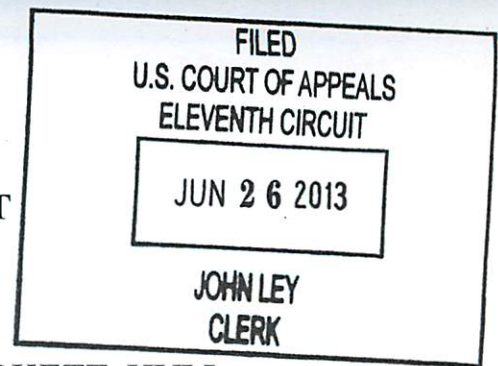


**U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

GENERAL ORDER 39



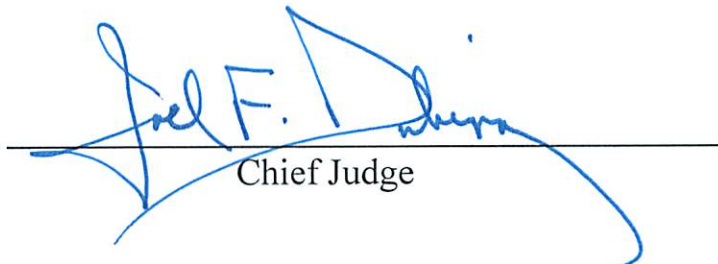
Before: DUBINA, Chief Judge, TJOFLAT, CARNES, BARKETT, HULL,
MARCUS, WILSON, PRYOR, MARTIN, and JORDAN, Circuit Judges.

In re: ELECTRONIC RECORDS ON APPEAL

On 26 February 2007, this Court issued General Order 33 continuing in effect an Electronic Records on Appeal Pilot Program in the Southern District of Alabama through 30 November 2007, unless earlier modified or extended by the Court. On 23 October 2007, the Court made several changes to the components of the pilot program as reflected in General Order 35. As of 1 April 2013, all district courts in this circuit are participating in the Electronic Records on Appeal Program for civil and criminal cases being appealed from the district court.

As a result of further evaluation of the Electronic Records on Appeal Program and after receiving input from the bar in this circuit, the Court now vacates General Order 35 and adopts the attached "Appendix on Appeal" requirements for appeals where the district court is now filing only an electronic record on appeal. The requirements of the Electronic Records on Appeal Program Components have been significantly changed and reduced in content to only those items now set forth in the attached "Appendix on Appeal" requirements.

FOR THE COURT:



Chief Judge

Dated: JUN 26 2013

APPENDIX ON APPEAL WHERE ONLY ELECTRONIC RECORD FILED BY DISTRICT COURT

Appendix Requirements

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

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

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

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

Items 1 – 12 below are already required by 11th Cir. R. 30-1. Items 13 – 14 were added as part of the original Electronic Records on Appeal Program requirements, but those original requirements have now been significantly changed and reduced in content:

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

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

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

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

(5) the judgment or interlocutory order appealed from;

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

(7) in an appeal from the grant or denial of a petition for a writ of habeas corpus under 28 U.S.C. § 2254, all opinions by any state court previously rendered in the criminal prosecution and related collateral proceedings and appeals, and any state court orders addressing any claims and defenses brought by the petitioner in the federal action. This requirement applies whether or not the state court opinions and orders are contained in the district court record;

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

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

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

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

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

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

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

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

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

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

In an appeal by an incarcerated pro se party, counsel for appellee must submit an appendix that includes the specific pages of any record materials referred to in the

argument section of appellee's brief and those referred to in the argument section of the appellant's brief that are relevant to the resolution of an issue on appeal.

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

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

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

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

District Court Items

- (a) The district court is not required to certify and transmit an entire paper record on appeal as required by FRAP 11 and the corresponding circuit rules, unless requested to do so by the Clerk of this Court in a particular case; but the district court is still required to certify when the record is complete for purposes of appeal.
- (b) The district court is required to transmit in paper any document in the record that is not available to this Court electronically, including depositions, sealed records, PSIs, and any paper exhibits that have not been scanned into CM/ECF by the district court. Such documents must be transmitted at the time the district court certifies that the record is complete for purposes of appeal, unless the Clerk of this Court requests earlier transmittal in a particular case.
- (c) When the Supreme Court requests a paper record in a case, it is the responsibility of the district court to provide one.

- (d) This Court will rely on the electronic record on appeal to access any necessary documents not contained in the parties' appendices, or when access to the record is required prior to briefing.
- (e) The Clerk's Office will not print documents from the electronic record, but the staff attorneys and chambers staff may do so.
- (f) The electronic record, including any hearing or trial proceedings, will be available in a text-searchable format.
- (g) There will be an ongoing evaluation of the program by judges, chambers staff and staff attorneys to determine whether the objectives have been met.