

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 5, 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 Wednesday, January 4, 2023.

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 2022

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.)

* * * *

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 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.

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. 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 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.

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 previously raised in a district court, the movant must provide all filings in the district court supporting or opposing the position taken by the movant and the district court's ruling on the issue. If compliance is not possible, the reason for non-compliance shall be stated.

(4) To expedite consideration by the court, the movant 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.

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

(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;

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

(5) a party's first motion to reinstate an appeals- dismissed by the clerk if the motion to reinstate is filed within 14 days of dismissal;

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

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

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

(9) for substitution of parties pursuant to FRAP 43(c)(2);

(10) to withdraw motions-;

(11) to file out-of-time any required filing received no more than 14 days after the due date, unless a judge has already ruled that no further extensions will be granted.

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

(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) in appeals not yet assigned or under submission;

(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.

(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