

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NOTICE OF PROPOSED AMENDMENTS
TO LOCAL RULES 22(c), 22(d), 28(e), 31(a),
32(a), 32(b), 34(e), 36(a), 36(b), and 46(c); and
INTERNAL OPERATING PROCEDURES 11.1 and 45.2

PLEASE TAKE NOTICE that the Court intends to amend several Local Rules and Internal Operating Procedures.

The proposed amendment to Local Rules 22(d), 31(a), 32(b), 34(e), and 36(a) provides that the time requirements in those rules will be calculated in calendar days, as required by the amendment to Rule 26(a)(2) of the Federal Rules of Appellate Procedure, effective December 1, 2002.

The proposed amendment to Local Rule 28(e) deletes the provision prohibiting argument in letters presented to the Court, pursuant to the amendment to Rule 28(j) of the Federal Rules of Appellate Procedure, effective December 1, 2002.

The proposed amendment to Local Rule 22(c) deletes reference to separate procedures in death penalty cases concerning distribution of petitions for rehearing and rehearing en banc.

The proposed amendment to Local Rule 32(a) deletes reference to double-sided copying of briefs to correspond with Federal Rule of Appellate Procedure 32(a)(1).

The proposed amendment to Local Rule 36(b) adds information concerning the availability of published and unpublished opinions on the Court's web site, www.ca4.uscourts.gov.

The proposed amendment to Local Rule 46(c) changes the time period for filing an appearance of counsel form from 10 days to 14 days to be consistent with the time period for filing a docketing statement under existing Local Rule 3(b).

The proposed amendment to I.O.P. 11.1 deletes information regarding sanctions for court reporters contained in the second sentence because it is redundant with the information contained in the third sentence of the existing I.O.P.

The proposed amendment to I.O.P. 45.2 provides information regarding access on the Court's web page to the Court's opinions, rules, procedures, forms, oral argument calendar, and docket.

The proposed amendments will take effect on December 1, 2002, subject to revision in light of any comments received. Interested parties may submit comments on or before November 29, 2002, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

October 31, 2002
Date

s/ Patricia S. Connor
Clerk

Local Rule 22(c). Petitions for Rehearing in Death Penalty Cases.

~~(1) All Death Penalty Cases.~~ Once the Court's mandate has issued in a death penalty case, any petition for panel or en banc rehearing should be accompanied by a motion to recall the mandate and motion to stay the execution.

~~Counsel should be aware that the process for distributing materials by the Clerk's Office ordinarily requires a minimum of three days for all members of the Court to receive a petition. Generally, the Court will not enter a stay of execution solely to allow for additional time for counsel to prepare, or for the Court to consider, a petition for rehearing. Consequently, counsel should take all possible steps to assure that any such petition is filed sufficiently in advance of the scheduled execution date to allow it to be considered by the Court. Counsel should notify the Clerk's Office promptly of their intention to file a petition for rehearing so that arrangements can be made in advance for the most expeditious consideration of the matter by the Court.~~

~~(2) Emergency Petitions.~~ In extraordinary circumstances, when the petition cannot be filed earlier than three days before a scheduled execution date, the Clerk's Office will endeavor to inform the members of the panel that issued the Court's decision of the filing of a petition for panel or en banc rehearing within a shorter period of time. At the direction of a panel member, similar efforts will be made to inform the full Court of the matter. The Clerk's Office will give notice to counsel by telephone of the Court's decision on such petitions.

Local Rule 22(d). Motions for Authorization.

Any individual seeking to file in the district court a second or successive application for relief pursuant to 28 U.S.C. § 2254 or § 2255 shall first file a motion with the Court of Appeals for authorization as required by 28 U.S.C. § 2244, on the form provided by the clerk for such motions. The motion shall be entitled "In re _____, Movant." The motion must be accompanied by copies of the § 2254 or § 2255 application which movant seeks authorization to file in the district court, as well as all prior § 2254 or § 2255 applications challenging the same conviction and sentence, all court opinions and orders disposing of those applications, and all magistrate judge's reports and recommendations issued on those applications. The movant shall serve a copy of the motion with attachments on the respondent named in the proposed application and shall file an original and three copies of the motion with attachments in the Court of Appeals. Failure to provide the requisite information and attachments may result in denial of the motion for authorization.

If the Court requires a response to the motion, it will direct that the response be received by the clerk for filing within no more than seven **calendar** days. The Court will enter an order granting or denying authorization within 30 days of receipt of the motion by the clerk for filing, and the clerk will certify a copy of the order to the district court. If authorization is granted, a copy of the application will be attached to the certified order for filing in the district court. No motion or request for reconsideration, petition for rehearing, or any other paper seeking review of the granting or denial of authorization will be allowed.

Local Rule 28(e). Citation of Additional Authorities.

Counsel may, without leave of Court, present a letter drawing the Court's attention to supplemental authorities under Rule 28(j). An original and three copies of the letter should be filed with the clerk and a copy of the letter should be mailed to all counsel of record. ~~No argument should be made in the letter.~~ The Court may grant leave for or direct the filing of additional memoranda, which may include additional argument, before, during or after oral argument.

Local Rule 31(a). Shortened Time for Service and Filing of Briefs in Criminal Cases.

Pursuant to the authority conferred by FRAP 31(a)(2), the time for serving and filing briefs in criminal appeals is shortened as follows: the appellant shall serve and file appellant's brief and appendix within thirty-five days after the date on which the briefing order is filed; the appellee shall serve and file appellee's brief within twenty-one days after service of the brief of the appellant; the appellant may serve and file a reply brief within ten **calendar** days after service of the brief of the appellee.

Local Rule 32(a). Reproduction of Briefs and Appendices.

~~Double-sided copying of briefs is permitted but not preferred.~~ Double-sided copying of appendices is preferred in all cases. If an appendix is prepared by a commercial printer in a court-appointed case, the materials contained in the appendix should be reproduced on both sides of a sheet because reimbursement for

copying expenses will be limited to 35 cents per double-sided sheet of the joint appendix. No joint appendix in a court-appointed case should exceed 250 sheets without advance permission from the Court; unless such permission is granted, reimbursement of copy expenses will be limited to 250 sheets.

Local Rule 32(b). Length of Briefs.

The Fourth Circuit encourages short, concise briefs. Under no circumstances may a brief exceed the limits set forth in FRAP 32(a)(7) without the Court's advance permission.

A motion for permission to submit a longer brief must be made to the Court of Appeals at least 10 **calendar** days prior to the due date of the brief and must be supported by a statement of reasons. These motions are not favored and will be granted only for exceptional reasons.

Local Rule 34(e). Motion to Submit on Briefs.

As soon as possible upon completion of the briefing schedule or within 10 **calendar** days of tentative notification of oral argument, whichever is earlier, any party may file a motion to submit the case on the briefs without the necessity of oral argument. Such motions are not granted as a matter of course. A motion to submit on briefs should not be used to alleviate a scheduling conflict after the notification of oral argument has been issued.

Local Rule 36(a). Publication of Decisions.

Opinions delivered by the Court will be published only if the opinion satisfies one or more of the standards for publication:

- i. It establishes, alters, modifies, clarifies, or explains a rule of law within this Circuit; or
- ii. It involves a legal issue of continuing public interest; or
- iii. It criticizes existing law; or
- iv. It contains a historical review of a legal rule that is not duplicative; or
- v. It resolves a conflict between panels of this Court, or creates a conflict with a decision in another circuit.

The Court will publish opinions only in cases that have been fully briefed and presented at oral argument. Opinions in such cases will be published if the author or a majority of the joining judges believes the opinion satisfies one or more of the standards for publication, and all members of the Court have acknowledged in writing their receipt of the proposed opinion. A judge may file a published opinion without obtaining all acknowledgments only if the opinion has been in circulation for ten **calendar** days.

Local Rule 36(b). Unpublished Dispositions.

Unpublished opinions give counsel, the parties, and the lower court or agency a statement of the reasons for the decision. They may not recite all of the facts or background of the case and may simply adopt the reasoning of the lower court. They are sent only to the trial court or agency in which the case originated, to counsel for all parties in the case, and to litigants in the case not represented by counsel. Any individual or institution may receive copies of all published and certain unpublished opinions of the Court by paying an annual subscription fee for this service. In addition, copies of such opinions are sent to all circuit judges, district judges, bankruptcy judges, magistrate judges, clerks of district court, United States Attorneys, and Federal Public Defenders upon request. ~~All opinions are available on ABBS, the Appellate Bulletin Board System, for a minimum of six months after issuance. The Federal Reporter periodically lists the result in all cases involving unpublished opinions. Copies of any unpublished opinion are retained in the file of the case in the Clerk's Office and a copy may be obtained from the Clerk's Office for \$2.00.~~ **Copies of published and unpublished opinions are available from the Clerk's Office for \$2.00 per opinion. Published and unpublished opinions issued since January 1, 1996 are available free of charge at www.ca4.uscourts.gov.**

Counsel may move for publication of an unpublished opinion, citing reasons. If such motion is granted, the unpublished opinion will be published without change in result.

Local Rule 46(c). Appearance of Counsel; Withdrawal; Substitutions.

Each attorney of record must file a written appearance with the clerk within 10 **14** days after the appeal is docketed or after being retained or appointed. At the time of docketing, the clerk will send to each counsel

or party in the trial court a "designation of counsel" form. This form should be filled out and returned to the Clerk of the Fourth Circuit within ~~10~~ **14** days. Thereafter, the Court will send correspondence, notices of oral argument, and copies of final decisions only to those attorneys who have filed their appearance forms. More than one attorney of the same firm may sign the same form. This form does not affect the credit line listed on printed opinions, as that information is furnished to publishing firms from those names listed on the briefs.

Once an appearance in an appeal has been filed, an attorney may not withdraw from representation without notice to the party he or she is representing and consent of the Court. A motion to withdraw should state fully the reason for the request. Substitution of counsel of record can be accomplished by submitting a counsel of record form or written appearance for new counsel along with existing counsel's motion to withdraw or strike appearance.

I.O.P.-11.1. Sanctions for Court Reporter's Failure to File a Timely Transcript. The Fourth Circuit Judicial Council has implemented a resolution of the Judicial Conference of the United States which mandates sanctions for the late delivery of transcripts. ~~For transcripts not delivered within 60 days of the date ordered and payment received therefor, the reporter may charge only 90 percent of the prescribed fee; for a transcript not delivered within 90 days the reporter may charge only 80 percent of the prescribed fee with the following exception:~~ For transcripts not delivered within the time limits set forth in Local Rule 11(b), the reporter may charge only 90 percent of the prescribed fee; for a transcript not delivered within 30 days after that time the reporter may charge only 80 percent of the prescribed fee. The time period in criminal proceedings for the preparation of transcripts that are ordered before sentencing shall not begin to run until after entry of the judgment and commitment order.

-45.2. Public Information. The Court's opinions, rules, procedures, forms, and argument calendar are available at www.ca4.uscourts.gov. Docket information is also available at www.ca4.uscourts.gov to users with a log-in name and password for the Judiciary's PACER system (Public Access to Court Electronic Records). Information concerning the status of appeals and the operation of rules and procedures may be obtained from the Clerk's Office by telephone inquiry. Matters of public record may be reviewed upon request at the Clerk's Office and case documents may be transmitted to the district court for review by counsel upon proper application to the Clerk's Office.