

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

April 4, 2018

MEMORANDUM

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

Comments on the proposed amendments may be submitted in writing to me at the above address, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, by 5:00 PM Eastern Time on May 4, 2018.

Thank you for your interest.

David J. Smith

UNITED STATES
COURT OF APPEALS
for the
ELEVENTH CIRCUIT

PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES
AND INTERNAL OPERATING PROCEDURES

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

April 2018

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, ~~within seven days of filing the notice of appeal~~, 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. ~~The opposing party must file a response within ten days, unless otherwise ordered by the court. Any replies shall be filed no later than seven days after the filing of the response, unless otherwise ordered by the court.~~ 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 on all parties appearing below.

FRAP 11. Forwarding the Record

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

(b) Duties of Reporter and District Clerk.

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

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

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

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

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

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

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

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

- (1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.**
- (2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.**
- (3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.**

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

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

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

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

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

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

- (a) acknowledge that the reporter has received the order for the transcript and the date of the order;
- (b) state whether adequate financial arrangements have been made under CJA or otherwise;

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

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

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

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

11th Cir. R. 11-3 Preparation and Transmission of Exhibits - Duties of District Court Clerk. The clerk of the district court is responsible for transmitting with the record to the clerk of this court a list of exhibits correspondingly numbered and identified with reasonable definiteness. The district court clerk must include in the electronic record on appeal electronic versions of all documentary exhibits admitted into evidence at trial or any evidentiary hearing. The district court clerk must ensure that no such documentary exhibits are returned to the parties before electronic versions of those exhibits have been entered into the electronic record on appeal.

If any documentary exhibits have been sealed or marked confidential by the district court or the district court clerk, the district court clerk must transmit any such sealed or confidential documentary exhibits to this court either in their original form or in electronic form provided the electronic access is appropriately restricted, unless otherwise directed by the clerk of this court. If audio or video files

were entered into evidence at trial or any evidentiary hearing, such files and any transcripts must be retained by the district court clerk during the period in which a notice of appeal may be timely filed and transmitted to this court as part of the record on appeal. **However, the district court clerk must not transmit to this court any exhibits containing child pornography unless requested to do so by the clerk of this court.**

As to non-documentary physical exhibits, the parties are required to include photographs or other reproductions of such exhibits in the electronic record on appeal. The parties may submit such photographs or other reproductions in paper or electronic form. The district court clerk must make advance arrangements with the clerk of this court prior to sending any exhibit containing wiring or electronic components (such as a beeper, cellular phone, etc.). Exhibits of unusual size or weight which are contained in a box larger than 14 3/4" x 12" x 9 1/2" shall not be transmitted by the district court clerk until and unless directed to do so by the clerk of this court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual size or weight. If transmittal has been authorized, a party may be requested to personally transfer oversized exhibits to the clerk of this court.

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

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I.O.P. -

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

2. Preparation of Paper Record; Duties of District Court Clerk. *When the record on appeal is in paper, at the time that the record is complete for purposes of appeal and before transmitting certification that the record is complete, the district court will assemble the record into one or more volumes, and identify by a separate document number each filing contained therein. Each volume of the record should generally contain less than 250 pages. The district court docket sheet, so numbered, will be provided to the parties upon request to facilitate citation to the original record by reference to the file copies maintained by the parties. Prior to transmitting the record to the clerk of the court of appeals, the district court docket sheet shall be marked to identify by number the volume into which documents have been placed, and the cover of each volume of the record shall indicate the volume number and the document numbers of the first and last document contained therein (e.g., Vol. 2, Documents 26 - 49). The district court docket sheet, so marked, will be included*

in the record transmitted to the clerk of the court of appeals. Transcripts will be sequentially arranged in separate numbered volumes, with volume numbers noted on the docket sheet index. In civil appeals, including bankruptcy and prisoner (civil and habeas) appeals, standard commercially-available indexing tabs or their equivalent which extend beyond the edge of the page shall be affixed to the first page of orders and of significant filings in the record to identify and assist in locating the papers. Tabs should be visible and staggered in sequence from top to bottom along the right-hand side. Tab numbers should correspond to the document numbers assigned by the district court.

~~*3. Oversized Exhibits. Ordinarily, oversized exhibits must be transmitted at the expense of the party requesting same, following approval from the clerks of this court and the district court. Requests to transmit oversized exhibits are discouraged. In lieu of arranging for transmittal by the district court of oversized physical exhibits, parties are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. The clerk of this court may dispose of oversized exhibits without further notice unless a party makes arrangements with the clerk for their return within 30 days of issuance of the mandate.*~~

Cross-Reference: FRAP 16

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

- (a) **Docketing the Appeal.** Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district court action and must identify the appellant, adding the appellant's name if necessary.
- (b) **Filing a Representation Statement.** Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.
- (c) **Filing the Record, Partial Record, or Certificate.** Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

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

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

11th Cir. R. 12-2 Clerk's Authority to Consolidate Appeals. The clerk may, at the time of docketing or thereafter, consolidate appeals in the absence of a motion where consolidation is required by statute or is in the interest of judicial economy, such as when multiple appeals raise the same or similar issues.

* * * *

I.O.P.-

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

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

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

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

(a) Petition for Review; Joint Petition.

- (1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.**
- (2) The petition must:**
 - (A) name each party seeking review either in the caption or the body of the petition—using such terms as “et al.,” “petitioners,” or “respondents” does not effectively name the parties;**
 - (B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and**
 - (C) specify the order or part thereof to be reviewed.**
- (3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.**
- (4) In this rule “agency” includes an agency, board, commission, or officer; “petition for review” includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.**

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

- (1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.**
- (2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.**
- (3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.**

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

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

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

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

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

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

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

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

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

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

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

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I.O.P. -

1. Payment of Fees. The court of appeals docketing fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, is due upon filing of the petition. Checks should be made payable to Clerk, U.S. Court of Appeals, Eleventh Circuit. **If the petition is being filed electronically, payments must be made using this court's Electronic Case Files (ECF) system.** Applications to file a petition in forma pauperis are governed by FRAP 24(b).

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

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

4. National Labor Relations Board Original Contempt Proceedings.

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

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

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

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

TITLE V. EXTRAORDINARY WRITS

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

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

- (1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.**
- (2) (A) The petition must be titled “In re [name of petitioner].”**
 - (B) The petition must state:**
 - (i) the relief sought;**
 - (ii) the issues presented;**
 - (iii) the facts necessary to understand the issue presented by the petition; and**
 - (iv) the reasons why the writ should issue.**
 - (C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.**
- (3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.**

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

- (1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.**
- (2) The clerk must serve the order to respond on all persons directed to respond.**
- (3) Two or more respondents may answer jointly.**
- (4) The court of appeals may invite or order the trial court judge to address the petition or may invite an amicus curiae to do so. The trial court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.**

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

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

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

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

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

TITLE VII. GENERAL PROVISIONS

FRAP 25. Filing and Service

(a) Filing.

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

(2) Filing: Method and Timeliness.

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

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

- (i)** mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or
- (ii)** dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(C) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(C). A paper filed by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- (i)** it is accompanied by:
 - a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
 - evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- (ii)** the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(C)(i).

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

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

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

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

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

(c) Manner of Service.

(1) Service may be any of the following:

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

(B) by mail;

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

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

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

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

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

(d) Proof of Service.

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

- (A) an acknowledgment of service by the person served; or
- (B) proof of service consisting of a statement by the person who made service certifying:
 - (i) the date and manner of service;
 - (ii) the names of the persons served; and
 - (iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

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

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

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

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

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

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

11th Cir. R. 25-3 [Electronic Case Files \(ECF\) System](#).

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

The notice generated and e-mailed by the ECF system constitutes service of all electronically filed documents on attorneys registered to use the ECF system. Independent service, either by paper or otherwise, need not be made on those attorneys. Pro se litigants 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) Exemption. Upon motion and a showing of good cause, the court may exempt an attorney from the electronic filing requirements and authorize filing and service by means other than the use of the ECF system. The motion, which need not be filed or served electronically, must be filed at least 14 days before the brief, petition, or other document is due. Also see 11th Cir. R. 31-5.

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

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

- a. Social Security numbers and Taxpayer Identification numbers. If an individual's social security number or taxpayer identification number must be included in a pleading, only the last four digits of that number should be used.
- b. Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used. For purposes of this rule, a minor child is any person under the age of eighteen years, unless otherwise provided by statute or court order.
- c. Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.
- d. Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
- e. Home addresses. If a home address must be included, only the city and state should be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11th Cir. R. 25-7 Obligation to Notify Court of Change of Addresses. Each pro se party and attorney exempt from electronic filing requirements has a continuing obligation to notify this court of any changes to the party's or attorney's mailing address and e-mail address, if any, during the pendency of the case in which the party or attorney is participating. Every attorney registered to use the ECF system has a continuing obligation to notify the PACER Service Center of any changes to the attorney's e-mail address, mailing address, telephone number, and fax number. The transmission of court documents to a previous address is effective if the pro se party or attorney has failed to comply with this rule.

* * * *

I.O.P. -

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

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

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

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

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

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

Cross-Reference: FRAP 26, 45, "E-Government Act of 2002," Pub. L. No. 107-347

Cross-Reference for 11th Cir. R. 25-6(a)(2): See 5 U.S.C. § 552b(c)(6) [personal privacy exception to the Freedom of Information Act]

FRAP 27. Motions

(a) In General.

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

(2) Contents of a Motion.

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

(B) Accompanying documents.

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

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

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

(C) Documents barred or not required.

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

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) Response.

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

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

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

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

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

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

(1) Format.

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

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

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

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

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

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

- (A) a motion or response to a motion produced using a computer must not exceed 5,200 words;
- (B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;
- (C) a reply produced using a computer must not exceed 2,600 words; and
- (D) a handwritten or typewritten reply to a response must not exceed 10 pages.

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

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

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

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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).

(b) Emergency Motions.

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

1. The motion will be moot unless a ruling is obtained within seven days; and
2. If the order sought to be reviewed is a district court order or action, the motion is being filed within seven days of the filing of the district court order or action sought to be reviewed.

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

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

- (i) the likelihood the moving party will prevail on the merits;
- (ii) the prospect of irreparable injury to the moving party if relief is withheld;
- (iii) the possibility of harm to other parties if relief is granted; and

(iv) the public interest.

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

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

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

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

1. The motion will be moot unless a ruling is obtained prior to noon [Eastern Time] of the next business day; and
2. If the order or action sought to be reviewed is a district court order or action, the motion is being filed within two business days of the filing of the district court order or action sought to be reviewed.

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

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

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

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

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

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

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

(6) to supplement or correct records;

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

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

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

(10) to reinstate appeals dismissed by the clerk;

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

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

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

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

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

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

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

(18) for substitution of parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) to expedite appeals;

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

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

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

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

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

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

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

- (a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or
- (b) it contains assertions of material facts that are false or unsupported by the record; or
- (c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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

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

* * * *

I.O.P. -

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

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

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

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

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

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

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

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

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

FRAP 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

- (1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.
- (2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

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

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

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

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

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

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

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

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

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

(c) Effect of Other Pending Motions on Time for Serving and Filing Brief. Except as otherwise provided in this rule, a pending motion does not postpone the time for serving and filing any brief. ~~For example, the appellee's brief remains due within 30 days after service of the appellant's brief even though a motion to file appellant's brief out-of-time or to file a brief which does not comply with the court's rules is pending.~~ However, the filing of a motion to dismiss a criminal appeal based on an appeal waiver in a plea agreement shall postpone the due date for filing appellee's brief until the court rules on such motion. In addition, a motion to file a **brief out-of-time, a motion to file a brief that does not comply with the court's rules, or a motion to file a** replacement brief shall

postpone the due date for filing an opposing party's response brief or reply brief until the court rules on such motion. ~~When the court rules on the motion, a new due date will be set for filing the next brief.~~

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

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

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

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

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

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

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

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

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

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

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

* * * *

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

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

FRAP 35. En Banc Determination

- (a) When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:
- (1)** en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
 - (2)** the proceeding involves a question of exceptional importance.
- (b) Petition for Hearing or Rehearing En Banc.** A party may petition for a hearing or rehearing en banc.
- (1) The petition must begin with a statement that either:**
 - (A)** the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or
 - (B)** the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of every other United States Court of Appeals that has addressed the issue.
 - (2) Except by the court's permission:**
 - (A)** a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and
 - (B)** a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.
 - (3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.**
- (c) Time for Petition for Hearing or Rehearing En Banc.** A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.
- (d) Number of Copies.** The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

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

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

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

* * * *

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

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

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

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

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

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

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

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

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

- (a) a cover page as described in 11th Cir. R. 28-1(a);
- (b) a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules;
- (c) where the party petitioning for en banc consideration is represented by counsel, one or both of the following statements of counsel as applicable:

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

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

/s/ _____

ATTORNEY OF RECORD FOR

- (d) table of contents and citations;
- (e) statement of the issue(s) asserted to merit en banc consideration;
- (f) statement of the course of proceedings and disposition of the case;
- (g) statement of any facts necessary to argument of the issues;

- (h) argument and authorities. These shall concern only the issues and shall address specifically not only their merit but why they are contended to be worthy of en banc consideration;
- (i) conclusion;
- (j) certificate of service;
- (k) a copy of the opinion sought to be reheard.

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

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

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

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

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

* * * *

I.O.P. -

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

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

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

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

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

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

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

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

in regular active service on this court, and five of them are recused or disqualified in an appeal, rehearing en banc may be granted by affirmative vote of four judges (a majority of the seven non-recused and non-disqualified judges).

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

9. En Banc Rehearing Procedures Following Affirmative Poll.

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

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

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

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

Cross-Reference: FRAP 40, 41

FRAP 42. Voluntary Dismissal

- (a) **Dismissal in the District Court.** Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.
- (b) **Dismissal in the Court of Appeals.** The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

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

* * * *

11th Cir. R. 42-1 Dismissal of Appeals.

(a) Motions to Dismiss by Appellants or Petitioners and Joint Motions to Dismiss. If an appellant or petitioner files an unopposed motion to dismiss an appeal, petition, or agency proceeding, or if both parties file a joint motion to dismiss an appeal, petition, or agency proceeding, and the matter has not yet been assigned to a panel on the merits, the clerk may clerically dismiss the appeal, petition, or agency proceeding and in such circumstances will issue a copy of the order as and for the mandate. By issuing such a dismissal, the clerk expresses no opinion on the effect of that dismissal. If the appeal, petition, or agency proceeding has been assigned to a panel on the merits, any motion to dismiss will be submitted to that panel.

A joint motion to dismiss must be signed by counsel for each party encompassed by the motion, or by the party itself if proceeding pro se. All motions to dismiss must contain a Certificate of Interested Persons and Corporate Disclosure Statement in compliance with FRAP 26.1 and the accompanying circuit rules. If an appellant's or petitioner's motion to dismiss is opposed, it will be submitted to the court. For motions to dismiss criminal appeals, see also 11th Cir. R. 27-1(a)(7) and 27-1(a)(8).

(b) Dismissal for Failure to Prosecute. Except as otherwise provided for briefs and appendices in civil appeals in 11th Cir. R. 42-2 and 42-3, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to timely file such motion will result in dismissal for want of prosecution.

The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal

forthwith. The clerk shall not dismiss an appeal during the pendency of a timely filed motion to file documents out of time or otherwise remedy the default which is accompanied by the brief or other required papers, but if the court denies such leave the clerk shall dismiss the appeal forthwith.

If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

11th Cir. R. 42-2 Dismissal in a Civil Appeal for Appellant's Failure to File Brief or Appendix by Due Date.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice of Due Date for Filing Brief and Appendix. Eleventh Circuit Rules 30-1(c) and 31-1 establish the due dates for filing the brief and appendix. To facilitate compliance, the clerk will send counsel and pro se parties a notice confirming the due date for filing appellant's brief and appendix consistent with 11th Cir. R. 30-1(c) and 31-1. However, delay in or failure to receive such notice does not affect the obligation of counsel and pro se parties to file the brief and appendix within the time permitted by the rules.

(c) Dismissal Without Further Notice. When an appellant has failed to file the brief or appendix by the due date as established by 11th Cir. R. 30-1(c) and 31-1 and set forth in the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the timely filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required brief or appendix. Such a motion showing extraordinary circumstances, accompanied by the required brief or appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required brief or appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal. **The time to file a responsive**

brief runs from the date the court’s order granting a motion to set aside dismissal and remedy default is entered on the docket.

(f) Failure of Appellee to File Brief by Due Date. When an appellee fails to file a brief by the due date as established by 11th Cir. R. 31-1, or, if the due date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-3 Dismissal in a Civil Appeal for Appellant’s Failure to Correct a Deficiency in Briefs or Appendices Within 14 Days of Notice.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice to Correct a Deficiency in Briefs or Appendices. If briefs or appendices do not comply with the rules governing the form of briefs and appendices, the clerk will send counsel and pro se parties a notice specifying the matters requiring correction. A complete corrected set of replacement briefs or appendices must be filed in the office of the clerk within 14 days of the date of the clerk’s notice.

(c) Dismissal Without Further Notice. When an appellant has failed to correct the brief or appendix within 14 days of the clerk’s notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to correct a deficiency in appellant’s brief or appendix, but if the court denies such leave after the expiration of the due date for correcting a deficiency in the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required corrected brief or appendix. Such a motion showing extraordinary circumstances, accompanied by the required corrected brief or appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required corrected brief or appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal. **The**

time to file a responsive brief runs from the date the court's order granting a motion to set aside dismissal and remedy default is entered on the docket.

(f) Failure of Appellee to File Corrected Brief Within 14 Days of Notice. When an appellee fails to file a corrected brief within 14 days of the clerk's notice, or, if that date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-4 Frivolous Appeals. If it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed.

* * * *

I.O.P. - Dismissal Rules Apply to Principal Briefs. The rules that provide for dismissal of an appeal for appellant's failure to file a brief by the due date, or to correct deficiencies in a brief within 14 days of notice, apply to appellant's or cross-appellant's principal (first) brief only, unless the court orders otherwise.

Cross-Reference: FRAP 3, 38; 28 U.S.C. § 1927

FRAP 46. Attorneys

(a) Admission to the Bar.

- (1) Eligibility.** An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).
- (2) Application.** An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

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

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

(b) Suspension or Disbarment.

- (1) Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:
 - (A)** has been suspended or disbarred from practice in any other court; or
 - (B)** is guilty of conduct unbecoming a member of the court's bar.
- (2) Procedure.** The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.
- (3) Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

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

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

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

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

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

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

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

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

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 ~~from~~ **establishing that the attorney is admitted to practice before** a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee prescribed by the court and posted on the court's website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Scope of Legal Assistance.

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

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

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

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

(b) Law Student Eligibility Requirements.

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

- (1) Be enrolled in a law school approved by the American Bar Association;
- (2) Have completed legal studies for which the student has received at least 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;
- (3) Be certified by the dean of the law student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;
- (4) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent these entities from making proper charges for its services;
- (5) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court; and
- (6) File all of the certifications and consents necessary under this rule with the clerk of this court prior to the submission of any briefs or documents containing the law student's name and the law student's appearance at oral argument.

(c) Supervising Attorney of Record Requirements.

- (1) The supervising attorney of record must be a member in good standing of the bar of this court.
- (2) With respect to the law student's appearance, the supervising attorney of record shall certify in writing to this court that he or she:
 - (A) consents to the participation of the law student and agrees to supervise the law student;

- (B) assumes full, personal professional responsibility for the case and for the quality of the law student's work;
- (C) will assist the student to the extent necessary; and
- (D) will appear with the student in all written and oral proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

* * * *

I.O.P. -

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

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

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