in 2011.

46.4 Signing Documents

All documents, motions and briefs must be signed by an attorney or by a party appearing pro se. Electronically filed documents must be signed with either an electronic signature or "s/ typed name."

Source: Fed. R. Civ. P. 11

Cross-references: L.A.R. 28.4; L.A.R. Misc. 113.9

Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires signatures on all papers. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief to ensure that it complies with all federal and local rules. The requirement is interpreted broadly and the attorney of record may designate another person to sign the brief. If a party is represented by multiple counsel, the signature from only one attorney of record is required. The rule was amended in 2008 to permit electronic signatures.

L.A.R. 47.0 RULES BY COURTS OF APPEALS

47.1 Advisory Committee

Any proposed change in the Third Circuit Local Appellate Rules will be forwarded for comment to the Lawyers Advisory Committee, which constitutes the advisory committee for the study of the rules of practice as required by 28 U.S.C. § 2077(b).

Source: None

Cross-references: 28 U.S.C. § 2077(b)

Committee Comments: The 1988 amendments to the Judicial Code provide for the appointment of an advisory committee to study, *inter alia*, local rules of practice. 3d Cir. L.A.R. 47.1 specifies the Lawyers Advisory Committee (LAC) as the statutorily-required review

committee, and specifies that any proposed changes in these rules be studied by the LAC before they are adopted.

L.A.R. 48.0 SPECIAL MASTERS

48.1 Special Masters

The court may appoint a master to hold hearings, if necessary, and make recommendations as to any auxiliary matter requiring a factual determination in the court of appeals. If the master is not a court officer, the compensation to be allowed to the master will be fixed by the court, and will be charged upon such of the parties as the court may direct.

Source: None

Cross-references: FRAP 48

Committee Comments: New provision in 1997. This rule is intended to formalize by rule the court's practice of appointing special masters to resolve factual questions where appropriate and needed by the court.

Miscellaneous - 3d Circuit Local Appellate Rules

L.A.R. MISC. 101.0 CONSTITUTION OF THE COURT - PANELS - QUORUM

101.1 The Court - Judges who Constitute it

The court consists of the circuit judges in regular active service. The circuit justice and other justices and judges so designated or assigned by the chief judge are eligible to sit as judges of the court.

Source: 1988 Court Rule 2.1

Cross-references: None

Committee Comments: Prior Court Rule 2.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 2.1 is intended.

101.2 Quorum - Adjournment in Absence of - By Whom Adjourned

A majority of the number of judges authorized to constitute the court or a panel thereof constitutes a quorum. When necessary, a judge may attend via audio or video conference. If a quorum does not attend on any day appointed for holding a session of the court or a panel thereof, any judge who does attend may adjourn the court or panel, or, in the absence of any judges, the clerk may adjourn the court or panel.

Source: 1988 Court Rule 2.5

Cross-references: 28 U.S.C. § 46(d)

Committee Comments: Prior Court Rule 2.5 has no counterpart in FRAP and is therefore classified as Miscellaneous. All references in the prior rule to "divisions" of this court have been changed to "panels." Otherwise, no substantive change from prior Court Rule 2.5 is intended. The rule was amended in 2008 to clarify that judges may attend by audio or video conference.

L.A.R. MISC. 102.0 SESSIONS

102.1 Sessions - When and Where Held

(a) Stated sessions of the court or of its panels will be held at Philadelphia or at another place within the circuit commencing on such dates each month as the court designates, and in the Virgin Islands commencing at such dates as the court designates. Pursuant to request of the parties or order of the court, a Virgin Islands case may be heard at another place in the circuit. The stated sessions of the court in the Virgin Islands will be held in Charlotte Amalie in even-numbered years and in Christiansted in odd-numbered years unless the court directs otherwise.

(b) Special sessions may be held at any time or place within the circuit when so ordered by the court.

Source: 1988 Court Rules 3.2 and 3.3

Cross-references: None

Committee Comments: Prior Court Rules 3.2 and 3.3 have no counterpart in FRAP and are therefore classified as Miscellaneous. The rule has been revised to give the court the option to schedule its Virgin Islands sessions in months other than April and December. A reference to the "divisions" of this court has been changed to "panels." Otherwise, no substantive change from prior Court Rules 3.2 and 3.3 is intended. The rule has been revised so that the court may sit at other places within the circuit and may, in appropriate circumstances, reverse the place or alter the timing of the Virgin Islands sitting.

L.A.R. MISC. 103.0 MARSHAL, CRIER, AND OTHER OFFICERS

103.1 Who Shall Attend Court

A crier and, if requested, the marshal of the district in which the sessions of the court are held will be in attendance during the sessions of the court.

Source: 1988 Court Rule 6.1

Cross-references: None

Committee Comments: Prior Court Rule 6.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 6.1 is intended.

L.A.R. MISC. 104.0 COURT LIBRARIES

104.1 Regulations Governing Use of Libraries

The law libraries will be open during such hours as are reasonable to satisfy the needs of the court, and will be governed by such regulations as the librarian, with the approval of the court's library committee, may from time to time make effective.

Source: 1988 Court Rule 7.3

Cross-references: None

Committee Comments: Prior Court Rule 7.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 7.3 is intended.

L.A.R. MISC. 105.0 JUDICIAL CONFERENCE OF THE THIRD CIRCUIT

105.1 Attendance at Invitations to the Conference

In addition to judicial participants, attendance at the Judicial Conference of the Third Circuit may be open at the discretion of the chief judge to any member of the bar of any court within the circuit interested in the work of the courts and the administration of justice in the circuit.

Source: 1988 Court Rule 18.2

Cross-references: 28 U.S.C. § 333

Committee Comments: Prior Court Rule 18.2 has no counterpart in FRAP and is therefore classified as Miscellaneous. The rule has been revised to reflect the court's open invitation policy.

L.A.R. MISC. 106.0 FILING OF DOCUMENTS UNDER SEAL

106.1 Necessity; Grand Jury Matters; Previously Impounded Records; Unsealing

(a) Generally. With the exception of matters relating to grand jury investigations, filing of documents under seal without prior court approval is discouraged. If a party believes a portion of a brief or other document merits treatment under seal, the party must file a motion setting forth with particularity the reasons why sealing is deemed necessary. Any other party may file objections, if any, within 7 days.

A motion to seal must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in a separate sealed supplemental brief, motion or filings. Sealed documents must not be included in a regular appendix, but may be submitted in a separate, sealed volume of the appendix. In addressing material under seal (except for the

presentencing report) in an unsealed brief or motion or oral argument counsel are expected not to disclose the nature of the sealed material and to apprise the court that the material is sealed.

(b) Grand Jury Matters. In matters relating to grand jury investigations, when there is inadequate time for a party to file a motion requesting permission to file documents under seal, the party may file briefs and other documents using initials or a John or Jane Doe designation to avoid disclosure of the identity of the applicant or the subject matter of the grand jury investigation. Promptly thereafter, the party must file a motion requesting permission to use such a designation. All responsive briefs and other documents must follow the same format until further order of the court.

(c) Records Impounded in the District Court.

(1) Criminal Cases and Cases Collaterally Attacking Convictions. **G**rand jury materials protected by Fed. R. Crim. P. 6(c), presentence report**s**, statement**s** of reasons for the sentence and any other similar material in a criminal case or a case collaterally attacking a conviction (cases under 28 U.S.C. §§ 2241, 2254, 2255), which were filed with the district court under sealpursuant to statute, rule or an order of impoundment, and which constitute part of the record transmitted to this court, remain subject to the district court's impoundment order and will be placed under seal by the clerk of this court until further order of this court. In cases in which impounded documents other than grand jury materials, presentence reports, statements of reasons for the sentence, or other documents required to be sealed by statute or rule, are included in the record transmitted to this court under L.A.R. 11.2, the party seeking to have the document sealed must file a motion within 21 days of receiving notice of the docketing of the appeal in this court, explaining the basis for sealing and specifying the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal.

(2) Civil Cases. When the district court impounds part or all of the documents in a civil case, they will remain under seal in this court for 30 days after the filing of the notice of appeal to give counsel an opportunity to file a motion to continue the impoundment, setting forth the reasons therefor. A motion to continue impoundment must explain the basis for sealing and specify the desired duration of the sealing order. If the motion does not specify a date, the documents will be unsealed, without notice to the parties, five years after conclusion of the case. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. If a motion to continue impoundment is filed, the documents will remain sealed until further order of this court.

Source:	1988 Court Rule 21.3
Cross-references:	3d Cir. L.A.R. 30.3
Committee Comments:	Prior Court Rule 21.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. The rule has been revised to place an affirmative obligation to file a motion on the party in a civil matter who wishes to continue the sealing of documents on appeal. The archiving center will not accept sealed documents, which presents

storage problems for the court. The rule has been amended to require the parties to specify how long documents must be kept under seal after the case is closed. The rule was amended in 2008 to provide that unless otherwise specified, documents in civil cases would remain sealed only for five years.

L.A.R. MISC. 107.0 SANCTIONS

107.1 Dismissal of Appeal for Failure to Pay Certain Fees

(a) The clerk is authorized to dismiss the appeal if the appellant does not pay the docketing fee within 14 days after the case is opened in the court of appeals, as prescribed by 3d Cir. L.A.R. 3.3.

(b) The appellant's failure to comply with 3d Cir. L.A.R. 11.1 regarding transcription fees is grounds for dismissal of the appeal.

Source: 1988 Court Rules 15.1, 28.1

Cross-references: FRAP 3(a), 11; 3d Cir. L.A.R. 3.3

Committee Comments: For the convenience of counsel, all rules relating to sanctions are included in 3d Cir. L.A.R. Misc. 107.0. Where these rules have some counterpart in FRAP, they are included in both the corresponding 3d Cir. L.A.R. and Misc. 107.0. Where they have no counterpart in FRAP, they are included in 3d Cir. L.A.R. Misc. 107.0 only. Only the parts of prior Court Rules 15.1 and 28.1 setting forth sanctions have been included here. No substantive change from prior Court Rules 15.1 and 28.1 is intended. The rule was amended in 2008 to clarify when the time for payment of fees begins to run.

107.2 Dismissal for Failure to Prosecute

(a) When an appellant fails to comply with the Federal Rules of Appellate Procedure or the Local Appellate Rules of this court, the clerk will issue written notice to counsel or to the appellant who appears pro se that upon the expiration of 14 days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the clerk is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the clerk of the district court as the mandate. The appellant is not entitled to remedy the deficiency after the appeal is dismissed except by order of the court. A motion to set aside such an order must be justified by the showing of good cause and must be filed within 10 days of the date of dismissal. If the appeal is one taken from the District Court of the Virgin Islands, an additional 10 days will be added to the time limits specified in this paragraph.

(b) Notwithstanding subsection (a), if an appellant fails to comply with the Federal Rules

of Appellate Procedure and the Local Appellate Rules with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the clerk is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in subsection (a).

Source: 1988 Court Rule 28.2

Cross-references: FRAP 3(a)

Committee Comments: Prior Court Rule 28.2 had no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 28.2 is intended.

107.3 Non-Conforming Motion, Brief or Appendix

If a motion, brief, or appendix submitted for filing does not comply with FRAP 27 - 32 or 3d Cir. L.A.R. 27.0 - 32.0, the clerk will file the document, but notify the party of the need to promptly correct the deficiency. The clerk will also cite this rule and indicate to the defaulting party how he or she failed to comply. In the event a party subsequently corrects the deficiencies in either a brief or appendix pursuant to this rule and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed. If the party fails or declines to correct the deficiency, the clerk must refer the defaulting document, any motion or answer by the party, and pertinent correspondence to a judge of this court for review. If the court finds that the party continues not to be in compliance with the rules despite the notice by the clerk, the court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, striking of the document, imposition of costs or disciplinary sanctions upon counsel.

Source: 1988 Court Rule 21.4

Cross-references: FRAP 3(a), 30(b)(2), 38; 3d Cir. L.A.R. 27.0 - 32.0

Committee Comments: Prior Court Rule 21.4 had no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 21.4 is intended.

107.4 Sanctions Pursuant to FRAP 30(b)(2)

(a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion must do so not later than 10 days after a bill of costs has been served. The movant must submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which must be filed within 10 days after service of the motion or Rule to Show Cause.

Source: 1988 Court Rule 20.4

Cross-references: FRAP 30(b)(2); 3d Cir. L.A.R. 30.5

Committee Comments: This Miscellaneous Rule is identical to 3d Cir. L.A.R. 30.5. No substantive change from prior Court Rule 20.4 is intended.

L.A.R. MISC. 108.0 APPLICATIONS FOR ATTORNEY'S FEES AND EXPENSES

108.1 Application for Fees

(a) Except as otherwise provided by statute, all applications for an award of attorney's fees and other expenses relating to a case filed in this court, regardless of the source of authority for assessment, must be filed within 30 days after the entry of this court's judgment, unless a timely petition for panel rehearing or rehearing en banc has been filed, in which case a request for attorney's fees must be filed within 14 days after the court's disposition of such petition. Such application must be filed with the clerk in the time set forth above whether or not the parties seek further action in the case or further review from any court.

(b) The court will strictly adhere to the time set forth above and grant exceptions only in extraordinary circumstances.

(c) The application must include a short statement of the authority pursuant to which the party seeks the award. The application must also show the nature and extent of services rendered and the amount sought, including an itemized statement in affidavit form from the attorney stating the actual time expended and the rate at which fees are computed, together with a statement of expenses for which reimbursement is sought.

Source: 1988 Court Rule 27.1

Cross-references: None

Committee Comments: Prior Court Rule 27.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.1 is intended. L.A.R. Misc. 108.3 addresses claims for attorney's fees and expenses under the Criminal Justice Act, 18 U.S.C. § 3006A. Petition for rehearing en banc was substituted for "suggestion for rehearing en banc" in 2008 to conform to changes in FRAP.

108.2 Objections to Applications for Fees

Written objections to an allowance of attorney's fees, setting forth specifically the basis

for objection, must be filed within 10 days after service of the application. Thereafter, the court may, when appropriate, either refer the application to the district court or agency where the case originated or refer the application to a master.

Source: 1988 Court Rule 27.2

Cross-references: FRAP 48; 3d Cir. L.A.R. 48.0

Committee Comments: Prior Court Rule 27.2 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.2 is intended.

108.3 Fee Applications Under 18 U.S.C. § 3006A

All claims for attorney's fees and reimbursement for expenses reasonably incurred by counsel in representing a defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, be must filed with the clerk no later than 45 days after the conclusion of the attorney's representation. Such claims must be itemized and prepared on prescribed forms.

Source: 1988 Court Rule 30.1

Cross-references: 18 U.S.C. § 3006A; Third Circuit Criminal Justice Act Plan, Chapter 4(2) (1991)

Committee Comments: Prior Court Rule 30.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 30.1 is intended.

L.A.R. MISC. 109.0 COUNSEL IN DIRECT CRIMINAL APPEALS

109.1 Trial Counsel to Continue Representation on Appeal

Trial counsel in criminal cases, whether retained or appointed, are expected to continue on appeal absent extraordinary circumstances. After the entry of an order of judgment, counsel will not be permitted to withdraw from a direct criminal appeal without specific leave of this court. Trial counsel not members of the bar of this court must promptly move for admission pursuant to 3d Cir. L.A.R. 46.1.

Source: None

Cross-references: None

Committee Comments: 3d Cir. L.A.R. Misc. 109.1 is designed to remind trial counsel in criminal cases that they are expected to continue the representation of their clients through appeal. "Trial counsel" includes counsel

who have represented a client at pretrial, plea or sentencing proceedings.

109.2 Motions by Trial Counsel to Withdraw Representation

(a) Where, upon review of the district court record, counsel is persuaded that the appeal presents no issue of even arguable merit, counsel may file a motion to withdraw and supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967), which must be served upon the appellant and the United States. The United States must file a brief in response. Appellant may also file a brief in response pro se. After all briefs have been filed, the clerk will refer the case to a merits panel. If the panel agrees that the appeal is without merit, it will grant counsel's Anders motion, and dispose of the appeal without appointing new counsel. If the panel finds arguable merit to the appeal, or that the Anders brief is inadequate to assist the court in its review, it will appoint substitute counsel, order supplemental briefing and restore the case to the calendar. The panel will also determine whether to continue the appointment of current counsel or to direct the clerk to discharge current counsel and appoint new counsel.

(b) In cases in which a motion to withdraw filed by counsel appointed under the Criminal Justice Act has been granted after the filing of a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), the court in its decision determining the case may state that the issues presented in the appeal lack legal merit for purposes of counsel filing a petition for writ of certiorari in the Supreme Court. In such a case counsel is under no obligation to file a petition. In all other cases in which counsel appointed under the Criminal Justice Act is of the opinion, in his or her professional judgment, that no issues are present which warrant the filing of a petition for writ of certiorari in the Supreme Court, counsel must promptly file with the court of appeals a motion stating that opinion with particularity and requesting leave to withdraw. *SeeAustin v. United States*, 513 U.S. 5 (1994). Any such motion must be served on the appellant and the United States.

(c) If the court is of the opinion in a case in which counsel has been appointed under the Criminal Justice Act that there are no issues present which warrant the filing of a petition for writ of certiorari, the court may include a statement to that effect in its decision and counsel may thereafter file the appropriate motion to withdraw. Any such motion must be served on the appellant and the United States. The absence of a statement by the court with respect to the merit of issues which might be presented to the Supreme Court must not be construed as an indication of the opinion of the court of appeals of merit or lack of merit of any issue.

Source: None

Cross-references: Third Circuit Criminal Justice Act Plan, Chapter 3

Committee Comments: New provision in 1995. 3d Cir. L.A.R. Misc. 109.2 sets out for the first time the procedure by which trial counsel may withdraw from a non-meritorious criminal appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). Addition of sections (b) and (c) was made in response to *Austin v. United States*, 513 U.S. 5 (1994). Subsection (a) was revised in 2008 to conform with United States v. Marvin, 211 F.3d 778, 782 n.4 (3d Cir. 2000).

L.A.R. MISC. 110.0 CERTIFICATION OF QUESTIONS OF STATE LAW

110.1 Certification of Questions of State Law

When the procedures of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the procedures of that court, and will stay the case in this court to await the state court's decision whether to accept the question certified. The certification will be made after the briefs are filed in this court. A motion for certification must be included in the moving party's brief.

L.A.R. MISC. 111.0 DEATH PENALTY CASES

111.1 Scope

This rule, in conjunction with all other applicable rules, governs all cases in which this court is required to rule on the imposition of the death penalty. The rule is applicable to direct criminal appeals, appeals from the grant or denial of a motion to vacate sentence or a petition for writ of habeas corpus, appeals from the grant or denial of requests for stay or injunctive relief, applications under 28 U.S.C. § 2244 and/or § 2255, and original petitions for writ of habeas corpus.

Source:	1988 Court Rule 29 (Introductory Paragraph)
Cross-references:	18 U.S.C. § 3731, 28 U.S.C. §§ 2254, 2255; Federal Rules of Appellate Procedure; 3d Cir. L.A.R.; 3d Cir. Internal Operating Procedures
Committee Comments:	Prior Court Rule 29 (Introductory Paragraph) has no counterpart in FRAP and is therefore classified as Miscellaneous. 3d Cir. L.A.R. Misc. 111.1 broadens the scope of the prior rule to provide for review of death sentences imposed on federal as well as state prisoners. Where applicable, 3d Cir. L.A.R. Misc. 111.2 - 111.7 are similarly amended to reflect the broadened scope of 3d Cir. Misc. 111.0.

111.2 Preliminary Requirements

(a) In aid of this court's potential jurisdiction, each party in any proceeding filed in any district court in this circuit challenging the imposition of a sentence of death pursuant to a federal or state court judgment must file a "Certificate of Death Penalty Case" with any initial pleading filed in the district court. A certificate must also be filed by the U.S. Attorney upon return of a verdict of death in a federal criminal case. The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of

execution of sentence; and the emergency nature of the proceedings. Upon docketing, the clerk of the district court will transmit a copy of the certificate, together with a copy of the petition, to the clerk of this court.

(b) Upon entry of an appealable order in the district court, the clerk of the district court and appellant's counsel will prepare the record for appeal. The record will be transmitted to this court within 5 days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1), unless the appealable order is entered within 14 days of the date of a scheduled execution, in which case the record must be transmitted immediately by expedited delivery.

(c) Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this circuit, and in aid of this court's potential jurisdiction, the clerk is directed to monitor the status of the execution and any pending litigation and to establish communications with all parties and relevant state and/or federal courts. Without further order of this court, the clerk may direct parties to lodge with this court up to five copies of (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings.

Source: 1988 Court Rule 29.1

Cross-references: 18 U.S.C. § 3731, 28 U.S.C. §§ 1291, 1292

Committee Comments: Prior Court Rule 29.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. The prior rule's general reference to a "certificate providing specific information" has been changed to the more specific "Certificate of Death Penalty Case" to reflect current practice. Subsection (c) directs the clerk to establish lines of communication with the sentencing court and other concerned parties and to authorize the filing of documents and court records in advance of the court's jurisdiction. This section has been added because some parties in recent cases have challenged the clerk's authority to request information in the absence of a docketed appeal. Because early warning is critical, the court expressly delegates this authority to the clerk pursuant to this local rule.

111.3 Review of Direct Criminal Appeals, Petitions for Writs of Habeas Corpus and Motions to Vacate Sentence

(a) In all such cases, the district court must articulate the reasons for its disposition of the case in a written opinion, which must be expeditiously prepared and filed, or by an oral opinion from the bench, which must be promptly transcribed.

(b) The district court must state whether a certificate of appealability is granted or denied at the time a final decision is entered on the merits of a claim seeking relief under 28 U.S.C. § 2254 or 2255. If the district court grants the certificate of appealability, it must state the issues that merit the granting of the certificate and it must also grant a stay pending disposition of

the appeal except as provided in 28 U.S.C. § 2262.

(c) The denial of a certificate of appealability by the district court will not delay consideration by this court of a motion for stay or review of the merits. If the court grants a certificate of appealability, it may thereafter affirm, reverse or remand without further briefing under I.O.P. 10.6 or may direct full briefing and oral argument.

Source: 1988 Court Rule 29.2

Cross-references: 28 U.S.C. § 2254

Committee Comments: Subsection (c) is intended to clarify this court's practice with respect to certificates of appealability in death penalty cases. In accordance with *Barefoot v. Estelle*, 463 U.S. 880 (1982), the court of appeals may consider, in addition to whether there has been a substantial showing of the denial of a constitutional right, the severity of the sentence in determining whether a certificate of appealability should be issued. Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act.

111.4 Motion for Stay of Execution of a Federal or State Court Judgment and Motions to Vacate Orders Granting a Stay

(a) Except as provided in 28 U.S.C. § 2262, motions for stay of execution and motions to vacate stay orders may be filed in docketed requests for certificate of appealability, applications to file a second or successive petition, or appeals from the denial of injunctive relief. No such motion may be entertained unless a case has been docketed in this court. If a stay application is submitted to this court before a district court decision is entered, the clerk must transmit the motion to the panel designated to hear and dispose of the case.

(b) Documents Required. The movant must file the original and three (3) copies of a motion and serve all parties. Legible copies of the documents listed in 1-10 below must be attached to the motion. If time does not permit, the motion may be filed without attachments, but the movant must file the necessary copies as soon as possible.

(1) The complaint or petition to the district court;

(2) Each brief or memorandum of authorities filed by both parties in the district court;

(3) The opinion giving the reasons advanced by the district court for granting or denying relief;

(4) The district court judgment granting or denying relief;

(5) The application to the district court for a stay;

(6) The district court order granting or denying a stay, and the statement of reasons for its action;

(7) The certificate of appealability or, if there is none, the order denying a certificate of appealability;

(8) A copy of each state or federal court opinion or judgment in cases in which appellant was a party involving any issue presented to this court or, if the ruling was not made in a written opinion or judgment, a copy of the relevant portions of the transcripts;

(9) A copy of the docket entries of the district court; and

(10) Notice of appeal.

(c) Emergency Motions. Emergency motions or applications, whether addressed to the court or to an individual judge, must ordinarily be filed with the clerk rather than an individual circuit judge. If time does not permit the filing of a motion or application in person, by mail, or electronically, counsel may communicate with the clerk or a single judge of this court and thereafter must file the motion with the clerk in writing as promptly as possible. The motion, application, or oral communication must contain a brief account of the prior actions of this court or judge to which the motion or application, or a substantially similar or related petition for relief, has been submitted.

Source:	1988 Court Rule 29.3
Cross-references:	28 U.S.C. § 2251; FRAP 8
Committee Comments:	Prior Court Rule 29.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. Except where necessary to reflect the expansion of this rule to reach federal prisoners, no substantive change from prior Court Rule 29.3 is intended.

111.5 Statement of the Case; Exhaustion; Issues Presented

In addition to requirements set forth in 3d Cir. L.A.R. 28 with respect to the contents of motions and briefs, any application, motion, or brief that may result in either a disposition on the merits or the grant or denial of a stay of execution must include:

(a) A statement of the case delineating precisely the procedural history of the case;

(b) With respect to state habeas corpus petitions brought pursuant to 28 U.S.C. § 2254, a statement of exhaustion with respect to each issue presented to the district court indicating whether it has been exhausted and if not, what circumstances exist that may justify an exception to the exhaustion requirement.

(c) The parties must fully address every issue presented to this court. Supplemental briefing will be permitted only by order of this court.

Source: 1988 Court Rule 29.4

Cross-references: None

Committee Comments: Prior Court Rule 29.4 has no counterpart in FRAP and is therefore classified as Miscellaneous. Except where necessary to reflect the expansion of this rule to reach federal prisoners, no substantive change from prior Court Rule 29.4 is intended.

111.6 Consideration of Merits

The panel to which an appeal has been assigned must consider and expressly rule on the merits before vacating or denying a stay of execution.

Source: 1988 Court Rule 29.5

Cross-references: None

Committee Comments: None

111.7 Determination of Causes by the Court En Banc

(a) Filing. The filing of petitions seeking hearing or rehearing by the court en banc is governed by FRAP 35 and 3d Cir. L.A.R. 35. However, because of the difficulty of delivering petitions seeking hearing or rehearing by the court en banc to the judges of the court, the parties are hereby notified that due to these logistical considerations any such petition filed within 48 hours of a scheduled execution may not be delivered to the judges of the court in sufficient time for adjudication prior to the time of the scheduled execution. Petitions for rehearing by the court en banc filed within 48 hours of a scheduled execution will be processed and distributed by the normal means of delivery used by the court unless the panel handling the case has entered an order for expedited voting in accordance to subsection (b) of this rule.

(b) Consideration. Consideration of a petition seeking hearing or rehearing by the court en banc will be in accordance with the procedures specified in the court's Internal Operating Procedures except that if an execution is scheduled, the original panel which has determined the matter may, upon a majority vote, direct that the time normally allowed for voting to request answers or to grant the petition may be reduced to a time specified by the panel. Upon the entry of an order by the panel reducing the time for voting, the clerk must immediately transmit the petition and the order to the court by the most expedient means available.

(c) Stays. Generally the court will not enter a stay of execution solely to allow additional time for counsel to prepare, or for the court to consider, a petition for rehearing or for rehearing by the court en banc except as follows:

(1) A stay may be granted in order to allow time for counsel to prepare, or for the court to consider, a petition for rehearing upon majority vote of the original panel. Such a vote will be based upon a determination that there is a reasonable possibility that a majority of the

active members of the court would vote to grant rehearing by the court en banc and whether there is a substantial possibility of reversal of its decision, in addition to a likelihood that irreparable harm will result if the decision is not stayed.

(2) In the event that four judges vote to direct the filing of answers to a petition seeking rehearing by the court en banc, the presiding judge of the merits panel will enter a stay.

(3) A stay entered in accordance with 3d Cir. L.A.R. 8.2 in a direct appeal of a conviction or sentence in a criminal case in which the district court has imposed a sentence of death will remain in effect until the court's mandate issues. The mandate will ordinarily not issue until such time that the time for filing a petition for rehearing has expired, or if such a petition has been filed, until the petition has been determined.

(d) No petition for rehearing may be filed from the denial of a petition seeking authorization under 28 U.S.C. § 2244 or §2255 to file a second or successive habeas corpus petition under § 2254 or motion to vacate sentence under § 2255.

Source: 6th Cir. Rule 28(k), 11th Cir. IOP 35-11.8 [L.A.R. Misc. 111.7(a)]; 4th Cir. IOP 22.3(b) [L.A.R. Misc. 111.7(c)]; 5th Cir. IOP 8.11 [L.A.R. Misc. 111.7(c)(1)]

Cross-References: FRAP 35 and 40; 3d Cir. L.A.R. 35; Third Circuit Internal Operating Procedures, Chapter 9 (1994)

Committee Comments: New Provision in 1995. Although the extraordinary nature of death penalty cases is recognized, this section must be read in conjunction with 3d Cir. L.A.R. 35.4 in which it is emphasized that the court does not favor requests for hearing or rehearing en banc. Because 28 U.S.C. § 2244(b)(3)(D) prohibits the filing of a petition for rehearing from the denial of an application seeking permission to file a second or successive § 2254 or § 2255 petition, there is no conflict with Rule 25(a), FRAP, which states that the clerk may not reject a document "solely because it is not presented in proper form." The rejection of such a petition for rehearing is not for form, but is required by statute.

111.8 Post-Judgment Motions

(a) Mandate: The panel may order that the mandate of the court issue forthwith or after such time as it may fix.

(b) Stays of Execution: In ruling on a motion for stay to permit the filing and consideration of a petition for writ of certiorari, the panel must determine whether there is a reasonable probability that the United States Supreme Court would consider the underlying issues sufficiently meritorious to grant the petition.

Source: 1988 Court Rule 29.6

Cross-references: None

Committee Comments: No substantive change from prior Court Rule 29.6 is intended.

111.9 Second or Successive Petitions

The procedures of L.A.R. 22.5 apply to the filing of a petition seeking authorization under 28 U.S.C. § 2244 or 2255 to file a second or successive habeas corpus petition under § 2254 or motion to vacate sentence under § 2255 in a death penalty case.

Source: L.A.R. 22.5

Cross-references: 28 U.S.C. §§ 2244, 2254, and 2255

Committee Comments: This rule makes clear that the procedures for filing a second or successive petition under 28 U.S.C. § 2244 set forth in L.A.R. 22.5 also apply in death penalty cases and insures that the court will have the documents necessary to decide such petitions.

L.A.R. MISC. 112 PETITIONS FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE VIRGIN ISLANDS

112.1 Considerations Governing Review on Certiorari

(a) Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor limiting the court's discretion, indicate the character of reasons that will be considered.

(1) The Supreme Court of the Virgin Islands has decided a question in a way that conflicts with applicable decisions of this court, other appellate courts, or the United States Supreme Court.

(2) The Supreme Court of the Virgin Islands has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's powers of review.

(3) The Supreme Court of the Virgin Islands has decided an important question of federal or territorial law that has not been, but should be, decided by this court.

(4) The Supreme Court of the Virgin Islands was without jurisdiction of the case, or where, because of disqualifications or other reason, the decision of the Supreme Court of the Virgin Islands lacks the concurrence of the required majority of qualified non-recused judges.

(b) A petition for a writ of certiorari will rarely be granted when the asserted error consists of erroneous findings of fact or the misapplication of a properly stated rule of law. A petition for writ of certiorari that raises any issue or relies on any material fact that was omitted from or misstated in the opinion of the Supreme Court of the Virgin Islands will normally not be considered, unless the omission or misstatement was called to the attention of the Supreme Court of the Virgin Islands in a petition for rehearing. All other issues and facts may be presented in the petition for a writ of certiorari without the necessity of filing a petition for rehearing.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.2 Petition for Writ of Certiorari - How Sought

(a) In both civil and criminal cases, review of a final decision of the Supreme Court of the Virgin Islands may be sought pursuant to 48 U.S.C. § 1613 by filing a petition for a writ of certiorari with the Clerk of the United States Court of Appeals for the Third Circuit within 60 days from the entry of judgment sought to be reviewed on the docket of the Supreme Court of the Virgin Islands. A petition filed by an incarcerated person will be deemed filed when placed in the prison mail system; the petition must be accompanied by a statement under penalty of perjury stating the date the petition was placed in the prison mail system and stating that first-class postage has been pre-paid. In all other cases, the petition must be received by the Clerk in Philadelphia by the sixtieth day.

(b) Petitioner must file, with proof of service, an original and three copies of the petition for writ of certiorari. Petitioner must serve one copy of the petition for writ of certiorari on each of the parties to the proceedings in the Supreme Court of the Virgin Islands. When filing the petition, petitioner must pay the docketing fee, which shall be the same as the fees charged for an original proceeding such as a petition for writ of mandamus or petition for review of an agency order, in the Court of Appeals. Counsel for the petitioner must enter an appearance within 14 days of filing a petition. Once the case has been opened on the court's electronic docketing system, all documents must be filed electronically in accordance with L.A.R. Misc. 113.

(c) Parties interested jointly may file a joint petition. A petitioner not shown on the petition at the time of filing may not later join in that petition.

(d) If a petition for rehearing of the final decision of the Supreme Court of the Virgin Islands is timely filed pursuant to the Rules of the Supreme Court of the Virgin Islands or if that court sua sponte considers rehearing, the time for filing the petition for writ of certiorari shall run from entry of the order denying the petition or, if rehearing is granted, from entry of the order on rehearing.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing. Time changed to 14 days in 2010 to conform to amendments in FRAP.

112.3 Cross-Petitions for Certiorari

(a) Unless a rule specifies a different procedure for a cross-petition for certiorari, the rules for a petition for certiorari apply to cross-petitions.

(b) A cross-petition for a writ of certiorari may be filed within 21 days after the first petition was filed. When filing the cross-petition, cross-petitioner must pay the docketing fee. The cross-petitioner must serve one copy of the petition on each of the parties to the proceedings in the Supreme Court of the Virgin Islands.

(c) a cross-petitioner need not duplicate the appendix filed by petitioner

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.4 Extension of Time to File Petitions

(a) A circuit judge, for good cause shown, may extend the time for filing a petition for writ of certiorari or cross-petition for a period not exceeding 30 days. Any application for extension of time within which to file a petition for writ of certiorari must set out the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons justifying an extension. An untimely petition for writ of certiorari must be accompanied by a motion for extension of time. However, an application for extension of time to file a petition for certiorari ordinarily will not be granted, if filed less than 5 days before the expiration of the time to file a petition.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.5 Denominating Parties

(a) The party filing the first petition for the writ of certiorari shall be denominated the

petitioner; petitioner's denomination in the appeal or other proceeding before the Supreme Court and the Superior Court of the Virgin Islands must be included in the first paragraph of the statement of the case.

(b) Parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties in this court and shall be denominated respondents, unless the petitioner notifies the clerk of this court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice must be served on all parties to the proceeding in the Supreme Court of the Virgin Islands. A party noted as no longer interested may remain a party by notifying the clerk in writing within 14 days from the date of service of petitioner's notice, with service on all other parties, that the party has an interest in the petition. Each respondent's denomination in the proceedings before the Supreme Court and the Superior Court of the Virgin Islands must be included in the petition for writ of certiorari in the first paragraph of the statement of the case. Any respondent who supports the position of a petitioner must meet the time schedule for filing responsive document.

(c) a party who files a cross-petition for certiorari is denominated as respondent/cross-petitioner.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.6 The Petition for Writ of Certiorari

(a) The petition for writ of certiorari must contain, in the following order:

(1) a table of contents;

(2) a table of authorities, including citations to the relevant constitutional provisions, treaties, statutes, ordinances, and regulations;

(3) a concise statement of the ground on which the jurisdiction of this court is invoked, with citations to applicable statutes and stating relevant facts establishing the finality of the order. The jurisdictional statement must also include the date of entry of the judgment sought to be reviewed, the date of any orders respecting rehearing, and, in the case of a cross-petition for a writ of certiorari, the date of the filing of the petition for a writ of certiorari;

(4) a concise statement, with citations to appropriate statutes, of the basis of jurisdiction of the Supreme Court of the Virgin Islands and of the Superior Court of the Virgin Islands.

(5) the questions presented for review, expressed concisely in relation to the circumstances of the case. The statement of the questions should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary

question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the court;

(6) A concise statement of the case containing the facts material to the consideration of the questions presented. The first paragraph of the statement of the case must specify the denomination of each of the parties as they appeared in the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands. The statement of the case must specify, with appropriate citation to the record, the stage in the proceedings, both in the Superior Court and the Supreme Court of the Virgin Islands, at which the questions sought to be reviewed were raised and the ruling thereon;

(7) a direct and concise argument amplifying the reasons why the questions for review are important enough to warrant issuance of the writ;

(8) a short conclusion, which must include a statement of the specific relief requested if the writ of certiorari is granted.

(b) All contentions in support of a petition for writ of certiorari must be set forth in the body of the petition, as provided by this rule. No separate brief in support of a petition for a writ of certiorari will be received, and the clerk will refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

(c) Any reason for expedited treatment or request for interim relief must be made by separate motion. The requirement in Rule 8, FRAP, that a request for stay or injunction pending appeal must first be made to the court below will be strictly enforced. Any motion for stay or injunction must attach the order of the Supreme Court of the Virgin Islands disposing of the motion for stay or injunction made to it in the first instance.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.7 Appendix

(a) In addition to electronically filing the appendix, an original and three paper copies of an appendix must be filed for the convenience of the court. The appendix must contain in the following order:

(1) copies of all docket entries, opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the Supreme Court of the Virgin Islands; and

(2) copies of any applicable local statutes, ordinances, and regulations
the above documents may be bound with the petition provided they do not exceed

75 pages.

(b) the above documents in subparagraphs (1) and (2) may be bound with the petition provided they do not exceed 75 pages.

(c) Cross-petitioners need not duplicate materials filed by the petitioner.

(d) Respondents wishing to file materials in addition to those filed by petitioner must file a motion for permission to file a supplemental appendix.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.8 Brief in Opposition - in Support - Reply - Supplemental Briefs

(a) Within 30 days of receipt of a petition for writ of certiorari, a respondent may file electronically a brief in opposition. An original and three paper copies, with certificate of service, of the opposing brief must be filed for the court's convenience. In addition to the merits of the questions presented, the brief should address whether the issues identified by the petitioner are suitable for review. The respondent may agree that the petition for certiorari should be granted because the case presents an important question, yet argue that the decision of the Supreme Court of the Virgin Islands is correct.

(b) A respondent supporting the position of the petitioner must file a response supporting the petition with 20 days of the opening of the case. Parties who file no document will not qualify for any relief from the court.

(c) If no response is received within the time prescribed, it will be assumed that the party does not wish to participate and will no longer receive notices from the clerk or be entitled to service of documents from the other parties. The clerk may direct a party to file a response.. Ordinarily, a petition for certiorari will not be granted unless a response has been filed or requested.

(d) No motion by a respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant the writ of certiorari may be included in the brief in opposition.

(e) Petitioner may file electronically a reply brief addressed to arguments first raised in the brief in opposition within 14 days of receipt of respondent's brief. An original and three paper copies, with certificate of service, of the reply brief must be filed for the court's convenience.

(f) Motions for extensions of time to file a brief are governed by Third Circuit L.A.R. 31.4

(g) No supplemental filings may be made by any party except as provided in Rule 28(j), FRAP.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.9 Format and Length

(a) The typeface, page size, margins, line spacing, binding, and text style of a petition for writ of certiorari and responses must be in compliance with Rule 32(a), FRAP and Third Circuit Local Rule 32.1. The cover of a petition for writ of certiorari must be blue; the cover of respondent's brief must be red; the cover of a reply brief must be gray.

(b) A proportionately spaced petition for a writ of certiorari and response must not exceed 5,600 words, exclusive of the table of contents and table of authorities. A reply brief must not exceed 2,300 words.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.10 Disposition of a Petition for Writ of Certiorari

(a) The petition and any responses shall be referred to a motions panel for disposition. If a petition for writ of certiorari is granted, the clerk will issue a briefing schedule and the case shall proceed as other appeals in accordance with the Federal Rules of Appellate Procedure and Local Appellate Rules but with review limited to the questions on which the writ of certiorari was granted.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.11 Record on Review

(a) The record on review shall consist of the record presented to the Supreme Court of the Virgin Islands.

(b) Within 30 days of an order granting a writ of certiorari, the Clerk of the Supreme Court of the Virgin Islands must file a certified copy of the docket entries in lieu of the record with the Clerk of the Court of Appeals. The filing of the certified docket entries with the Court of Appeals constitutes the filing of the record.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.12 Rehearings

(a) Rules 35 and 40, FRAP, govern petitions for rehearing an order denying a petition for writ of certiorari.

(b) The grounds for a petition for rehearing of an order denying a petition for writ of certiorari are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds. A petitioner must certify that the petition is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay. This certification is in lieu of that required by Third Circuit L.A.R. 35.1;

(c) No response to a petition for rehearing will be received unless requested by the court, but no petition will be granted without an opportunity to submit a response.

(d) Consecutive petitions for rehearings will not be received.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.13 Costs

(a) Each party shall bear its own costs in a proceeding seeking a writ of certiorari, unless the court either sua sponte or following a motion directs that costs be taxed under Rule 38, FRAP, for a vexatious or frivolous petition. If the writ is granted and the case proceeds to briefing and decision, costs may be taxed as in Rule 39, FRAP

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were

amended in 2008 to provide for electronic filing.

112.14 Applicability of the Federal Rules of Appellate Procedure

(a) The Federal Rules of Appellate Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding seeking a writ of certiorari.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

L.A.R.MISC. 113 ELECTRONIC FILING

113.1 Scope of Electronic Filing

(a) Except as otherwise prescribed by local rule or order, all cases will be assigned to the court's electronic filing system. Case-initiating documents in original proceedings in the court of appeals must be filed in paper format. Except as otherwise prescribed by local rule or court order, all briefs, motions, petitions for rehearing, and other documents subsequently filed in any case with the court by a Filing User registered as set forth under Rule 113.2 must be filed electronically using the electronic filing system.

(b) Ten paper copies of briefs and four paper copies of the appendices must be filed within 5 days as provided in L.A.R. 31.1. The clerk may direct a party to provide the court with paper copies of other documents electronically filed.

(c) Upon the court's request, a Filing User must promptly provide the clerk, in a format designated by the court, an identical electronic version of any paper document previously filed in the same case by that Filing User.

(d) By local rule or order of the court or clerk, electronic access to entire case files or portions thereof may be restricted to the parties and the court. Public documents, except those filed under seal, may be viewed at the clerk's office.

(e) Upon motion and a showing of good cause, the court may exempt a Filing User from the provisions of this Rule and authorize filing by means other than use of the electronic filing system.

Source: Model Local Rules

Cross-References: FRAP 31; L.A.R. 31.1

Comments: Rules on electronic filing were added in 2008. This Local Appellate Rule is not intended to supplant the requirements of FRAP 31(b) or any local rule or procedure requiring counsel to provide additional paper copies of filings to the court. Time for filing paper copies changed to 5 days in 2010.

113.2 Eligibility, Registration, Passwords

(a) Attorneys who intend to practice in this court, including attorneys authorized to represent the United States without being admitted to the bar of this court, must register as Filing Users of the court's electronic filing system. Registration requirements will be defined by the court and may include training as a prerequisite to registration as a CM/ECF Filing User.

(b) A party to a pending civil case who is not represented by an attorney may, but is not required to, register as a Filing User in the electronic filing system solely for purposes of that case. Filing User status will be terminated upon termination of the case. If a pro se party retains an attorney, the attorney must advise the clerk.

(c) Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules and with the Federal Rules of Appellate Procedure.

(d) Filing Users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. Filing Users may be sanctioned for failure to comply with this provision. The clerk may terminate without notice the electronic filing privileges of any Filing User who abuses the system by excessive filings, either in terms of quantity or length. The clerk may order that over length or repetitive filings will not be available electronically.

(e) Upon motion showing extraordinary circumstances, the clerk may grant an exemption from electronic filing.

Source: Model Local Rules

Cross-References: L.A.R. 46

Comments: Rules on electronic filing were added in 2008.

113.3 Consequences of Electronic Filing

(a) Electronic transmission of a document to the electronic filing system consistent with these rules, together with the transmission of a Notice of Docket Activity from the court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b). If the court requires a party to file a motion for leave to file a document,

both the motion and document at issue should be submitted electronically; the underlying document will be filed if the court so directs.

(b) Before filing a document with the court, a Filing User must verify its legibility and completeness. Documents created by the filer and filed electronically must be in PDF text format. When a document has been filed electronically, the official record is the electronic document stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 113.1, a document filed electronically is deemed filed at the date and time stated on the Notice of Docket Activity from the court.

(c) Filing must be completed by midnight on the last day Eastern Time to be considered timely filed that day.

Source: Model Local Rules

Cross-References: L.A.R. 27-32, 35, 40

Comments: Rules on electronic filing were added in 2008. Time changed to midnight in 2010 to conform to amendments to FRAP.

113.4 Service of Documents by Electronic Means

(a) The Notice of Docket Activity that is generated by the court's electronic filing system constitutes service of the filed document on all Filing Users. Parties who are not Filing Users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Appellate Procedure and the local rules.

(b) If the document is not filed and served electronically through the court's cm/ecf system, the filer must use an alternative method of service prescribed by FRAP 25(c).

(c) The Notice of Docket Activity generated by the court's electronic filing system does not replace the certificate of service required by FRAP 25. The certificate of service must state either that the other party is a Filing User and is served electronically by the Notice of Docket Activity or that the other party will be served with paper documents pursuant to FRAP 25(c)

Source: Model Local Rules

Cross-references: L.A.R. 27.2 and 31.1

Comments: The electronic filing system generates a Notice of Docket Activity at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, if one was attached to the filing, allowing anyone receiving the notice by e-mail to retrieve the document automatically. The system sends this Notice to all case

participants registered as Filing Users of the electronic filing system. Under the amendments to FRAP 25, a court may, by local rule, provide that the court's automatically generated Notice of Docket Activity constitutes service of the document on all Filing Users in the case.

Parties who are not Filing Users have not consented to electronic service via the Notice of Docket Activity. They must be served in some other way authorized by FRAP 25.

If the document is not filed electronically through the court's cm/ecf system, the filer must use an alternative method of service prescribed by FRAP 25(c).

FRAP 26 provides that the three additional days to respond to service by mail will apply to electronic service as well. This provision is intended to account for technical problems that can arise during electronic service and to encourage parties to consent to electronic service.

113.5 Entry of Court-Issued Documents

(a) Except as otherwise provided by local rule or court order, all orders, decrees, judgments, and proceedings of the court relating to cases filed and maintained in the CM/ECF system will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under FRAP 36 and 45(b). Court orders, decrees, judgments, and other documents filed by the court will contain an electronic signature. Any order or other court issued document filed electronically without a hand-written signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.

(b) Orders also may be entered as "text-only" entries on the docket, without an attached document. Such orders are official and binding.

Source: Model Local Rules

Cross-References: FRAP 45

Comments: Rules on electronic filing were added in 2008.

113.6 Attachments and Exhibits to Motions and Original Proceedings

(a) Filing Users must submit in electronic form all documents referenced as exhibits or attachments. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. The court may require parties to file additional excerpts or the complete document.

Source: Model Local Rules

Cross-References: FRAP 27; L.A.R. 27

Comments: Rules on electronic filing were added in 2008. In many instances, only a small portion of a much larger document might be relevant to a matter before the court, therefore only an excerpt of the larger, original document should be submitted. The court retains the authority to require the filer to provide additional portions or the complete document, and other parties may supplement the filed excerpts or provide the entire document in support of their responsive pleadings.

113.7 Sealed Documents

(a) A motion to file documents under seal may be filed electronically unless prohibited by law, local rule, or court order.

(b) If the court grants the motion, the order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

(c) With permission of the clerk, documents ordered placed under seal may be filed in paper form only. A paper copy of the authorizing order must be attached to the documents under seal and delivered to the clerk.

(d) Ex parte motions, e.g. to file a document under seal, must be filed in paper form only.

Source: Model Local Rules

Cross Reference: L.A.R. Misc. 106

Comments: The court's electronic filing system is capable of accepting sealed documents electronically from filing users, either directly into a sealed case in which the attorney is a participant or as a sealed filing in an otherwise unsealed case. See L.A.R. Misc. 113.4, which addresses service of sealed documents filed electronically. See L.A.R. Misc. 113.12 for other provisions addressing privacy concerns arising from electronic filing. Attorneys must not include private and/or confidential information in their motions to file a document under seal and must fulfill their obligations under L.A.R. Misc. 113.12.

113.8 Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until 2 years after the

issuance of the mandate or order closing the case, whichever is later. If counsel withdraws and a new attorney enters an appearance, documents that require original signatures must be transferred to the new attorney of record. On request of the court, the Filing User must provide original documents for review.

Source: Model Local Rules

Cross Reference: None

Comments: Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Rule addresses the retention requirement for "verified documents" (in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury, e.g. affidavits, stipulations or the Criminal Justice Act forms) bearing original signatures of persons other than the person who files the document electronically.

113.9 Signatures

(a) The user log-in and password required to submit documents to the electronic filing system serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the local rules of court, and any other purpose for which a signature is required in connection with proceedings before the court.

(b) The name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear. Alternatively, an electronic signature may be used.

(c) No Filing User or other person may knowingly permit or cause to permit a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User. Documents requiring signatures of more than one party must be electronically filed either by:

(1) submitting a scanned document containing all necessary signatures;

(2) submitting a statement representing the consent of the other parties on the document;

(3) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or

(4) in any other manner approved by the court. Electronically represented signatures of all parties and Filing Users as described above are presumed to be valid signatures. If any party, counsel of record, or Filing User objects to the representation of his or her signature

on an electronic document as described above, he or she must, within 10 days, file a notice setting forth the basis of the objection.

Source: Model Local Rules

Cross References: L.A.R. 28 and 46

Comments: An electronic signature or the "s/" preceding a typed name indicates that the electronically filed document was endorsed by that party or Filing User. This Rule does not require a Filing User to personally file his or her own documents. The task of electronic filing may be delegated to an authorized agent, who may use the log-in and password to make the filing. Use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not perform the physical act of filing. Issues arise when documents being electronically filed have been signed by persons other than the filer, *e.g.*, stipulations and affidavits. For documents signed by individuals without logins and passwords (non-Filing Users), the Rule provides that the signature must appear as "s/" or as a scanned image. Under L.A.R. Misc. 113.8 above, the Filing User must retain a paper copy with the original signature of any such document filed by the Filing User.

113.10 Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a case assigned to the electronic filing system, the clerk will electronically transmit a Notice of Docket Activity to Filing Users in the case. Electronic transmission of the Notice of Docket Activity constitutes the notice and service of the opinion required by FRAP 36(b) and 45 (c). The clerk must give notice in paper form to a person who has not consented to electronic service.

Source: Model Local Rules

Cross-References: FRAP 45

Comments: Rules on electronic filing were added in 2008.

113.11 Technical Failures

A Filing User whose filing is untimely as the result of a technical failure may seek appropriate relief from the court.

Court personnel are not responsible for assisting Filing Users in the remedying of technical problems.

Source: Model Local Rules

Cross-References: L.A.R. 27 (motions)

Comments: Rules on electronic filing were added in 2008.

113.12 Public Access

(a) Parties, counsel, or other persons filing any document, whether electronically or in paper, must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court:

(1) Social Security numbers. If an individual's Social Security number must be included, only the last four digits of that number should be used.

(2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(3) Dates of birth. If an individual's date of birth must be included, only the year should be used.

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

(5) Home addresses. In criminal cases, if a home address must be included, only the city and state should be listed.

(b) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

(1) File an un-redacted version of the document under seal, or

(2) File a reference list under seal. The reference list must contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

(c) The un-redacted version of the document or the reference list must be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

(d) The responsibility for redacting these personal identifiers rests solely with the party, counsel, or other person filing the document. The clerk will not review each pleading for compliance with this rule.

Source: Model Local Rules

Cross Reference: Judicial Conference Policy on Privacy and Public Access to Electronic Case Files

Comments: It is each filer's responsibility to redact information from documents submitted by the filer. Documents containing prohibited personal identifiers must be redacted by the parties so as not to include un-redacted Social Security numbers, financial account numbers, names of minor children, or dates of birth. In criminal cases, home addresses also must be redacted. Information should be provided in shortened form, rather than completely omitted, with Social Security numbers represented as XXX-XX-1234, financial account numbers reduced to the last four digits, names of minor children represented as initials, dates of birth represented by year, and home addresses listed only by city and state.

Parties should consult the "Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files." This Guidance explains the policy permitting remote public access to electronic criminal case file documents and sets forth redaction and sealing requirements for documents that are filed. The Guidance also lists documents for which public access should not be provided. A copy of the Guidance is available at the court's website. For further information on privacy issues, see the Judicial Conference policies on privacy and public access to documents filed in civil, criminal, and bankruptcy cases, as well as section 205(c) of the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2914, as amended by Pub. L. No. 108-281, 118 Stat. 889 (2004).

113.13 Hyperlinks

(a) Electronically filed documents may contain the following types of hyperlinks:

(1) Hyperlinks to other portions of the same document; and

(2) Hyperlinks to a location on the Internet or PACER, e.g. the appendix, that contains a source document for a citation. If hyperlinks are used in the brief, counsel must also include immediately preceding the hyperlink a reference to the paper appendix page. Hyperlinks to testimony must be to a transcript. A motion must be filed and granted seeking permission to hyperlink to an audio or video file before such links may be included in the brief or appendix. Hyperlinks may not be used to link to sealed or restricted documents.

(b) Hyperlinks to cited authority or documents may not replace standard citation format. Complete citations to paper documents if available must be included in the text of the filed

document. If a cited reference is available on the internet only, a complete citation to the internet site must be included in addition to the hyperlink. A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

(c) Hyperlinks do not replace paper copies of the appendix. Four paper copies of the appendix must be filed in accordance with L.A.R. 30.1.

Source: Model Local Rules

Cross-References: L.A.R. 28 and 30

Comments: Hyperlinks are a connection from one point of electronic data to another. Because hyperlinks might be to sites outside the control of the court, the court cannot take responsibility for the viability of those links, nor does it take responsibility for the content of any linked site. Because hyperlinks are not considered part of the record, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the content of the filed document.

Hyperlinks are a convenient means of accessing material cited in electronic documents. Any electronically filed document that contains a hyperlink must also contain the standard citation to the same material. This requirement ensures that anyone working with a printed version of the document has the necessary citation, and that subsequent failure of a hyperlink will not preclude finding the cited material.

Just as the complete text of a document cited in a brief or other filing in support of a legal proposition, unless specifically quoted, is not considered part of the brief, the hyperlink and the site to which it refers are not considered part of the brief. Thus, they will not be considered part of the court's record.

113.14 Changes

The clerk may make changes to the procedures for electronic filing to adapt to changes in technology or to facilitate electronic filing. Any changes to procedures will be posted on the court's internet website.

Source: None

Cross-reference: None

Comments: None

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORDER ADOPTING LOCAL APPELLATE RULES

PRESENT: SCIRICA, **Chief Judge**, and SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, **Circuit Judges**

IT IS HEREBY ORDERED that the preceding Local Appellate Rules are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (F.R.A.P.). These rules are effective December 15, 2008 and supercede all prior editions and all prior orders amending the Local Appellate Rules.

Per Curiam,

s/ Anthony J. Scirica
Chief Judge

DATED: November 20, 2008

A true copy:
/s/ Marcia M. Waldron
Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORDER AMENDING LOCAL APPELLATE RULES

PRESENT: SCIRICA, **Chief Judge**, and SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, **Circuit Judges**

IT IS HEREBY ORDERED that amendments which change deadlines in Local Appellate Rules 9.1, 11.1, 39.4, 46.2, 112.2, 112,.5, 113.1, 113.3 and technical amendments to Local Appellate Rules 3.3, 4.1, 22.5, 27.7, 30.5, 31.4, 33.2, 33.5, 34.1, 106, 107, 108, 111.2, 112.3, 112.4, 112.8, 112.11, 113.8, 113.9 are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (F.R.A.P.). These rules are effective March 8, 2010 and supercede all prior editions and all prior orders amending the Local Appellate Rules.

Per Curiam,

s/ Anthony J. Scirica
Chief Judge

DATED: March 3, 2010

A true copy:
/s/ Marcia M. Waldron
Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORDER ADOPTING LOCAL APPELLATE RULES

PRESENT: McKEE, **Chief Judge**, and SLOVITER, SCIRICA, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., and VANASKIE, **Circuit Judges**

IT IS HEREBY ORDERED that amendments to Local Appellate Rules 26.1.0, 31.4, 33.0, 39.3, 46.3, are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (F.R.A.P.). These rules are effective August 1, 2011, and supercede all prior editions and all prior orders amending the Local Appellate Rules.

Per Curiam,

s/ Theodore A. McKee
Chief Judge

DATED: August 1, 2011

A true copy:
s/ Marcia M. Waldron
Clerk