

United States Court of Appeals

Eleventh Circuit

56 Forsyth Street, NW

Atlanta, Georgia 30303

David J. Smith
Clerk of Court

www.ca11.uscourts.gov

Peter F. Busscher
Chief Deputy Clerk

December 4, 2024

MEMORANDUM

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

Comments on the proposed amendments may be submitted in writing at the above address, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, no later than Wednesday, January 3, 2025.

David J. Smith

UNITED STATES
COURT OF APPEALS
for the
ELEVENTH CIRCUIT

PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES

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

December 2024

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 bond or other security provided to obtain a stay of judgment; 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; Apr. 26, 2018, eff. Dec. 1, 2018.)

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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~~ an 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. **Court reporters must file the application using this court's Electronic Case Files (ECF) system, unless the court exempts the court reporter from the electronic filing requirements upon motion and a showing of good cause.** 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.

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22. Habeas Corpus and Section 2255 Proceedings

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

(b) **Certificate of Appealability.**

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

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

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

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

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

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

(b) If the district court denies a certificate of appealability, a party may seek a certificate of appealability from the court of appeals within 30 days of the later of the district court's denial of a certificate of appealability or the filing of the notice of appeal. In the event that a party does

not file an application for such a certificate within that period, the court of appeals will construe a party's filing of a timely notice of appeal as an application to the court of appeals for a certificate of appealability. **This rule does not entitle a party to a stay of the execution of their judgment and sentence.**

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

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

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

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

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

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

* * * *

I.O.P. -

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

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

parties and attorneys in the appeal or agency proceeding. Access to orders and opinions is not restricted in these cases. Parties seeking to restrict access to orders and opinions must file a motion explaining why that relief is required in a given case.

(f) Service. Registration to use the ECF system constitutes consent to receive electronic service of all documents as provided by the Federal Rules of Appellate Procedure and the circuit rules, as well as to receive electronic notice of correspondence, orders, and opinions issued by the court. The notice generated and e-mailed by the ECF system constitutes service of all electronically filed documents on attorneys and pro se parties registered to use the ECF system. Independent service, either by paper or otherwise, need not be made on those attorneys or parties and no certificate of service is required. Incarcerated pro se litigants, non-incarcerated pro se litigants who are not registered to file electronically or whose permission to file electronically has been revoked, and attorneys who are exempt from electronic filing must be served by the filing party through the conventional means of service set forth in FRAP 25 and a certificate of service is required.

(g) Documents Exempted from Electronic Filing. Unless otherwise directed by the court, the following documents must not be filed through the ECF system: (1) any document filed by an incarcerated party who is not represented by counsel; (2) a document filed under seal or requested to be filed under seal; (3) a document classified as a highly sensitive document; (4) any documents pertaining to a request for authorization, a claim for compensation, or a claim for reimbursement of expenses under the Criminal Justice Act and Addendum Four that are not otherwise appropriate for submission through the eVoucher system; and (5) a voucher and associated documents pertaining to a claim for reimbursement of expenses under Addendum Five.

(h) Documents Under Seal. Documents filed under seal in the court from which an appeal is taken will continue to be filed under seal on appeal to this court. ~~A motion to file documents under seal may be filed electronically unless prohibited by law, circuit rule, or court order. The sealed documents or documents requested to be sealed must not be attached to the motion. Documents requested to be sealed must be submitted in paper format in a sealed envelope, and must be received by the clerk within 10 days of filing the motion. The face of the envelope containing such documents must contain a conspicuous notation that it contains "DOCUMENTS UNDER SEAL" or substantially similar language. See also 11th Cir. R. 25-5.~~

ECF filers seeking to file a brief, motion, or other pleading under seal must electronically file on the public docket a motion to seal the pleading and a redacted version of the pleading and must separately file the unredacted version of the pleading using the appropriate sealed docket event. For ECF filers who are filing an appendix containing documents filed under seal in the court from which an appeal is taken, a motion to seal the portions of the appendix containing sealed documents is not required; the sealed documents must be included as a separate volume of the appendix filed using the appropriate sealed docket event.

(i) Filing Deadlines. An electronically filed document is deemed filed upon completion of the transmission and issuance of an NDA. The uploading of an incorrect document, or the filing of a document in the wrong case, does not constitute compliance with filing deadlines. In the event an ECF Filer uploads an incorrect document, or files a document in the wrong case, the clerk will send the ECF Filer notice of the error. If the ECF Filer corrects the error within 5 days of the clerk's

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

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

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

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

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

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

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

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

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

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

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

(14) in an appeal in a criminal case in which any issue is raised concerning the sentence, the transcript of the sentencing proceeding, and the presentence investigation report and addenda. ~~(The presentence investigation report and addenda must be filed under seal in a separate envelope if filed in paper and must be included as a separate sealed volume of the appendix if filed electronically)~~; and

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

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

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

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

(c) Time for Filing. A party must file an appendix or supplemental appendix within seven days of filing the party's brief, **except that an incarcerated pro se party is not required to file an appendix. Where multiple parties are on one side of an appeal, they are strongly urged to file a joint appendix.**

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

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

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

At the conclusion of briefing, pro se parties proceeding in forma pauperis must send to the court one paper copy of the appendix and all other parties who are required to file an appendix must send to the court two paper copies of the appendix. The clerk will send a notice directing that the paper copy be sent within seven days of the date of the notice. If the appeal is classed for oral argument, parties who are required to file an appendix must send an additional three paper copies of the appendix within seven days of the date of the notice from the clerk that the appeal has been classed for oral argument.

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

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

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

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

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 **Paper** Copies. All parties must file four briefs in paper. For filers using the ECF system, the electronically filed brief is the official record copy of the brief. Use of the ECF system does not modify the requirement that filers must provide to the court four paper copies of a brief. ECF filers will be considered to have complied with this requirement if, on the day the electronic brief is filed, the filer sends four paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(A)(ii). Also see 11th Cir. R. 25-3.~~

~~— If the appeal is classed for oral argument, parties (except for pro se parties proceeding in forma pauperis) must file an additional one identical paper copy of the brief within seven days after the date on the notice from the clerk that the appeal has been classed for oral argument.~~

At the conclusion of briefing, parties must send to the court two paper copies of the briefs. The clerk will send a notice directing that the paper copies be sent within seven days of the date of the notice. If the appeal is classed for oral argument, parties must send to the court an additional three paper copies of briefs within seven days of the date of the notice from the clerk that the appeal has been classed for oral argument. The paper copies of briefs submitted by ECF filers must include the ECF docketing header from the electronically filed version of the brief.

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, if required, shall indicate the date of service of the brief in paper format.

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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.

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

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

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

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

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

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

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

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

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

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

(j) Citation of Supplemental Authorities During Oral Argument. **A party shall not cite supplemental authorities at oral argument if the authorities were not provided to the opposing**

party (electronically or in paper) before the day of argument. If the supplemental authorities were not available until the day before oral argument, counsel intend to cite supplemental authorities during oral argument that were not provided to the court and opposing counsel prior to the day of oral argument, counsel the party must bring to oral argument a sufficient number of paper copies of the opinion(s) or other authorities being cited to permit distribution to panel members and the opposing counsel party.

* * * *

I.O.P. -

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

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

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

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

2. Oral Argument.

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

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