

MOTION PROCEDURES

CONTENT: A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. A separate brief or memorandum supporting a motion, response, or reply must NOT be filed. Requests for procedural and substantive relief must be made in separate motions rather than combined in a single motion. Fed. R. App. P. 27(a)(2); Local Rule 27(c).

MOTION LENGTH AND FORMAT: Motions must not exceed 20 pages, excluding attachments, unless the Court permits otherwise, and must be in 14-point proportional type or 12-point monospace type. Text must be double-spaced, with 1" margins. No cover is required, but the motion must contain a case caption and a title identifying all relief requested and for whom the motion is filed. Fed. R. App. P. 27(d).

STATEMENT REGARDING CONSENT: In cases where all parties are represented by counsel, all motions must contain a statement by counsel that counsel for the other parties to the appeal have been informed of the intended filing of the motion. The statement must indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition. Local Rule 27(a).

RESPONSES: Any party may file a response within 10 days after service of the motion, unless the Court shortens or extends the time. If the motion was served other than by hand-delivery, 3 days are added to the response period. A response is not required unless directed by the Court. No separate memorandum in support of a response is allowed, and the response must not exceed 20 pages in length. A response may include a motion for affirmative relief, but the title of the response must alert the court to the request for relief. If the Court acts upon a motion without a response, any party adversely affected by such action may by application to the Court request reconsideration, vacation, or modification of the Court's ruling. Fed. R. App. P. 27(a)(3); Local Rule 27(d)(1).

REPLIES: Any reply to a response must be filed within 7 days after service of the response. If the response was served other than by hand-delivery, 3 days are added to the reply period. A reply may not exceed 10 pages and must not present matters that do not relate to the response. The Court will not await a reply before reviewing a motion and response; therefore, movants intending to reply should so notify the clerk in writing and request that the Court not act until the reply is received. Fed. R. App. P. 27(a)(4); Local Rule 27(d)(2).

ARGUMENT: Unless otherwise ordered, motions are considered and decided on the papers without oral argument. Fed. R. App. P. 27(e).

MOTIONS FOR STAY OR INJUNCTION PENDING APPEAL: Counsel wishing to stay a judgment during the pendency of an appeal must file a motion for stay pending appeal. Filing a notice of appeal does not automatically stay the operation of the judgment. Counsel intending to file a motion for stay or injunction pending appeal in which time is of the essence should call the clerk's office to facilitate the rapid processing of the necessary papers.

Application for a stay or injunction pending appeal must ordinarily be made in the first instance in the district court. If an application to the district court for temporary relief pending appeal is not practicable, counsel must make a specific showing of the reasons the application was not made to the district court in the first instance.

A motion for stay shall state the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, shall be supported by an affidavit. The motion must prominently state the date of the action sought to be stayed. The motion shall include copies of all previous applications for relief and their outcome; a corporate disclosure statement (unless one has been previously filed); and any parts of the record or other materials essential to a fair presentation of the issues.

The motion is to be filed in the clerk's office. It will generally be considered by a panel of the court. If, due to exigent circumstances, counsel wishes to request consideration by a single circuit judge, counsel may make such a request in the title of the motion filed in the clerk's office. It is within the discretion of the judge assigned by the clerk's office whether to consider the motion as a single circuit judge. Fed. R. App. P. 8, 18; Local Rules 8, 21(e), 27(e).

MOTIONS FOR BAIL PENDING APPEAL: Application to set bail pending appeal must be made first to the district court. After action by the district court, the appellant may, if an appeal has been taken from the conviction, file a motion for release, or for a modification of the conditions of release, in the court of appeals without noting an additional appeal. A copy of the district court's ruling on bail and the judgment of conviction must accompany the motion. Fed. R. App. P. 9; Local Rule 9.

MOTIONS TO EXPEDITE: The court on its own motion or on motion of the parties may expedite an appeal for briefing and oral argument. Any motion to expedite should state clearly the reasons supporting expedition, the ability of the parties to present the appeal on the existing record, and the need for oral argument.

A motion to expedite must state the position of opposing counsel. If opposing counsel agrees to expedited briefing, the motion should set forth the schedule agreed to by counsel. In general, all briefs should be filed at least two weeks prior to the argument session to afford the panel a full opportunity to study the briefs in advance of argument. More expedited argument may, however, be ordered in the discretion of the court.

The granting of a motion to expedite affects the briefing and argument of the case; the timing of the ultimate disposition rests within the discretion of the panel. Local Rule 12(c).

MOTIONS FOR EXTENSION OF TIME TO FILE BRIEF: A motion for an extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The court discourages these motions, and grants extensions only when extraordinary circumstances exist. Local Rule 31(c).

MOTIONS FOR ABEYANCE: In the interest of docket control the court may, either on its own motion or upon request, place a case in abeyance pending disposition of matters before this court or other courts which may affect the ultimate resolution of an appeal. During the period of time a case is held in abeyance, the appeal remains on the docket but nothing is done to advance the case to maturity and resolution. The parties will be required to make periodic status reports

and/or notify the court of appeals upon resolution of the matter for which the case was placed in abeyance. Local Rule 12(d).

MOTIONS TO INTERVENE: A party who appeared as an intervenor in a lower court proceeding shall be considered a party to the appeal upon filing a notice of appearance. Otherwise, a motion for leave to intervene must be filed with the court of appeals. Any notice of appearance or motion to intervene should indicate the side upon which the movant proposes to intervene. Local Rule 12(e).

Intervention in agency review proceedings is governed by Fed. R. App. P. 15(d). A motion for leave to intervene in an agency review proceeding shall be filed in the court of appeals and served on all parties to the proceeding within 30 days of the date on which the petition for review was filed. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought.

Under Fed. R. App. P. 44, it is the duty of a party who draws into question the constitutionality of any federal or state statute in any proceeding to which the United States or the affected state is not a party, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the United States Attorney General or the state attorney general. The United States or the state may thereafter intervene to defend the constitutionality of the law at issue in the appeal.

MOTIONS TO DISMISS: Motions to dismiss based on lack of jurisdiction should be filed at the earliest possible time to avoid unnecessary preparation of transcript or briefs. A motion to dismiss does not automatically suspend preparation of transcript or the briefing schedule, but counsel may file a separate motion to suspend transcript or briefing pending disposition of the motion to dismiss. Local Rule 27(f).

MOTIONS FOR SUMMARY AFFIRMANCE OR REVERSAL: Motions for summary affirmance or reversal are reserved for extraordinary cases and should not be filed routinely. Counsel contemplating filing a motion for summary disposition should carefully consider whether the issues raised are manifestly unsubstantial and appropriate for disposition by motion.

Motions for summary disposition should be made only after briefs are filed. If such motions are filed before completion of the briefing schedule, the court will generally defer action on the motion until the case is mature for full consideration.

The court may summarily dispose of any appeal at any time. Local Rule 27(f).

MOTIONS TO SUBMIT ON THE BRIEFS: As soon as possible upon completion of the briefing schedule, or within 10 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. Local Rule 34(e). The motion must state the position of opposing counsel.

MOTIONS FOR VOLUNTARY DISMISSAL: Once an appeal is docketed, the court of appeals may dismiss upon filing with the clerk of an agreement signed by the parties stipulating dismissal and specifying the terms of payment of costs, and paying any outstanding fees. An appeal may also be dismissed on motion of the appellant according to terms agreed to by the parties or set by the court.

As an additional protection in criminal appeals, Local Rule 42 requires that the defendant must personally sign a Rule 42(b) motion to dismiss a criminal appeal.