

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

August 3, 2022

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 to me at the above address, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, by 5:00 PM Eastern Time on Friday, September 2, 2022.

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*

August 2022

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) Definitions. The following definitions apply in the circuit rules.

(1) Document means any order, opinion, judgment, petition, application, notice, transcript, motion, brief, or other filing in a case.

(2) ECF (Electronic Case Files) means the system maintained by the court for receiving and storing documents in electronic format.

(3) ECF Filer means an attorney or non-incarcerated pro se party who has registered and is therefore authorized to file documents electronically and to receive service through the ECF system.

(4) NDA (Notice of Docket Activity) is a notice generated automatically by the ECF system at the time a document is filed and a docket entry results. This notice sets forth the date of filing, the text of the docket entry, and the names of the attorneys or pro se parties required to receive notice of the filing. If a PDF document is attached to the docket entry, the NDA will also identify the person filing the document and the type of document, and will contain a hyperlink to the filed document. Any document filed by the court will similarly list those to whom electronic notice of the filing is being sent.

(5) PACER (Public Access to Court Electronic Records) is an electronic system that allows internet users to view, print, and download electronically maintained docket information and federal court documents.

(6) PDF (Portable Document Format) means a non-modifiable electronic file containing the “.pdf” file extension. Text-Searchable PDF means a PDF file generated from an original word-processing file rather than scanned.

(b) Electronic Filing by Attorneys. Except as otherwise required by circuit rule or court order, all counsel of record must file documents electronically using the ECF system. 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. Rules 30-3 and 31-5.

(c) Electronic Filing by Non-Incarcerated Pro Se Parties. Non-incarcerated pro se parties are permitted to use the court's ECF system. However, once a non-incarcerated pro se party has registered to use the ECF system, such party is required to do so unless the court grants the party's request to not use the system or revokes the party's permission upon a finding that the party has abused the privilege of using the ECF system.

(d) Registration and Passwords. To register as a user of the ECF system, an attorney or pro se party must submit to the PACER Service Center a completed ECF Registration form. An attorney must be a member of the Eleventh Circuit bar, admitted for a particular proceeding under 11th Cir. R. 46-3, admitted pro hac vice in a particular case, or appearing in a particular case as a pro se party. In addition to ECF registration, the attorney, the attorney's firm, or the pro se party must have a PACER account and an e-mail address. The log-in and password for ECF access will be used to file documents electronically with the court.

Upon receipt of the attorney or pro se party's registration information from the PACER Service Center, the clerk will determine eligibility and activate the ECF Filer's account. If a log-in and/or password should become compromised, the ECF Filer is responsible for notifying the PACER Service Center. An ECF Filer whose e-mail address, mailing address, telephone number, or fax number changes from that disclosed on the filer's original ECF Registration form must promptly notify the PACER Service Center.

(e) Electronic Filing. Documents must be filed and served electronically in accordance with these rules. Information and training materials related to electronic filing are available at www.ca11.uscourts.gov. Authorized use of an ECF Filer's log-in and password by another is deemed to be the act of the ECF Filer. Later modification of a filed document or docket entry by the ECF Filer is not permitted except as authorized by the court. The clerk may edit the docket entry to correct or supplement the text. A notation will be made indicating the entry was edited. When a correction to an electronically filed document (e.g., motion, brief, or appendix) is necessary, the ECF Filer must upload the entire new document, and not just the corrected pages.

All electronically filed documents must be in PDF form and must conform to all technical and format requirements established by the court and, if any, the Judicial Conference of the United States. Whenever possible, documents must be in Text-Searchable PDF and not created by scanning. The maximum size of a document that may be filed electronically is 50 MB (megabytes). If a document exceeds 50 MB, it must be filed in separate volumes, each not to exceed 50 MB.

In accordance with FRAP 25(a)(5) and 11th Cir. R. 25-5, an ECF Filer must redact all documents, including briefs, consistent with the privacy policy of the Judicial Conference of the United States. Remote electronic access to dockets in immigration, and Social Security, and Railroad Retirement Act cases docket is limited. See FRAP 25(a)(5) and 11th Cir. R. 25-5. In this regard, remote electronic public access to the full record in these cases is restricted to judges, court staff, and the 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.

(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 notice, a motion to file the document out of time is not required. Otherwise, the ECF Filer must also electronically file in the case a motion to file the document out of time.

An ECF Filer whose filing is untimely as the result of a technical failure may seek appropriate relief from the court. Technical issues such as log-in and password questions, and creating and uploading PDF documents, should be directed to the PACER Service Center help desk. Procedural questions concerning how to docket a specific event should be directed to the Eleventh Circuit ECF help desk. This includes any instance in which an ECF Filer has transmitted a document to the ECF system and did not thereafter receive an NDA.

(j) Electronic Filing and Service by the Clerk. The electronic filing of any document by the clerk of court or a deputy clerk by use of that individual’s log-in and password shall be deemed the filing

of a signed original document for all purposes. Service by the clerk on an obsolete e-mail address will constitute valid service on an ECF Filer if the filer has failed to notify the PACER Service Center of a new e-mail address.

(k) Entry on the Docket and Official Court Record. The electronic transmission of a document, together with transmission of the NDA from the court, constitutes the filing of the document under the Federal Rules of Appellate Procedure and constitutes the entry of that document onto the official docket of the court maintained by the clerk pursuant to FRAP 45(b)(1). The electronic version of filed documents, whether filed electronically in the first instance or received by the clerk in paper or other format and subsequently scanned or converted into electronic format, constitutes the official record in the case. When the clerk scans a paper document into the ECF system, the clerk will discard the paper document once it has been scanned and made a part of the official record, unless the electronic file thereby produced is incomplete or of questionable quality. A document submitted electronically is deemed to have been filed on the date indicated in the system-generated NDA.

Except as otherwise provided by circuit rule or court order, all orders, opinions, judgments, and other court-issued documents in cases maintained in the ECF system are filed in accordance with the circuit rules, which constitutes entry on the docket kept by the clerk, and are served on ECF Filers electronically. Any order or other court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the document.

11th Cir. R. 25-4 Information and Signature Required. All documents 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 address. Signatures for ECF Filers are governed by FRAP 25(a)(2)(B)(iii). The ECF Filer of any electronically filed document containing multiple signatures must include each person's name on a signature block. By submitting such a document, the ECF Filer certifies that each of the other filers has expressly agreed to the form and substance of the document, and that the ECF Filer has their authority to submit the document electronically.

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), remote electronic public access is not provided to pleadings filed with the court in Social Security appeals, ~~and immigration cases,~~ **and Railroad Retirement Act cases**. Therefore, parties in ~~Social Security appeals and immigration~~ **such** cases 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.

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I.O.P. -

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: (1) a certificate of service indicating that the brief has been served on the party represented as well as on the other parties to the appeal; and (2) a statement certifying that counsel has informed the party represented that he or she has 30 days to file a response to the motion to withdraw with the court.

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

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

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

(b) Emergency Motions.

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

1. The motion will be moot unless a ruling is obtained within seven days; and
2. If the ~~order-~~matter 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~~. **If a motion requests relief by a date certain to avoid irreparable harm, the motion must specify that date in bold on the**

caption page, and the motion must explain the basis for the requested ruling date as well as why the motion was not filed earlier. The motion or accompanying memorandum shall must also 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. Upon filing an emergency motion, the movant must promptly notify the opposing party by electronic means at the address listed in the ECF system, if available.

(3) If the emergency motion raises any issue ~~therefore~~ previously raised in a district court, counsel for the moving party shall furnish the movant must provide copies of all pleadings, briefs, memoranda or other papers filed all filings in the district court supporting or opposing the position taken by the moving party in the motion movant and copies of any order or memorandum the district court's ruling on the issue decision of the district court relating thereto. If compliance is not possible impossible or impractical due to time restraints or otherwise, the reason for non-compliance shall be stated.

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

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

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

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

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

(1) to extend the time for filing briefs or other papers in appeals not yet assigned or under submission **as follows:** †

- **in forma pauperis motions, standalone certificates of interested persons and corporate disclosure statements, applications for a certificate of appealability, civil appeal statements, transcript order forms, motions for leave to proceed, filing fees, consent forms, responses to jurisdictional questions, and responses to motions, up to the amount of time originally given to file, generally 14 or 30 days;**
- **the agency record, up to 40 days; and**
- **first requests for an extension of up to 30 days to file or correct a deficiency in briefs and appendices, pursuant to 11th Cir. R. 31-2(a).**

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

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

(4-3) 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;

(7-4) 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);

(10-5) to reinstate appeals dismissed by the clerk **if the motion to reinstate is filed within 14 days of dismissal;**

(11-6) 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;

(13-7) to **grant first requests for an extension of up to 14 days** extend the time for filing Bills of Costs **and/or motions for attorney's fees;**

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

~~(15-8) 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;~~

~~(18-9) for substitution of parties **pursuant to FRAP 43(c)(2);** -~~

(10) to withdraw motions.

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

~~(19-11) to grant **first requests for an extension of up to 30 days to file or correct a deficiency in briefs and appendices, pursuant to 11th Cir. R. 31-2(a)** 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;~~~~

~~(20-12) 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;

(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 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 29, 1994; eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

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11th Cir. R. 33-1 [Kinnard Mediation Center](#).

(a) [Filing Civil Appeal Statement](#).

A Civil Appeal Statement is required in all civil appeals, except as provided in section (a)(3) below.

(1) Civil appeals from United States district courts. When notice of the filing of a notice of appeal is served pursuant to FRAP 3(d), the clerk of the district court shall notify the appellant(s) (and cross-appellant(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s) (and cross-appellant(s)) shall file with the clerk of the court of appeals, with service on all other parties, a completed Civil Appeal Statement within 14 days after the date the appeal is docketed in this court. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal. Any appellee may file a response with the court of appeals within 10 days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(2) Review of administrative agency orders and appeals from the United States Tax Court. When the clerk of the court of appeals notifies the parties that an appeal or petition has been docketed, the clerk shall also notify the appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) shall file with the clerk of the court of appeals, with service on all other parties, a completed Civil Appeal Statement within 14 days from the date the notice was transmitted by the clerk of the court of appeals. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal or petition. Any appellee/respondent may file a response with the court of appeals within 10 days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(3) A Civil Appeal Statement is not required to be filed in (1) appeals or petitions in which any party is proceeding without the assistance of counsel or in which any party is incarcerated; (2)

appeals from habeas corpus actions filed under 28 U.S.C. §§ 2241, 2254, and 2255; and (3) immigration appeals.

(4) Availability of Civil Appeal Statement forms. The Civil Appeal Statement form is available on the Internet at www.ca11.uscourts.gov. Copies may also be obtained from the clerk of the court of appeals and from the clerk of each district court within the Eleventh Circuit.

(b) [Rescinded]

(c) Mediation.

(1) An active or senior judge of the court of appeals, a panel of judges (either before or after oral argument), or the Kinnard Mediation Center, by appointment of the court, may direct counsel and parties in an appeal to participate in mediation conducted by the court's circuit mediators. Mediations are official court proceedings and the Kinnard Mediation Center circuit mediators act on behalf of the court. Counsel for any party may request mediation in an appeal in which a Civil Appeal Statement is required to be filed if he or she thinks it would be helpful. Such requests will not be disclosed by the Kinnard Mediation Center to opposing counsel without permission of the requesting party. The purposes of the mediation are to explore the possibility of settlement of the dispute, to prevent unnecessary motions or delay by attempting to resolve any procedural problems in the appeal, and to identify and clarify issues presented in the appeal. Mediation sessions are held in person, ~~or by telephone,~~ **or by video conference.** **Parties are expected to participate in the mediation, unless their participation is waived in advance of the mediation by the mediator.** Counsel must, except as waived by the mediator in advance of the mediation date, have the party available during the mediation. Should waiver of party availability be granted by the mediator, counsel must have the authority to respond to settlement proposals consistent with the party's interests. ~~The mediator may require the physical presence of the party at an in-person mediation or the telephone participation of the party in a telephone mediation.~~ For a governmental or other entity for which settlement decisions must be made collectively, the availability, presence, or participation requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and to make recommendations to it concerning settlement.

(2) A judge who participates in the mediation or becomes involved in the settlement discussions pursuant to this rule will not sit on a judicial panel that deals with that appeal.

(3) Communications made during the mediation and any subsequent communications related thereto shall be confidential. Such communications shall not be disclosed by any party or participant in the mediation in motions, briefs, or argument to the Eleventh Circuit Court of Appeals or to any court or adjudicative body that might address the appeal's merits, except as necessary for enforcement of Rule 33-1 under paragraph (f)(2), nor shall such communications be disclosed to anyone not involved in the mediation or otherwise not entitled to be kept informed about the mediation by reason of a position or relationship with a party unless the written consent of each mediation participant is obtained. Counsel's motions, briefs, or argument to the court shall not contain any reference to the Kinnard Mediation Center. **Neither counsel nor any participant may record the mediation.**

(d) Confidential Mediation Statement. The court requires, except as waived by the circuit mediator, that counsel in appeals selected for mediation send a confidential mediation statement assessing the appeal to the Kinnard Mediation Center before the mediation. The Kinnard Mediation Center will not share the confidential mediation statement with the other side, and it will not become part of the court file.

(e) Filing Deadlines. The filing of a Civil Appeal Statement or the scheduling of mediation does not extend the time for ordering any necessary transcript (pursuant to 11th Cir. R. 10-1) or for filing briefs (pursuant to 11th Cir. R. 31-1). Such time may be extended by a circuit mediator to comply with these rules if there is a substantial probability the appeal will settle and the extension will prevent the unnecessary expenditure of time and resources by counsel, the parties, and the court.

(f) Noncompliance Sanctions.

(1) If the appellant or petitioner has not taken the action specified in paragraph (a) of this rule within the time specified, the appeal or petition may be dismissed by the clerk of the court of appeals after appropriate notice pursuant to 11th Cir. R. 42-1.

(2) Upon failure of a party or attorney to comply with the provisions of this rule or the provisions of the court's notice of mediation, the court may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; dismiss the appeal; or take such other appropriate action as the circumstances may warrant.

(g) Use of Private Mediators.

(1) Upon agreement of all parties, a private mediator may be employed by the parties, at their expense, to mediate an appeal that has been selected for mediation by the Kinnard Mediation Center.

(2) Such private mediator (i) shall have been certified or registered as a mediator ~~by either the State of Alabama, Florida, or Georgia~~ for the preceding five years; (ii) shall have been admitted to practice law ~~in either the State of Alabama, Florida, or Georgia~~ for the preceding fifteen years and be currently in good standing; and (iii) shall be currently admitted to the bar of this court.

(3) All persons while employed as private mediators shall follow the private mediator procedures as set forth by the Kinnard Mediation Center.

(4) The provisions of this subsection (g) shall be in effect until discontinued by the Chief Circuit Mediator or by the court.

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.)

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

(a) Stipulated Dismissal Agreements and Motions to Dismiss by Appellants or Petitioners and Joint Motions to Dismiss. If an appeal has been assigned to a panel on the merits, any stipulated dismissal agreement or motion to dismiss the appeal will be submitted to that panel. If an appeal has not been assigned to a panel on the merits, the clerk may clerically dismiss the appeal if the parties file a stipulated dismissal agreement or if the appellant or petitioner files an unopposed motion to dismiss the appeal. 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 In such circumstances, the clerk 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.~~ If an appeal has not been assigned to a panel on the merits and an appellant's or petitioner's motion to dismiss is opposed, it will be submitted to the court. 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 and stipulated dismissal agreements 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