# United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

www.ca11.uscourts.gov

Amy C. Nerenberg
Chief Deputy Clerk

August 7, 2018

**MEMORANDUM**

Enclosed are proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. Text to be added is bold and double-underlined, while text to be deleted is lined-through.

Comments on the proposed amendments may be submitted in writing to me at the above address, or electronically at http://www.ca11.uscourts.gov/rules/proposed-revisions, by 5:00 PM Eastern Time on September 7, 2018.

Thank you for your interest.

David J. Smith

# UNITED STATES

# COURT OF APPEALS

# for the

# ELEVENTH CIRCUIT

PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES
AND INTERNAL OPERATING PROCEDURES

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

August 2018

## FRAP 10. The Record on Appeal

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

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

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

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

**(b) The Transcript of Proceedings.**

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

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

**(i) the order must be in writing;**

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

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

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

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

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

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

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

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

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

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

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

**(e) Correction or Modification of the Record.**

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

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

**(A) on stipulation of the parties;**

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

**(C) by the court of appeals.**

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

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

* * * *

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

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

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

* * * *

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

## FRAP 27. Motions

**(a) In General.**

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

**(2) Contents of a Motion.**

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

**(B) Accompanying documents.**

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

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

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

**(C) Documents barred or not required.**

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

**(ii) A notice of motion is not required.**

**(iii) A proposed order is not required.**

**(3) Response.**

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

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

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

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

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

**(d) Form of Papers; Length Limits; Number of Copies.**

**(1) Format.**

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

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

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

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

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

**(2) Length Limits. Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):**

**(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;**

**(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;**

**(C) a reply produced using a computer must not exceed 2,600 words; and**

**(D) a handwritten or typewritten reply to a response must not exceed 10 pages.**

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

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

**(As amended Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)**

* * * *

11th Cir. R. 27-1 Motions.

(a) Number of Copies and Form of Motion.

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

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

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

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

(5) A motion for extension of time made pursuant to FRAP 26(b) shall, and other motions where appropriate may, contain a statement that movant's counsel has consulted opposing counsel and that

either opposing counsel has no objection to the relief sought, or will or will not promptly file an objection.

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

(7) Both retained and appointed counsel who seek leave to withdraw from or to dismiss a criminal appeal must recite in the motion that the party they represent has been informed of the motion and either approves or disapproves of the relief sought and show service of the motion on the party they represent.

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

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

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

**(11) A motion must comply with the requirement for references to the record found at 11th Cir. R. 28-5.**

(b) Emergency Motions.

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

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

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

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

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

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

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

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

(iv) the public interest.

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

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

(4) To expedite consideration by the court in a genuine emergency, the movant or his or her counsel must telephone the clerk at the earliest practical time and describe a motion that has not yet been filed in writing. This is not a substitute for the filing required by FRAP 27(a). Failure to notify the clerk via telephone in advance may delay the processing of the motion.

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

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

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

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

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

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

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

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

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

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

(6) to supplement or correct records;

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

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

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

(10) to reinstate appeals dismissed by the clerk;

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

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

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

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

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

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

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

(18) for substitution of parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) to expedite appeals;

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

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

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

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

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

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

11th Cir. R. 27-4 Sanctions for Filing a Frivolous Motion. When a party or an attorney practicing before this court files a frivolous motion, the court may, on motion of a party, or on its own motion after notice and a reasonable opportunity to respond, impose an appropriate sanction on the party, the attorney, or both. For purposes of this rule, a motion is frivolous if:

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

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

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

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

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

* * * *

*I.O.P. -*

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

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

*3. Motions to Expedite Appeals. Except as otherwise provided in these rules, and unless the court directs otherwise, an appeal may be expedited only by the court upon motion and for good cause*

*shown. Unless the court otherwise specifies, the clerk will fix an appropriate briefing schedule which will permit the appeal to be heard at an early date.*

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

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

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

*7. Withdrawing Motions. If a party no longer requires a ruling by the court on a pending motion, the filing party should file a motion to withdraw the motion.*

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

## FRAP 28. Briefs

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

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

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

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

**(4) a jurisdictional statement, including:**

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

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

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

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

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

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

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

**(8) the argument, which must contain:**

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

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

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

**(10) the certificate of compliance, if required by Rule 32(g)(1).**

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

**(1) the jurisdictional statement;**

**(2) the statement of the issues;**

**(3) the statement of the case; and**

**(4) the statement of the standard of review.**

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

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

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

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

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

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

**(g) [Reserved]**

**(h) [Reserved]**

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

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

**(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; May 1, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016.)**

* * * *

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

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

(b) Certificate of Interested Persons and Corporate Disclosure Statement. A Certificate of Interested Persons and Corporate Disclosure Statement ("CIP") is required of every party and amicus curiae. The CIP shall comply with FRAP 26.1 and the accompanying circuit rules, and shall be included within each brief immediately following the cover page.

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

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

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

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

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

(h) Statement of the Issues.

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

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

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

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

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

(k) Argument and Citations of Authority. Citations of authority in the brief shall comply with the rules of citation in the latest edition of either the "Bluebook" (A Uniform System of Citation) or the "ALWD Guide" (Association of Legal Writing Directors' Guide to Legal Citation). Citations shall reference the specific page number(s) which relate to the proposition for which the case is cited.

For state reported cases the national reporter series should be cross referenced (e.g., Southern Reporter, Southeast Reporter).

(l) Conclusion.

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

(n) Certificate of Service.

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

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

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

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

* * * *

*I.O.P. -*

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

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

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

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

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

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

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

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

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

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

Cross-Reference: FRAP 26.1, 32.1, 36

## FRAP 28.1. Cross-Appeals

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

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

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

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

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

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

**(A) the jurisdictional statement;**

**(B) the statement of the issues;**

**(C) the statement of the case; and**

**(D) the statement of the standard of review.**

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

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

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

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

**(e) Length.**

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

**(2) Type-Volume Limitation.**

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

**(i) contains no more than 13,000 words; or**

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

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

**(i) contains no more than 15,300 words; or**

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

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

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

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

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

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

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

**(As amended Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016.)**

* * * *

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

11th Cir. R. 28.1-2 Briefing Schedule in Cross-Appeals. Except as otherwise provided by 11th Cir. R. 31-1, the initial brief of appellant/cross-appellee shall be served and filed within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1. The brief of appellee/cross-appellant shall be served and filed within 30 days after service of the last appellant's brief. The second brief of appellant/cross-appellee shall be served and filed within 30 days after service of the last appellee/cross-appellant's brief. Appellee/cross-appellant's reply brief shall be served and filed within ~~14~~ **21** days after service of the last appellant/cross-appellee's second brief.

* * * *

*I.O.P. -*

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

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

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

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

## FRAP 31. Serving and Filing Briefs

**(a) Time to Serve and File a Brief.**

**(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.**

**(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.**

**(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.**

**(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.**

**(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 29, 1994; eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)**

* * * *

11th Cir. R. 31-1 Briefs - Time for Serving and Filing.

(a) Briefing Schedule. Except as otherwise provided herein, the appellant shall serve and file a brief within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1. The appellee shall serve and file a brief within 30 days after service of the brief of the last appellant. The appellant may serve and file a reply brief within ~~14~~ **21** days after service of the brief of the last appellee.

(b) Pending Motions. If any of the following motions or matters are pending in either the district court or the court of appeals at the time the appeal is docketed in the court of appeals or thereafter, the appellant (or appellant/cross-appellee) shall serve and file a brief within 40 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later:

- Motion to proceed In Forma Pauperis
- Motion for a Certificate of Appealability or to expand a Certificate of Appealability
- Motion of a type specified in FRAP 4(a)(4)(A) or FRAP 4(b)(3)(A)
- Determination of excusable neglect or good cause as specified in FRAP 4(a)(5)(A) or FRAP 4(b)(4)
- Assessment of fees pursuant to the Prisoner Litigation Reform Act
- Appointment and/or withdrawal of counsel
- Request for transcript at government expense
- Designation by appellee of additional parts of the proceedings to be ordered from the court reporter, order by appellee of such parts, or motion by appellee for an order requiring appellant to order such parts, as provided by FRAP 10(b)(3)(B) and (C)
- Motion to consolidate appeals, provided that such motion is filed on or before the date the appellant's brief is due in any of the appeals which are the subject of such motion

Except as otherwise provided below, if any of the foregoing motions or matters are pending in either the district court or the court of appeals after the appellant (or appellant/cross-appellee) has served and filed a brief, the appellee (or appellee/cross-appellant) shall serve and file a brief within 30 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 30 days after the date on which the supplemental record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later.

When a motion to consolidate appeals is filed or is pending after an appellant has served and filed a brief in any of the appeals which are the subject of such motion, the due date for filing appellee's brief shall be postponed until the court rules on such motion. If the motion is granted, the appellee (or appellee/cross-appellant) shall serve and file a brief in the consolidated appeals within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief, whichever is later. If the motion is denied, the appellee (or appellee/cross-appellant) shall serve and file a brief in each separate appeal within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief in that separate appeal, whichever is later.

(c) Effect of Other Pending Motions on Time for Serving and Filing Brief. Except as otherwise provided in this rule, a pending motion does not postpone the time for serving and filing any brief. However, the filing of a motion to dismiss a criminal appeal based on an appeal waiver in a plea agreement shall postpone the due date for filing appellee's brief until the court rules on such motion. In addition, a motion to file a brief out-of-time, a motion to file a brief that does not comply with the court's rules, or a motion to file a replacement brief shall postpone the due date for filing an opposing party's response brief or reply brief until the court rules on such motion.

(d) Jurisdictional Question. If, upon review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over the appeal or cross-appeal, the court may request the parties to advise the court in writing of their position with respect to the jurisdictional question(s) raised. The issuance of a jurisdictional question does not stay the time for filing appellant's brief otherwise provided by this rule. Unless otherwise ordered by the court, the due date for filing appellee's or appellee-cross-appellant's brief shall be postponed until the court determines that the appeal or cross-appeal shall proceed or directs the parties to address the jurisdictional question(s) in their briefs on the merits. When the court rules on a jurisdictional question, a new due date will be set for filing appellee's or appellee-cross-appellant's brief if the appeal or cross-appeal is allowed to proceed.

11th Cir. R. 31-2 Briefs and Appendices - Motion to Extend Time.

(a) First Request for an Extension of Time. A party's first request for an extension of time to file its brief or appendix or to correct a deficiency in the brief or appendix must set forth good cause. A first request for an extension of 14 days or less may be made by telephone or in writing, is not subject to 11th Cir. R. 26-1, and may be granted by the clerk. A first request for an extension of more than 14 days must be made by written motion setting forth with particularity the facts demonstrating good cause, and will only be acted upon by the court. When a briefing schedule has been established by court order, a first request for an extension must be made by written motion and will only be acted upon by the court. Any motion for extension of time by the court shall be subject to 11th Cir. R. 26-1.

(b) First Request Filed 14 or More Days in Advance. When a party's first request for an extension of time to file its brief or appendix is filed 14 or more days in advance of the due date for filing the brief or appendix and the requested extension of time is denied in full on a date that is seven or fewer days before the due date or is after the due date has passed, the time for filing the party's brief or appendix will be extended an additional seven days beyond the initial due date or the date the court order is issued, whichever is later, unless the court orders otherwise.

(c) Seven Days in Advance Requirement. If a party's first request for an extension of time to file its brief or appendix seeks an extension of more than 14 days, the motion must be filed at least seven days in advance of the due date for filing the brief or appendix. Such a motion received by the clerk less than seven days in advance of the due date for filing the brief or appendix will generally be denied by the court, unless the motion demonstrates that the good cause on which the motion is based did not exist earlier or was not and with due diligence could not have been known earlier or communicated to the court earlier.

(d) Second Request for an Extension of Time. A party's second request for an extension of time to file its brief or appendix or to correct a deficiency in its brief or appendix is extremely disfavored and is granted rarely. A party's second request for an extension will be granted only upon a showing of extraordinary circumstances that were not foreseeable at the time the first request was made. A second request must be made by written motion and will only be acted upon by the court.

(e) Extension of Time Must Be Requested Prior to Expiration of Due Date. A request for an extension of time to file the brief or appendix pursuant to this rule must be made or filed prior to the expiration of the due date for filing the brief or appendix. The clerk is without authority to file an

appellant's motion for an extension of time to file the brief or appendix received by the clerk after the expiration of the due date for filing the brief or appendix. A request for an extension of time to correct a deficiency in the brief or appendix pursuant this rule must be made or filed within 14 days of the clerk's notice as provided in 11th Cir. R. 42-3. The clerk is without authority to file an appellant's motion for an extension of time to correct a deficiency in the brief or appendix received by the clerk after the expiration of the 14-day period provided by that rule. [See 11th Cir. R. 42-2 and 42-3 concerning dismissal for failure to prosecute in a civil appeal.]

11th Cir. R. 31-3 Briefs - Number of Copies. One originally signed brief and six copies (total of seven) shall be filed in all appeals, except that pro se parties proceeding in forma pauperis may file one originally signed brief and three copies (total of four). One copy must be served on counsel for each party separately represented.

For counsel using the ECF system, the electronically filed brief is the official record copy of the brief. Use of the ECF system does not modify the requirement that counsel must provide to the court seven paper copies of a brief. Counsel will be considered to have complied with this requirement if, on the day the electronic brief is filed, counsel sends seven paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B). Also see 11th Cir. R. 25-3(a).

11th Cir. R. 31-4 Expedited Briefing in Criminal Appeals. The clerk is authorized to expedite briefing when it appears that an incarcerated defendant's projected release is expected to occur prior to the conclusion of appellate proceedings.

11th Cir. R. 31-5 Electronic Brief Submission. This rule only applies to attorneys who have been granted an exemption from the use of the ECF system under 11th Cir. R. 25-3(b). On the day the attorney's paper brief is served, the attorney must provide the court with an electronic brief in accordance with directions provided by the clerk. The time for serving and filing a brief is determined by service and filing of the paper brief. If corrections are required to be made to the paper brief, a corrected copy of the electronic brief must be provided. The certificate of service shall indicate the date of service of the brief in paper format.

* * * *

*I.O.P. - Briefing Schedule. The clerk's office will send counsel and pro se parties a letter confirming the due date for filing appellant's brief consistent with the provisions of 11th Cir. R. 12-1 and 11th Cir. R. 31-1, but delay in or failure to receive such a letter does not affect the obligation of counsel and pro se parties to file the brief within the time permitted by 11th Cir. R. 31-1. The clerk's office will also advise counsel and pro se parties of the rules and procedures governing the form of briefs.*

Cross-Reference: FRAP 25, 26, 27; "E-Government Act of 2002," Pub. L. No. 107-347

## FRAP 35. En Banc Determination

**(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:**

**(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or**

**(2) the proceeding involves a question of exceptional importance.**

**(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.**

**(1) The petition must begin with a statement that either:**

**(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or**

**(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of every other United States Court of Appeals that has addressed the issue.**

**(2) Except by the court's permission:**

**(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and**

**(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.**

**(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.**

**(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.**

**(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.**

**(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.**

**(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.**

**(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016.)**

* * * *

11th Cir. R. 35-1 Number of Copies and Length. Fifteen copies of a petition for en banc consideration pursuant to FRAP 35 shall be filed whether for initial hearing or rehearing. A petition for en banc consideration shall not exceed the length limitations set out in FRAP 35(b)(2), exclusive of items required by 11th Cir. R. 35-5(a), (b), (c), (d), (j), and (k). If a petition for en banc consideration is made with a petition for rehearing (whether or not they are combined in a single document) the combined documents shall not exceed the length limitations set out in FRAP 35(b)(2), exclusive of items required by 11th Cir. R. 35-5(a), (b), (c), (d), (j), and (k).

Use of the ECF system does not modify the requirement that counsel must provide to the court 15 paper copies of a petition for en banc consideration, whether for initial hearing or rehearing. Counsel will be considered to have complied with this requirement if, on the day the electronic petition is filed, counsel sends 15 paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B).

11th Cir. R. 35-2 Time - Extensions. A petition for en banc rehearing must be filed within 21 days of entry of judgment, except that a petition for en banc rehearing in a civil appeal in which the United States or an agency or officer thereof is a party must be filed within 45 days of entry of judgment. Judgment is entered on the opinion filing date. No additional time is allowed for mailing. Counsel should not request extensions of time except for the most compelling reasons. For purposes of this rule, a "civil appeal" is one that falls within the scope of 11th Cir. R. 42-2(a).

11th Cir. R. 35-3 Extraordinary Nature of Petitions for En Banc Consideration. A petition for en banc consideration, whether upon initial hearing or rehearing, is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional importance in an appeal or other proceeding, and, with specific reference to a petition for en banc consideration upon rehearing, is intended to bring to the attention of the entire court a panel opinion that is allegedly in direct conflict with precedent of the Supreme Court or of this circuit. Alleged errors in a panel's determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the panel's misapplication of correct precedent to the facts of the case, are matters for rehearing before the panel but not for en banc consideration.

Counsel are reminded that the duty of counsel is fully discharged without filing a petition for rehearing en banc if the rigid standards of FRAP 35(a) are not met, and that the filing of a petition for rehearing or rehearing en banc is not a prerequisite to filing a petition for writ of certiorari.

11th Cir. R. 35-4 Matters Not Considered En Banc. A petition for rehearing en banc tendered with respect to any of the following orders will not be considered by the court en banc, but will be referred as a motion for reconsideration to the judge or panel that entered the order sought to be reheard:

(a) Administrative or interim orders, including but not limited to orders ruling on requests for the following relief: stay or injunction pending appeal; appointment of counsel; leave to appeal in forma pauperis; and, permission to appeal when an appeal is within the court's discretion.

(b) Any order dismissing an appeal that is not published including, but not limited to, dismissal for failure to prosecute or because an appeal is frivolous.

11th Cir. R. 35-5 Form of Petition. A petition for en banc consideration shall be bound in a white cover which is clearly labeled with the title "Petition for Rehearing (or Hearing) En Banc." A petition for en banc consideration shall contain the following items in this sequence:

(a) a cover page as described in 11th Cir. R. 28-1(a);

(b) a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules;

(c) where the party petitioning for en banc consideration is represented by counsel, one or both of the following statements of counsel as applicable:

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: [cite specifically the case or cases]

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: [set forth each question in one sentence]

/s/ _____

ATTORNEY OF RECORD FOR

_____

(d) table of contents and citations;

(e) statement of the issue(s) asserted to merit en banc consideration;

(f) statement of the course of proceedings and disposition of the case;

(g) statement of any facts necessary to argument of the issues;

(h) argument and authorities. These shall concern only the issues and shall address specifically not only their merit but why they are contended to be worthy of en banc consideration;

(i) conclusion;

(j) certificate of service;

(k) a copy of the opinion sought to be reheard.

11th Cir. R. 35-6 Response to Petition. A response to a petition for en banc consideration may not be filed unless requested by the court.

11th Cir. R. 35-7 En Banc Briefs. An en banc briefing schedule shall be set by the clerk for all appeals in which rehearing en banc is granted by the court. Twenty copies of en banc briefs are required, and must be filed in the clerk's office, and served on counsel, according to the schedule established. En banc briefs should be prepared in the same manner and form as opening briefs and conform to the requirements of FRAP 28 and 32. The covers of all en banc briefs shall be of the color required by FRAP 32 and shall contain the title "En Banc Brief." Unless otherwise directed by the court, the page and type-volume limitations described in FRAP 32(a)(7) apply to en banc briefs. Counsel are also required to furnish 20 additional copies of each brief previously filed by them.

11th Cir. R. 35-8 En Banc Amicus Briefs. The United States or its officer or agency or a state may file an en banc amicus brief without the consent of the parties or leave of court. Any other amicus curiae must request leave of court by filing a motion accompanied by the proposed brief in conformance with FRAP 29(a)(3) through (a)(5) and the corresponding circuit rules. An amicus curiae must file its en banc brief, accompanied by a motion for filing when necessary, no later than the due date of the principal en banc brief of the party being supported. An amicus curiae that does not support either party must file its en banc brief, accompanied by a motion for filing when necessary, no later than the due date of the appellant's or petitioner's principal en banc brief. An amicus curiae must also comply with 11th Cir. R. 35-7.

11th Cir. R. 35-9 Senior Circuit Judges' Participation. Senior circuit judges of the Eleventh Circuit assigned to duty pursuant to statute and court rules may sit en banc reviewing decisions of panels of which they were members and may continue to participate in the decision of a case that was heard or reheard by the court en banc at a time when such judge was in regular active service.

11th Cir. R. 35-10 Effect of Granting Rehearing En Banc. Unless otherwise expressly provided, the effect of granting a rehearing en banc is to vacate the panel opinion and the corresponding judgment.

* * * *

*I.O.P. -*

*1. Time. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing en banc whether or not combined with a petition for rehearing is timely only if received by the clerk within the time specified in 11th Cir. R. 35-2.*

*2. Panel Has Control. A petition for rehearing en banc will also be treated as a petition for rehearing before the original panel. Although a copy of the petition for rehearing en banc is distributed to each panel judge and every active judge of the court, the filing of a petition for rehearing en banc does not take the appeal out of plenary control of the panel deciding the appeal. The panel may, on its own, grant rehearing by the panel and may do so without action by the full court. A petition for rehearing will not be treated as a petition for rehearing en banc.*

*3. Requesting a Poll. Within 30 days of the date that the clerk transmits the petition for rehearing en banc, any active Eleventh Circuit judge may advise the "notify judge" that in the event the panel declines to grant rehearing, the judge requests that a poll be taken regarding en banc consideration. The "notify judge" is the writing judge if that judge is a member of this court. If the writing judge is a visiting judge, the notify judge will be the senior active judge of this court on the panel or, if none, the senior non-active judge of this court on the panel. At the same time the judge ~~may~~ **shall** notify the clerk to withhold the mandate**, and the clerk will enter an order withholding the mandate**.*

*If the panel, after such notice, concludes not to grant rehearing, the notify judge will inform the chief judge of that fact and that a request was made that a poll be taken regarding en banc consideration. The chief judge then polls the court by written ballot on whether rehearing en banc is to be granted.*

*4. No Poll Request. If after expiration of the specified time for requesting a poll, the notify judge has not received a poll request from any active member of the court, the panel, without further notice, may take such action as it deems appropriate on the petition for rehearing en banc. In its order disposing of the appeal or other matter and the petition, the panel must note that no poll was requested by any judge of the court in regular active service.*

*5. Requesting a Poll on Court's Own Motion. Any active Eleventh Circuit judge may request that the court be polled on whether rehearing en banc should be granted whether or not a petition for rehearing en banc has been filed by a party. This is ordinarily done by a letter from the requesting judge to the chief judge with copies to the other active and senior judges of the court and any other panel member. At the same time the judge ~~may~~ **shall** notify the clerk to withhold the mandate**, and the clerk will enter an order withholding the mandate**. ~~If a petition for rehearing or a petition for rehearing en banc has not been filed by the date that mandate would otherwise issue, the Clerk will make an entry on the docket to advise the parties that a judge has notified the clerk to withhold the mandate.~~ The identity of the judge will not be disclosed **in the order**.*

*6. Polling the Court. Upon request to poll, the chief judge conducts a poll. Each active judge receives a form ballot that is used to cast a vote. A copy of each judge's ballot is sent to all other active judges. The ballot form indicates whether the judge voting desires oral argument if en banc is granted.*

*7. Effect of Recusal or Disqualification on Number of Votes Required. A recused or disqualified judge is not counted in the base when calculating whether a majority of circuit judges in regular active service have voted to rehear an appeal en banc. If, for example, there are 12 circuit judges in regular active service on this court, and five of them are recused or disqualified in an appeal,*

*rehearing en banc may be granted by affirmative vote of four judges (a majority of the seven non-recused and non-disqualified judges).*

*8. Negative Poll. If the vote on the poll is unfavorable to en banc consideration, the chief judge enters the appropriate order.*

*9. En Banc Rehearing Procedures Following Affirmative Poll.*

*a. Appeal Managers. When an appeal is voted to be reheard en banc, the chief judge shall designate as appeal managers a group of active judges of this court. The chief judge will ordinarily designate the judge who authored the panel opinion, the judge who requested that the court be polled regarding whether the appeal should be reheard en banc, and a judge who dissented from or specially concurred in the panel opinion, if they are active circuit judges of this court. The chief judge may, however, designate other active circuit judges as appeal managers.*

*b. Initial Notice to Counsel. The clerk meanwhile notifies counsel that rehearing en banc has been granted but that they should not prepare en banc briefs until they are advised of the issue(s) to be briefed and length limitations on briefs.*

*c. Notice of Issue(s) to be Briefed. The appeal managers prepare and circulate to the other members of the en banc court a proposed notice to the parties advising which issue(s) should be briefed to the en banc court, length limitations on briefs, and whether the appeal will be orally argued or submitted on briefs. The notice may also set the time limits for oral argument. In appeals with multiple appellants or appellees, the notice may direct parties to file a single joint appellants' or appellees' en banc brief. In such cases the side directed to file a single joint brief may be allotted some extension of the length limitations that would otherwise apply to the brief. Members of the en banc court thereafter advise the appeal managers of any suggested changes in the proposed notice. Provided that no member of the en banc court objects, counsel may be advised that the en banc court will decide only specified issues, and after deciding them, remand other issues to the panel. Once the form of the notice has been approved by the court, the clerk issues the notice to counsel.*

*d. Oral Argument. Appeals to be reheard en banc will ordinarily be orally argued unless fewer than three of the judges of the en banc court determine that argument should be heard.*

Cross-Reference: FRAP 40, 41

## FRAP 41. Mandate: Contents; Issuance and Effective Date; Stay

**(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.**

**(b) When Issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.**

**(c) Effective Date. The mandate is effective when issued.**

**(d) Staying the Mandate.**

**(1) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.**

**(2) Pending Petition for Certiorari.**

**(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.**

**(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.**

**(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.**

**(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.**

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

* * * *

11th Cir. R. 41-1 Stay or Recall of Mandate.

(a) A motion filed under FRAP 41 for a stay of the issuance of a mandate in a direct criminal appeal shall not be granted simply upon request. Ordinarily the motion will be denied unless it shows that it is not frivolous, not filed merely for delay, and shows that a substantial question is to be presented to the Supreme Court or otherwise sets forth good cause for a stay.

(b) A mandate once issued shall not be recalled except to prevent injustice.

(c) When a motion to recall a mandate is tendered for filing more than one year after issuance of the mandate, the clerk shall not accept the motion for filing unless the motion states with specificity why it was not filed sooner. The court will not grant the motion unless the movant has established good cause for the delay in filing the motion.

(d) Unless otherwise expressly provided, **the effect of** granting a petition for rehearing en banc **is to** vacate~~s~~ the panel opinion and **the corresponding judgment** ~~stays the mandate~~.

11th Cir. R. 41-2 Expediting Issuance of Mandate. In any appeal in which a published opinion has issued, the time for issuance of **the** mandate may be shortened only after all circuit judges in regular active service who are not recused or disqualified have been provided with reasonable notice and an opportunity to notify the clerk to withhold issuance of the mandate.

11th Cir. R. 41-3 Published Order Dismissing Appeal or Disposing of a Petition for a Writ of Mandamus or Prohibition or Other Extraordinary Writ. When any of the following orders is published, the time for issuance of the mandate is governed by FRAP 41(b):

(a) An order dismissing an appeal.

(b) An order disposing of a petition for a writ of mandamus or prohibition or other extraordinary writ.

11th Cir. R. 41-4 Non-Published Order Dismissing Appeal or Disposing of a Petition for a Writ of Mandamus or Prohibition or Other Extraordinary Writ. When any of the following orders is not published, the clerk shall issue a copy to the district court clerk or agency as the mandate:

(a) An order dismissing an appeal, including an order dismissing an appeal for want of prosecution.

(b) An order disposing of a petition for a writ of mandamus or prohibition or other extraordinary writ.

* * * *

*I.O.P. -*

*1. Stay or Recall of Mandate. A motion for stay or recall of mandate is disposed of by a single judge. See 11th Cir. R. 27-1(d).*

*2. Return of Record. The original record and any exhibits are returned to the clerk of the district court or agency with the mandate.*

*3. Certified Records for Supreme Court of the United States. Pursuant to Rule 12.7 of the Rules of the Supreme Court of the United States, the clerks of the courts of appeals are deemed to be the custodial agents of the record pending consideration of a petition for a writ of certiorari. Therefore, the clerk's office does not prepare a certified record unless specifically requested to do so by the Clerk of the Supreme Court. If certiorari is granted, the Clerk of the Supreme Court will request the clerk of the court of appeals to certify and transmit the record. See Rule 16.2 of the Rules of the Supreme Court of the United States.*

Cross-Reference: FRAP 35, 36, 40

## FRAP 46. Attorneys

**(a) Admission to the Bar.**

**(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).**

**(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:**

> **"I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."**

**(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.**

**(b) Suspension or Disbarment.**

**(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:**

**(A) has been suspended or disbarred from practice in any other court; or**

**(B) is guilty of conduct unbecoming a member of the court's bar.**

**(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.**

**(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.**

**(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.**

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

* * * *

11th Cir. R. 46-1 Bar Admission and Fees. Only attorneys admitted to the bar of this court may practice before the court, except as otherwise provided in these rules. Admission is governed by FRAP 46 and this Eleventh Circuit Rule, and attorneys must also meet the requirements of 11th Cir. R. 46-7. To request admission to the bar, an attorney must complete an application form, available on the Internet at www.ca11.uscourts.gov, and submit the form to the clerk's principal office in Atlanta. The application form must be accompanied by:

- a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1); and
- the non-refundable attorney admission fee, which is composed of: (1) the national admission fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913; and (2) the local admission fee prescribed pursuant to FRAP 46(a)(3) and posted on the court's website.

Each member of the bar has a continuing obligation to keep this court informed of any changes to addresses, phone numbers, fax numbers, and e-mail addresses.

11th Cir. R. 46-2 Renewal of Bar Membership; Inactive Status. Each attorney admitted to the bar of this court shall pay the bar membership renewal fee prescribed by the court and posted on the court's website every five years from the date of admission. A new certificate of admission will *not* issue upon payment of this fee. During the first week of the month in which an attorney's renewal fee is due, the clerk shall send by mail, e-mail, or other means a notice to the attorney using the contact information on the roll of attorneys admitted to practice before this court (attorney roll), and advise the attorney that payment of the renewal fee is due by the last day of that month. If the notice is returned undelivered due to incorrect or invalid contact information, no further notice will be sent. If the renewal fee is not paid by the last day of the month in which the notice is sent, the attorney's membership in the bar of this court will be placed in inactive status for a period of 12 months, beginning on the first day of the next month. An attorney whose bar membership is in inactive status may not practice before the court. To renew a bar membership, including one in inactive status, an attorney must complete a bar membership renewal form, available at www.ca11.uscourts.gov. The renewal form must be accompanied by the non-refundable bar membership renewal fee. All attorneys must use the court's Electronic Case Files (ECF) system to submit their renewal forms and payments.

After 12 months in inactive status, if an attorney has not paid the bar membership renewal fee, the clerk shall strike the attorney's name from the attorney roll. An attorney whose name is stricken from the attorney roll due to nonpayment of the renewal fee who thereafter wishes to practice before the court must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

11th Cir. R. 46-3 Admission for Particular Proceeding. The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application or payment of the admission fee: an attorney appearing on behalf of the United States, a federal public defender, an attorney appointed by a federal court under the Criminal Justice Act**,** ~~or appointed to represent a party in forma pauperis~~ **and any attorney appointed by this court**.

11th Cir. R. 46-4 Pro Hac Vice Admission. An attorney who does not reside in the circuit but is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules, and also meets the requirements of 11th Cir. R. 46-7, may apply to appear pro hac vice in a particular proceeding. The following items must be provided:

- a completed Application to Appear Pro Hac Vice form, available on the Internet at www.ca11.uscourts.gov, with proof of service;
- a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee prescribed by the court and posted on the court's website.

An attorney may apply to appear before this court pro hac vice only two times.

To practice before the court, an attorney who resides in the circuit or who has two times previously applied to appear before this court pro hac vice, must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

The clerk is authorized to grant an application to appear pro hac vice in an appeal not yet assigned or under submission, in such circumstances as determined by the court, when an attorney meets the requirements of the rules.

11th Cir. R. 46-5 Entry of Appearance. Every attorney, except one appointed by the court for a specific case, must file an Appearance of Counsel Form in order to participate in a case before the court. The form must be filed within 14 days after the date on the notice from the clerk that the Appearance of Counsel Form must be filed. With a court-appointed attorney, the order of appointment will be treated as the appearance form.

Except for those who are court-appointed, an attorney who has not previously filed an Appearance of Counsel Form in a case will not be permitted to participate in oral argument of the case until the appearance form is filed.

11th Cir. R. 46-6 Clerk's Authority to Accept Filings.

(a) Filings from an Attorney Who Is Not a Member of the Eleventh Circuit Bar.

(1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not a member of the circuit bar and who is not admitted for the particular proceeding pursuant to 11th Cir. R. 46-3:

- a petition or application that initiates a proceeding in this court;
- an emergency motion as described in 11th Cir. R. 27-1(b);
- a motion or petition that is treated by the clerk as "time sensitive" as that term is used in 11th Cir. R. 27-1(b).

(2) Upon filing the petition, application, or motion, the clerk will mail a notice to the attorney, stating that in order to participate in the appeal the attorney must be properly admitted either to the bar of this court or for the particular proceeding pursuant to 11th Cir. R. 46-4, and that the attorney must submit an appropriate application for admission within fourteen (14) days from the date of such notice.

(3) Within the 14-day notice period, the clerk may conditionally file motions and other papers received from the attorney, subject to receipt of an appropriate application for admission within that period. At the expiration of the 14-day notice period, if an appropriate application for admission has not been received, the clerk will return any such motions and other papers to the attorney and enter that action on the docket, and the motions and other papers will be treated as though they were never filed.

(4) When an appropriate application for admission is received within the 14-day notice period, the clerk may continue to conditionally file motions and other papers received from the attorney, subject to the court's approval of the attorney's application for admission. If the attorney's application is denied, the clerk will return any such motions and other papers to the attorney and enter that action on the docket, and the motions and other papers will be treated as though they were never filed. Before taking that action, the clerk may stay further proceedings in the appeal for 30 days, if necessary, to allow the attorney's client to seek new counsel.

(b) Filings from an Attorney Who Has Not Filed an Appearance of Counsel Form Within 14 Days After Notice is Mailed by the Clerk. When an attorney fails to file a required Appearance of Counsel Form within 14 days after notice of that requirement is mailed by the clerk, the clerk may not accept any further filings (except for a brief) from the attorney until the attorney files an Appearance of Counsel Form. When an attorney who has not filed an Appearance of Counsel Form tenders a brief for filing, the clerk will treat the failure to file an Appearance of Counsel Form as a deficiency in the form of the brief. An Appearance of Counsel Form need not be accompanied by a motion to file out of time.

11th Cir. R. 46-7 Active Membership in Good Standing with State Bar Required to Practice; Changes in Status of Bar Membership Must Be Reported. In addition to the requirements of FRAP 46 and the corresponding circuit rules, and Addendum Eight, an attorney may not practice before this court if the attorney is not an active member in good standing with a state bar or the bar of the highest court of a state, or the District of Columbia (hereinafter, "state bar"). When an attorney's active membership in good standing with a state bar lapses for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees, or failure to complete continuing education requirements, the attorney must notify the clerk of this court within 14 days. That notification must also list every other state bar and federal bar of which the attorney is a member, including state bar numbers and the attorney's status with that bar (e.g., active, inactive, retired, etc.). Members of the Eleventh Circuit bar have a continuing obligation to provide such notification, and attorneys appearing pro hac vice in a particular case or appeal must provide such notification while that case or appeal is pending. Upon receipt of that notification, the court may take any action it deems appropriate, including placing the attorney's bar membership in inactive status until the attorney provides documentation of active membership in good standing with a state bar.

11th Cir. R. 46-8 Certificate of Admission. Upon admission to the bar of this court, the clerk will send the attorney a certificate of admission. A duplicate certificate of admission is available for purchase upon payment of the fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

11th Cir. R. 46-9 Attorney Discipline. This court has adopted rules governing attorney conduct and discipline. See Addendum Eight.

11th Cir. R. 46-10 Appointment or Withdrawal of Counsel.

(a) Appellate Obligations of Retained Counsel. Retained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Criminal Justice Act, and may not abandon or cease representation of a defendant except upon order of the court.

(b) Habeas Corpus or 28 U.S.C. § 2255 Pauper Appeals. When any pro se appeal for either habeas corpus or 2255 relief is classified for oral argument, counsel will normally be appointed under the Criminal Justice Act before the appeal is calendared. The non-argument panel that classifies the appeal for oral argument will advise the clerk who will then obtain counsel under the regular procedure.

(c) Relieving Court Appointed Counsel on Appeal. Counsel appointed by the trial court shall not be relieved on appeal except in the event of incompatibility between attorney and client or other serious circumstances.

(d) Criminal Justice Act Appointments. The Judicial Council of this circuit has adopted the Eleventh Circuit Plan under the Criminal Justice Act and Guidelines for Counsel Supplementing the Eleventh Circuit Plan under the Criminal Justice Act. See Addendum Four.

(e) Non-Criminal Justice Act Appointments. This court has adopted rules governing Non-Criminal Justice Act Appointments. See Addendum Five.

11th Cir. R. 46-11 Appearance and Argument by Eligible Law Students.

(a) Scope of Legal Assistance.

(1) Notice of Appearance. An eligible law student, as described below, acting under a supervising attorney of record, may enter an appearance in this court on behalf of any indigent person, the United States, or a governmental agency in any civil or criminal case, provided that the party on whose behalf the student appears and the supervising attorney of record has consented thereto in writing. The written consent of the party (or the party's representative) and the supervising attorney of record must be filed with this court.

(2) Briefs. An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be reviewed, approved

entirely, and signed by the supervising attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs.

(3) Oral Argument. Except, on behalf of the accused, in a direct appeal from a criminal prosecution, an eligible law student may also participate in oral argument, but only in the presence of the supervising attorney of record.

(b) Law Student Eligibility Requirements.

In order to appear before this court, the law student must:

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

(2) Have completed legal studies for which the student has received at least 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

(3) Be certified by the dean of the law student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

(4) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent these entities from making proper charges for its services;

(5) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court; and

(6) File all of the certifications and consents necessary under this rule with the clerk of this court prior to the submission of any briefs or documents containing the law student's name and the law student's appearance at oral argument.

(c) Supervising Attorney of Record Requirements.

(1) The supervising attorney of record must be a member in good standing of the bar of this court.

(2) With respect to the law student's appearance, the supervising attorney of record shall certify in writing to this court that he or she:

(A) consents to the participation of the law student and agrees to supervise the law student;

(B) assumes full, personal professional responsibility for the case and for the quality of the law student's work;

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

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

* * * *

*I.O.P. -*

*1. Admissions. There is no formal swearing-in ceremony.*

*2. Payment Returned or Denied for Insufficient Funds. When a payment of a fee is returned unpaid or denied by a financial institution due to insufficient funds, counsel must thereafter pay the fee by money order or cashier's check made payable to the same entity or account as the returned check or denied payment. In addition, counsel must also remit by separate money order or cashier's check the returned-or-denied-payment fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.*

*3. Components of Attorney Admission Fee. The attorney admission fee is composed of two separate fees. A national admission fee has been prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. This fee is remitted to the federal judiciary. A local admission fee has been prescribed by this court pursuant to FRAP 46(a)(3), and is posted on the court's website. This fee is deposited in the court's non-appropriated fund account to be used for the benefit of the bench and bar in the administration of justice.*