

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 6, 2019

MEMORANDUM

Enclosed are proposed amendments to the Rules and Internal Operating Procedures 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 6, 2019.

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 2019

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

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

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

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

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

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

Cross-Reference: FRAP 27

FRAP 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

- (1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.
- (2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.
- (3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

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

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

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

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11th Cir. R. 9-1 *Motions*. Parties seeking review of a district court's order on release in a criminal case under FRAP 9(a) must file a motion with this court setting out the reasons why the party believes the order should be reversed. The clerk shall set expedited deadlines for the filing of the motion, the response, and any reply. All motions for release or for modification of the conditions of release, whether filed under FRAP 9(a) or 9(b), must include a copy of the judgment or order from which relief is sought and of any opinion or findings of the district court.

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

Cross-Reference: FRAP 23, 27

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

Cross-Reference: FRAP 27

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

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

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

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

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

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

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

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

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

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

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

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

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I.O.P. - Payment of Fees. The court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, is due upon filing of the petition. Checks should be made payable to Clerk, U.S. Court of Appeals, Eleventh Circuit. If the petition is being filed electronically, payments must be made using this court's Electronic Case Files (ECF) system.

Cross-Reference: FRAP 26.1

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22. Habeas Corpus and Section 2255 Proceedings

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

(b) **Certificate of Appealability.**

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

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

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

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

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

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

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

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

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

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

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

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

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

11th Cir. R. 22-4 ~~Petitions in~~ **Assignment of Capital Cases Pursuant to 28 U.S.C. §§ 2254 and 2255. Capital cases are randomly assigned from a roster of active judges of the court. Once assigned, the same panel will be assigned to all cases and appeals involving the same inmate under sentence of death. Replacement judges may be selected in the event a panel member takes senior status or is otherwise unavailable.**

(a) Stay Cases

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

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

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

~~—(4) Upon receipt of the notice of appeal and motion for stay (and application for a certificate of appealability, if not granted by the district court), the clerk shall docket the appeal and assign it to a panel constituted by the court from a roster of the active judges of the court maintained for the purposes of these rules. The clerk shall notify the judges of the panel of their assignment by telephone or other expeditious means. The panel to which the appeal is assigned shall handle all matters pertaining to the motion to stay, application for a certificate of appealability, the merits, second or successive petitions, remands from the Supreme Court of the United States, and all incidental and collateral matters, including any separate proceedings questioning the conviction or sentence.~~

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

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

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

~~—(b) Non-Stay Cases~~

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

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

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I.O.P. -

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

2. Oral Argument in Capital Cases. The presiding judge of the panel will notify the clerk at the appropriate time whether or not there will be oral argument in the case, and if so, the date for oral argument and the amount of oral argument time allotted to each side. A capital case appeal will include oral argument on the merits unless the panel decides unanimously that oral argument is not needed.

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

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

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

(a) Electronic Filing and Service. It is mandatory that all counsel of record use the court's Electronic Case Files (ECF) system. **Non-incarcerated pro se parties are permitted to use the court's ECF system; however, the court may revoke such permission upon a finding that the party has abused the privilege of using the ECF system.** Documents must be filed and served electronically ~~by counsel~~ in accordance with the procedures adopted by the court and set forth in the Eleventh Circuit Guide to Electronic Filing. The Eleventh Circuit Guide to Electronic Filing, and information and training materials related to electronic filing, are available ~~on the court's website~~ at www.ca11.uscourts.gov.

The notice generated and e-mailed by the ECF system constitutes service of all electronically filed documents on attorneys **and pro se parties** registered to use the ECF system. Independent service, either by paper or otherwise, need not be made on those attorneys ~~or parties~~. **Incarcerated P-pro se litigants, non-incarcerated pro se litigants who choose not to file electronically or whose permission to file electronically has been revoked,** and attorneys who are exempt from electronic filing must be served by the filing party through the conventional means of service set forth in FRAP 25. ~~A document filed electronically through the ECF system still must contain a certificate of service conforming to the requirements of FRAP 25.~~

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

11th Cir. R. 25-4 Information and Signature Required. All papers filed, including motions and briefs, must contain the name, office address, and telephone number of an attorney or a party proceeding pro se, and be signed by an attorney or by a party proceeding pro se. Inmate filings must be signed by the inmate and should contain name, prisoner number, institution, and street address.

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

checking for recusals. If there is no publicly traded corporation involved, and thus no stock ticker symbol to enter, the filer still must complete the web-based CIP by entering “nothing to declare.”

Failure to complete the web-based CIP will delay processing of the motion, case, or appeal, and may result in other sanctions under 11th Cir. R. 26.1-5(c).

The e-filing of a CIP by an attorney registered to use the ECF system does not relieve that attorney of the requirement to complete and keep updated the web-based CIP. Pro se filers (except attorneys appearing in particular cases as pro se parties) are not required or authorized to complete the web-based CIP.

11th Cir. R. 26.1-2 CIP: Contents.

(a) General. A CIP must contain a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party’s stock, and other identifiable legal entities related to a party.

In criminal and criminal-related appeals, the CIP must also disclose the identity of any victims. In bankruptcy appeals, the CIP must also identify ~~the~~ each debtor, the members of the creditor’s committee, any entity which is an active participant in the proceedings, and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings.

(b) CIPs in Briefs. The CIP contained in the first brief filed must include a complete list of all persons and entities known to that filer to have an interest in the outcome of the particular case or appeal. The CIP contained in the second and all subsequent briefs filed may include only persons and entities omitted from the CIP contained in the first brief filed and in any other brief that has been filed. Filers who believe that the CIP contained in the first brief filed and in any other brief that has been filed is complete must certify to that effect.

(c) CIPs in Motions or Petitions. The CIP contained in each motion or petition filed must include a complete list of all persons and entities known to that filer to have an interest in the outcome of the particular case or appeal. The CIP contained in a response or answer to a motion or petition, or a reply to a response, may include only persons and entities that were omitted from the CIP contained in the motion or petition. Filers who believe that the CIP contained in the motion or petition is complete must certify to that effect.

(d) CIPs in Petitions for En Banc Consideration. In a petition for en banc consideration, the petitioner’s CIP must also compile and include a complete list of all persons and entities listed on all CIPs previously filed in the case or appeal prior to the date of filing of the petition for en banc consideration. Eleventh Circuit Rule 26.1-2(b) applies to all en banc briefs.

11th Cir. R. 26.1-3 CIP: Form.

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

(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.)

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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.

(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. **The certificate described in FRAP 25(d), if required by that rule.**

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 document number and page number. The page number in a transcript is the page number that appears in the header generated by the district court's electronic filing system (and not the page number assigned 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.

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

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

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

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

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

- (1) the district court or tax court docket sheet, including, in bankruptcy appeals, the bankruptcy court docket sheet;
- (2) in an appeal in a criminal case, the indictment, information, or petition as amended;
- (3) in an appeal in a civil case, the complaint, answer, response, counterclaim, cross-claim, and any amendments to such items;
- (4) those parts of any pretrial order relevant to the issues on appeal;
- (5) the judgment or interlocutory order appealed from;
- (6) any other order or orders sought to be reviewed, including, in bankruptcy appeals, the order(s) of the bankruptcy court appealed to the district court;
- (7) in an appeal from the grant or denial of a petition for a writ of habeas corpus under 28 U.S.C. § 2254, all opinions by any state court previously rendered in the criminal prosecution and related collateral proceedings and appeals, and any state court orders addressing any claims and defenses brought by the petitioner in the federal action. This requirement applies whether or not the state court opinions and orders are contained in the district court record;
- (8) any supporting opinion, findings of fact and conclusions of law filed or delivered orally by the court;

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

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

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

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

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

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

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

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

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

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

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

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

Every other party must file two paper copies of the appendix or supplemental appendix within seven days of filing the party's brief, and if the appeal is classed for oral argument, such party must file an additional three identical paper copies of the appendix previously filed within seven days after the date on the notice from the clerk that the appeal has been classed for oral argument. One copy

shall be served on counsel for each party separately represented, and on each pro se party. Where multiple parties are on one side of an appeal, they are strongly urged to file a joint appendix.

For ~~counsel~~**filers** using the ECF system, the electronically filed appendix is the official record copy of the appendix. Use of the ECF system does not modify the requirement that ~~counsel~~**filers** must provide to the court the required number of paper copies of the appendix. ~~Counsel~~**Filers** will be considered to have complied with this requirement if, on the day the electronic appendix is filed, ~~counsel~~**the filer** sends two paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(A)(ii). If the appeal is classed for oral argument, ~~counsel~~**the filer (except for pro se parties proceeding in forma pauperis)** must file an additional three identical paper copies of the appendix in accordance with the preceding paragraph. Also see 11th Cir. R. 25-3(a).

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

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

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

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

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

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

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~~filers 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~~filers must provide to the court ~~seven~~the required number of paper copies of a brief. ~~Counsel~~Filers will be considered to have complied with this requirement if, on the day the electronic brief is filed, ~~counsel~~the filer sends ~~seven~~the required number of paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(A)(ii). 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

(2) Acceptable Form. Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016.)

* * * *

11th Cir. R. 32-1 Binding of Papers. Except as otherwise provided by 11th Cir. R. 30-1(e) for appendices, all papers shall be stapled or bound on the left. All copies presented to the court must be legible.

11th Cir. R. 32-2 Briefs - Cover. The cover of the brief must clearly indicate the name of the party on whose behalf the brief is filed. Each copy must comply with FRAP, have a cover of durable quality (at least 90#) on both front and back sides, and be securely bound along the left-hand margin so as to insure that the bound copy will not loosen or fall apart or the cover be detached by shipping and use. Exposed metal prong paper fasteners are prohibited on briefs.

11th Cir. R. 32-3 Briefs - Form.

Only the cover page, ~~the~~ a certificate of service, direct quotes, headings and footnotes may be single-spaced. All other typed matter must be double-spaced, including the Table of Contents and the Table of Citations. The court may reject or require recomposition of a brief for failure to comply.

The clerk may exercise very limited discretion to permit the filing of briefs in which the violation of FRAP and circuit rules governing the format of briefs is exceedingly minor if in the judgment of the clerk recomposition of the brief would be unwarranted.

Except as otherwise provided in the preceding paragraph, unless each copy of the brief, in the judgment of the clerk, conforms to this rule and to provisions of FRAP 32(a), the clerk may conditionally file the brief, subject to the requirement that the party file in the office of the clerk a complete set of replacement briefs which comply with FRAP and circuit rules within 14 days of issuance of notice by the clerk that the briefs have been conditionally filed. The clerk's notice shall specify the matters requiring correction. No substantive changes may be made to the brief. The time for filing of the opposing party's brief runs from the date of service of the conditionally filed brief and is unaffected by the later substitution of corrected copies pursuant to this rule.

11th Cir. R. 32-4 Briefs - Page Numbering and Length. The pages of each brief shall be consecutively numbered except that materials referred to in 11th Cir. R. 28-1(a), (b), (c), (d), (e), (f), (g), (m) and (n) and any addendum containing statutes, rules, or regulations need not be numbered and do not count towards page limitations or type-volume limitations. Motions for leave to file briefs which do not comply with the limitations set forth in FRAP 28.1(e) or FRAP 32(a)(7), as applicable, must be filed at least seven days in advance of the due date of the brief. The court looks with disfavor upon such motions and will only grant such a motion for extraordinary and compelling reasons.

* * * *

I.O.P. -

1. Color of Covers of Briefs. The covers of briefs operate for a busy court like traffic signals. It is important to efficient paper flow for those signals to be correct. The color of the covers of briefs shall be as follows:

brief of appellant -- blue
brief of appellee -- red
reply brief of appellant -- gray
amicus -- green
appellate intervenor -- green

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

For cross-appeals, see I.O.P. 2, Color of Covers of Briefs in Cross-Appeals, following FRAP 28.1.

2. Form of Printing- Legibility. While the court encourages inexpensive forms of reproduction to minimize costs, counsel should personally check each copy of the brief for legibility, completeness, and a proper binding since copies distributed to the court are selected at random. It is also essential that the size type conform to the requirements of FRAP 32(a).

3. Briefs - Miscellaneous Information.

a. Certificate of Service - ~~The~~ A certificate of service, if required by FRAP 25(d), must be shown at the conclusion of the brief.

b. Acknowledgment of Briefs - The clerk will acknowledge filing of a brief if a stamped self-addressed envelope is provided.

c. Sample Briefs and Appendices - Upon request, the clerk's office will loan to counsel sample briefs and appendices that comply with the prescribed form.

4. Brief Binding. Federal Rule of Appellate Procedure 32(a)(3) requires that briefs be bound in a "manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open." In the Court's view, only spiral and wire binding permit briefs to lie flat when open. For that reason, although the Court does not require any particular type of binding, it prefers that parties file briefs which are either spiral- or wire-bound instead of comb-bound, velo-strip-bound, tape-bound, metal-fastener-bound, thermal-bound, or stapled.

11th Cir. R. 34-4 Oral Argument Calendar.

(a) General. All appeals not assigned to the non-argument calendar shall be assigned to the oral argument calendar. Appeals to be orally argued will be calendared by the clerk based upon the court's calendaring priorities. Counsel for each party scheduled to present oral argument to the court must appear for oral argument unless excused by the court for good cause shown. The oral argument calendar will show the time the court has allotted for each argument.

(b) Waiver or Submission Without Argument. After an appeal has been scheduled for oral argument, argument may only be waived by the court upon motion filed in advance of the date set for hearing. If counsel for parties agree to submit the appeal on briefs, that appeal will be governed by FRAP 34(f).

(c) Failure to Appear for Oral Argument. If counsel for appellant fails to appear in an appeal from criminal conviction, the court will not hear argument from the United States; in all other appeals, the court may hear argument from counsel present.

(d) Number of Counsel to Be Heard. Only two counsel will be heard for each party whose appeal is scheduled to be argued, and the time allowed may be apportioned between counsel at their discretion.

(e) Change in or Addition to Counsel. After an appeal has been assigned to an oral argument panel, any change in or addition to counsel in the appeal requires leave of court. An appeal is considered assigned to an oral argument panel when the clerk notifies counsel of the specific day of the week on which oral argument in the appeal is scheduled to be heard.

(e) Expediting Appeals. The court may, on its own motion or for good cause shown on motion of a party, advance an appeal for hearing and prescribe an abbreviated briefing schedule.

(f) Continuance of Hearing. After an appeal has been set for hearing it may not be continued by stipulation of the parties or their counsel but only by an order of the court on good cause shown. Usually the engagement of counsel in other courts will not be considered good cause.

(g) Sealing Oral Arguments. Any motion to seal argument must be filed at least five days before oral argument, unless the court extends that period upon a showing of good cause. Recordings of sealed oral arguments will not be released absent an order of the court.

(h) Recording Oral Arguments. With advance approval of the court, counsel may arrange and pay for a qualified court reporter to be present to record and transcribe the oral argument for counsel's personal use. When counsel has received such approval, counsel must provide the court with a copy of the transcript without delay and at no expense to the court. Except as otherwise provided in this rule, recording of court proceedings by anyone other than the court is prohibited. Also see I.O.P. 16, CD Recordings of Oral Arguments and I.O.P. 17, Posting of Oral Argument Recordings on the Website, following this rule.

(i) Citation of Supplemental Authorities During Oral Argument. If counsel intend to cite supplemental authorities during oral argument that were not provided to the court and opposing

counsel prior to the day of oral argument, counsel must bring to oral argument a sufficient number of paper copies of the opinion(s) or other authorities being cited to permit distribution to panel members and opposing counsel.

* * * *

I.O.P. -

1. Non-Argument Calendar. *When the last brief is filed an appeal is sent to the office of staff attorney for classification. If the staff attorney is of the opinion that the appeal of a party does not warrant oral argument, a brief memorandum is prepared and the appeal is returned to the clerk for routing to one of the court's ~~active~~ judges, selected in rotation. In appeals involving multiple parties, the staff attorney may recommend that appeals of fewer than all parties be decided without oral argument but that the appeals of the remaining parties be scheduled for oral argument. If the judge to whom an appeal is directed for such consideration agrees that the appeal of a party does not warrant oral argument, that judge forwards the briefs, together with a proposed opinion, to the two other judges on the non-argument panel. If a party requests oral argument, all panel judges must concur not only that the appeal of that party does not warrant oral argument, but also in the panel opinion as a proper disposition without any special concurrence or dissent. If a party does not request oral argument, all panel judges must concur that the appeal of that party does not warrant oral argument.*

In other appeals, when oral argument is requested by a party and the staff attorney is of the opinion that oral argument should be heard, the staff attorney may recommend that an appeal be assigned to the oral argument calendar, subject to later review by the assigned oral argument panel.

If a determination is made that oral argument should be heard, the appeal is placed on the next appropriate calendar, consistent with the court's calendaring priorities. At that time a determination is made of the oral argument time to be allotted to each side.

The assignment of an appeal to the non-argument calendar does not mean that it is considered to be an appeal of less importance than an orally argued appeal.

2. Oral Argument.

a. Court Year Schedule - *A proposed court schedule for an entire year is prepared by the circuit executive in collaboration with the clerk's office, and then approved by the scheduling committee of the court which consists of active judges. The court schedule does not consider what specific appeals are to be heard, but only sets the weeks of court in relation to the probable volume of appeals and judgeship availability for the year.*

b. Separation of Assignment of Judges and Calendaring of Appeals - *To insure complete objectivity in the assignment of judges and the calendaring of appeals, the two functions of judge assignment to panels and calendaring of appeals are intentionally separated. The circuit executive and the scheduling committee take into account a fixed number of weeks for each active judge and the available sittings from the court's senior judges, visiting circuit judges, and*

(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~~filers must provide to the court 15 paper copies of a petition for en banc consideration, whether for initial hearing or rehearing. ~~Counsel~~Filers will be considered to have complied with this requirement if, on the day the electronic petition is filed, ~~counsel~~the filer sends 15 paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(A)(ii).

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, if required by FRAP 25(d);
- (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.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016.)

* * * *

11th Cir. R. 40-1 Contents. A copy of the opinion sought to be reheard shall be included as an addendum to each petition for rehearing, ~~following the certificate of service~~. This addendum does not count towards length limitations.

11th Cir. R. 40-2 Number of Copies. Four copies of a petition for rehearing pursuant to FRAP 40 shall be filed. Use of the ECF system does not modify the requirement that ~~counsel~~ filers must provide to the court four paper copies of a petition for rehearing. ~~Counsel~~ Filers will be considered to have complied with this requirement if, on the day the electronic petition is filed, ~~counsel~~ the filer sends four paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(A)(ii).

11th Cir. R. 40-3 Time - Extensions. A petition for rehearing must be filed within 21 days of entry of judgment, except that a petition for rehearing in a civil appeal in which the United States or an officer or agency thereof is a party must be filed within 45 days of entry of judgment. Judgment is entered on the opinion filing date. No additional time shall be allowed for mailing. Counsel should not request extensions of time except for the most compelling reasons. For purposes of this rule, a “civil appeal” is one that falls within the scope of 11th Cir. R. 42-2(a).

11th Cir. R. 40-4 [Rescinded]

11th Cir. R. 40-5 Supplemental Authorities. If pertinent and significant authorities come to a party’s attention while a party’s petition for rehearing or petition for rehearing en banc is pending, a party may promptly advise the clerk by letter, with a copy to all other parties. The body of the letter must not exceed 350 words, including footnotes. If a new case is not reported, copies should be appended. When such a letter is filed in paper, four copies must be filed.

* * * *

I.O.P. -

1. Necessity for Filing. *As indicated in 11th Cir. R. 35-3, it is not necessary to file a petition for rehearing or petition for rehearing en banc in the court of appeals as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States. Counsel are also reminded that the duty of counsel is fully discharged without filing a petition for rehearing en banc if the rigid standards of FRAP 35(a) are not met.*

2. Petition for Panel Rehearing. *A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is not to be used for reargument of the issues previously presented or to attack the court’s non-argument calendar procedures. Petitions for rehearing are reviewed by panel members only.*

3. Time. *Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received by the clerk within the time specified in 11th Cir. R. 40-3.*

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 the panel opinion and the corresponding judgment.

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).

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 Authorized to Practice Before this Court.

(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 authorized to practice before this court:

- 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~~ notify 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,~~ renewal form, or application to appear pro hac vice within ~~fourteen (14)~~ 21 days from the date of such notice.

(3) Within the ~~14~~ 21-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~~ 21-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~~ may be clerically stricken and treated as though they were never filed. The clerk may stay further proceedings in the appeal for 60 days, if necessary, to allow the attorney’s client to seek new counsel.

(4) When an appropriate application for admission is received within the ~~14~~ 21-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~~ may be clerically stricken and treated as though they were never filed. ~~Before taking that action, the~~ The clerk may stay further proceedings in the appeal for ~~30~~ 60 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

to do, and sit on oral argument panels several times during the year. Senior judges do not normally participate in the administrative work of the court, although they are authorized by law to do so.

3. Circuit Executive. The circuit executive is the chief administrative officer of the court. The circuit executive's office contains staff assistants and secretaries. See 28 U.S.C. § 332.

4. Office of Staff Attorneys. The office is comprised of a senior staff attorney, staff attorneys, and supporting clerical personnel. This office assists the court in legal research, analysis of appellate records, and studies of particular legal problems. It also assists in handling pro se prisoner matters. In many cases the office prepares memoranda to assist the judges.

5. Library. The library is staffed by the circuit librarian and assistant librarians. Library hours are from 8:30 a.m. to 4:30 p.m., Monday through Friday.

All persons admitted to practice before the court are authorized to use the library. Under regulations approved by the court, others may use the library by special permission only. Books and materials may not be removed from the library without permission of the librarian.

6. Judicial Conference. Pursuant to 28 U.S.C. § 333 there is held biennially, and may be held annually, at such time and place as designated by the chief judge of the court, a conference of all circuit, district and bankruptcy judges of the circuit for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit. See Addendum One to the circuit rules.

7. Judicial Council. The judicial council established by 28 U.S.C. § 332 is composed of nineteen members: one active judge from each of the nine district courts, nine active circuit judges, and the circuit chief judge. The judicial council meets on call of the chief judge approximately three times a year to consider and to make orders for the effective and expeditious administration of the courts within the circuit. The council is responsible for considering complaints against judges.

8. Fifth Circuit Court of Appeals Reorganization Act of 1980 (P.L. 96-452, October 4, 1980). Section 9 of the Fifth Circuit Court of Appeals Reorganization Act of 1980 determines appellate case processing after October 1, 1981, in terms of the "submitted for decision" date of each appeal.

The date an appeal assigned to the oral argument calendar is submitted for decision, is the date on which the initial argument of the appeal is heard. The date an appeal decided on the summary or non-argument calendar is submitted for decision, is the date on which the last panel judge concurs in summary or nonargument calendar disposition.

9. Recusal or Disqualification of Judges.

a. Grounds - A judge may recuse himself or herself under any circumstances considered sufficient to require such action. A judge is disqualified under circumstances set forth in 28 U.S.C. § 455 or in accordance with Canon 3C, Code of Conduct for United States Judges as approved by the Judicial Conference of the United States, April 1973, as amended.

b. Administrative Motions Procedure -

- (1) *single judge matter* - If a judge who is the initiating judge recuses himself or herself from considering or is disqualified to consider an administrative motion, the file is returned to the clerk who then sends it to the next initiating judge listed on the administrative routing log.
- (2) *panel matter* - If a judge who is the initiating judge recuses himself or herself from considering or is disqualified to consider an administrative motion, the file is **returned to the clerk for submission to the next available panel on the appropriate log** ~~forwarded by the recused judge directly to the next judge (who then becomes the initiating judge) for decision by quorum of the panel. If these remaining judges cannot agree as to disposition of the matter or if the appeal is deemed more appropriate for a full panel, the quorum may submit the matter to the backup judge. If at any point there are insufficient, unrecused judges on a panel to constitute a quorum, the file is returned to the clerk for appointment of a new panel from the administrative routing log.~~

c. Non-Argument Calendar Appeals - The same procedure is followed as in paragraph (b)(2) above, ~~except that a backup judge is ordinarily called in since the court's practice is that appeals are not ordinarily disposed of on the merits by only two judges.~~

d. Oral Argument Calendar Appeals - Prior to issuance of the court calendar, each judge on the panel is furnished with a copy for each appeal of the Certificate of Interested Persons and Corporate Disclosure Statement described in FRAP 26.1 and the accompanying circuit rules, for each judge's advance study to determine if the judge should recuse himself or herself or is disqualified in any of the appeals.

10. Complaints Against Judges. This court's rule for the conduct of complaint proceedings under 28 U.S.C. §§ 351-364 is outlined in Addendum Three.

11. Pro Se Applications. The clerk's office processes and answers prisoner and other pro se correspondence with the assistance of the staff attorneys' office. When a pro se petition is in the proper form for docketing and processing, it is routed to the staff attorneys' office. This office prepares legal memoranda for the court on such interlocutory matters as applications for leave to appeal in forma pauperis, certificates of appealability, and appointment of counsel, and on other pro se matters.

12. Statistics. The clerk periodically prepares statistical reports for the court and for the Administrative Office of the United States Courts. These reports are used to manage the internal affairs of the court and to provide information for purposes of determining personnel and equipment needs, the number of oral argument sessions to be scheduled, the workload of the judges and staff, and other management concerns. The reports are distributed to the judges and the circuit executive, and are discussed at judicial council meetings.

Cross-Reference: 28 U.S.C. §§ 41-48, 57, 291-296, 332, 333, 372, 455, 713, 1691